

Abhiram Dass Vs. Gopal Dass

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Court : Kolkata

Decided On : Jun-19-1889

Reported in : (1890)ILR17Cal48

Judge : Prinsep and ;Ghose, JJ.

Appellant : Abhiram Dass

Respondent : Gopal Dass

Judgement :

Prinsep and Ghose, JJ.

1. The matter under appeal before us is an order by the District Judge admitting the respondent as a caveator under Section 69 of the Probate and Administration Act (V of 1881).

2. A preliminary objection is taken that no appeal lies against such an order We have been referred to Section 86 of that Act, which declares, that every order made by a District Judge, by virtue of the powers conferred upon him by the Act 'shall be subject to appeal to the High Court, under the rules contained in the Code of Civil Procedure applicable to appeals.' It is contended on one hand that, inasmuch as this is not a decree, there is no appeal We, have been referred to the case of Brojonath Pal v. Dasmony Dasse 2 C.L.R. 589, in which the law in this respect has been clearly laid down by Sir RICHARD GARTH, the late Chief

Justice. The order in that case was found to be an order admitting a review of judgment, and it was there held that that order was not appealable under the Code of Civil Procedure, and therefore could not be brought before the Court. In our opinion Section 86 of the Probate and Administration Act makes the Code of Civil Procedure applicable to orders passed under that Act. The order admitting the respondent as a caveator was exactly the same in effect as if it had made him a defendant in the suit. We may refer, first of all, to Section 55 of the Probate and Administration Act, which declares that, except as specially provided the proceedings under that Act shall be regulated, as far as the circumstances of the case will admit, by the Code of Civil Procedure. Section 83 provides that 'in any case before the District Judge in which there is contention,' that is to say, an objection is raised to the grant of probate or letters of administration, 'the petitioner shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant' Consequently the position occupied by the respondent is clearly that of a defendant under the Code of Civil Procedure. Under such circumstances, it appears to us that the order passed admitting him as caveator is appealable under Section 588, Clause (2). We accordingly over-rule the objection.

3. On the merits of this appeal, we think that the order of the District Judge must be set aside. Admittedly the caveator has no interest in the estate of the deceased testator, but it is contended on his behalf that, inasmuch as he lays claim to the properties dealt with by the will, he is entitled to come in and oppose the grant of probate or letters of administration. The District Judge relies on the case of *Kamona Soondury Dasse v. Hurra Lall Shah* I.L.R. 8 Cal. 570 as authority for holding that the caveator has an interest in the estate of the deceased, because he disputes the title of the deceased to dispose of the particular property which he says is his. He lays no claim to succeed to any part of the estate of the testator, but claims some of the property said to form portion of that estate. We cannot agree in the rule laid down in that case which is that expressed by Mr. Justice Field in the case of *Nobeen Chunder Sil v. Bhobosoondun Dabee* I.L.R. 6 Cal. 460, but not adopted by Mr Justice White. A person disputing the right of a deceased testator to deal with certain property as his own cannot be properly regarded as having an interest in the estate of the deceased. His action is rather

that of one claiming to have an adverse interest. The cases of Behary Lall Sandijal v. Juggo Mohun Gosmin I.L.R. 4 Cal. 1 : 2 C.L.R. 422 and Nanhu Koer v. Somirun Thakur 8 C.L.R. 287 proceed on the principle which we think should be adopted. If any further argument be necessary, we would refer to the terms of Section 69 which require the District Judge to issue citations calling upon all persons claiming to have any interest in the estate of the deceased.' The term used does not necessarily refer to any particular property, but to the claim of any person to succeed by inheritance or otherwise to any portion of the estate of the deceased by reason of an interest, not on an adverse title to the testator to any particular property, but in the estate itself whatever that may consist of. The form of the caveat too, would seem to show that the person who enters a caveat admits that the particular property forms a portion of the estate of the testator but objects either to the execution of the will or to the proposed manner of dealing with any portion of the estate. We therefore set aside the order of the District Judge admitting the respondent as caveator in these proceedings. The appellant will be entitled to his costs.