

In Re: Courjon

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Court : Kolkata

Decided On : Aug-14-1897

Reported in : (1898)ILR25Cal65

Judge : Sale, J.

Appellant : In Re: Courjon

Judgement :

Sale, J.

1. It appears that at the request of a nephew of the testator the Administrator-General applied for and obtained letters of administration with a copy of the will and codicils of the testator annexed 'limited' for the purpose of collecting the assets and paying the debts and charges of the interment of the deceased. Subsequently he applied to the Court and obtained also authority to pay the legacies given by the will and codicils. This application for an extension of his authority was made at the request of the present petitioner, who, as universal legatee and executrix according to the tenor, is now applying that the letters of administration granted to the Administrator-General may be revoked, and that probate be granted to her. I think there are sufficient indications in the codicils that the testator intended that the petitioner should administer as estate, and accordingly on the authority of the cases *In the goods of Punc(sic)ard*, (1872) L. R., 2 P. and D., 369, and *In the goods of Adamson*, (1875) L. R., 3 P. and D., 253,

the petitioner is entitled to probate as executrix according to the tenor, and she is also entitled to an order for revocation of the letters of administration granted to the Administrator-General. It appears to me that the period of limitation created by the proviso to Section 26 of the Administrator-General's Act does not apply to the circumstances of the application.

2. A question also arises as to the commission which the Administrator-General is entitled to charge. The grant of letters of administration to the Administrator-General, though limited, does not come within the provisions of Section 18 of the Act. The question as to the commission payable is therefore governed not by that section but by Sections 27 and 52 read together with Section 54.

3. Section 27 provides that if any letters of administration granted to the Administrator-General be revoked, the Court may order the whole or any part of the commission which would otherwise have been payable under the Act to be paid to or retained by the Administrator-General out of any assets belonging to the estate.

4. The rule laid down by Section 52 is that the Administrator-General of each of the Presidencies shall be entitled to receive a commission at the following rates, respectively, namely, the Administrator-General of Bengal at the rate of 3 per centum, and the Administrator-General of Madras and Bombay, respectively, at the rate of 5 per centum upon the amount or value of the assets which they respectively collect and distribute in due course of administration. Section 54 provides that the commission to which the Administrator-General of each of the said three Presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration.

5. Accordingly, it is enacted 'that one-half of such commission shall be payable (sic) retained by, such Administrator-General upon the collection of the (sic) the other half thereof shall be payable to the Administrator-Generiffs (sic)tributes any assets in the due course of administration, and may be retained by him upon such distribution.'

6. The term 'assets' means and includes property of a deceased person chargeable with and applicable to the payment of his debts and legacies.' It would, therefore, include immoveable property. But the commission chargeable under this section is in respect of the collection and distribution of assets.

7. What then is meant by 'collection of assets.'

8. This question was considered by the Madras High Court in the case of *In the goods of Simpson* (1863) 1 Mad. H. C., 171. The view of Scotland, C.J., was that the words 'collection of assets' as used in Sections 26 and 29 of the Administrator-General's Act (VII of 1855) did not necessarily mean realization by sale or by actual receipt or possession, yet, on the other hand, they implied the doing of some act in connection with the assets, whereby the Administrator-General incurred (sic)ouble or expense or responsibility. In the present case the testator was entitled to a certain zemindary property which he had leased in perpetuity. The lessee or putnidar is in possession, and has all the rights of ownership subject to the payment of a fixed rental. This rent was payable to and has been collected by the Administrator-General, and these collections are of course chargeable with commission. Moreover, a part of the zemindary estate has been acquired for public purposes, and the compensation money now in deposit in the Bank of Bengal is, under an arrangement made by the Administrator-General with the putnidar, divisible between the estate and the putnidar in certain proportions. The Administrator-General is, therefore, entitled to commission upon the amount apportioned to the estate. But as regards the rest or corpus of the zemindary property, the Administrator-General has not, it would appear, done any act which would constitute it an asset collected by him. Applying, therefore, the rule laid down by Scotland, C.J., no commission is properly chargeable in respect of this portion of the estate. The deduction claimed in respect of probate duty will be dealt with by the Registrar in the usual way. There will be an order for revocation of the letters of administration granted to the Administrator-General and for the issue of probate to the petitioner as prayed. The Administrator-General may retain his commission out of the estate, subject to the directions already indicated, together with his costs of this application.

