

In Re: Nundo Lall Mullick

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Court : Kolkata

Decided On : May-19-1896

Judge : Sale, J.

Appellant : In Re: Nundo Lall Mullick

Judgement :

Sale, J.

1. This is an application by the Administrator-General as the Administrator of the estate of Nundo Lall Mullick, deceased, for permission, under section 90 of the Probate and Administration Act, to sell property belonging to the estate for the purpose of paying off certain pressing claims against the estate.
2. The Administrator-General is the Administrator of the estate by virtue, of a deed of transfer executed by the executors of the Will of the deceased under the provisions of Section 31 of the Administrator-General's Act.
3. The question raised is whether the Administrator-General, for the purposes of Section 90 of the Probate and Administration Act, is an executor or an administrator in respect of the properties vested in him by the deed of transfer. The deed of transfer is dated the 14th August 1893, and Section 31 of the Administrator-General's Act provides that on the transfer being made by a private executor, 'the Administrator-General for the time being shall have the rights and be subject to the liabilities which he would have had and to which he would have

been subject if the probate had been granted to him by his name of office at the date aforesaid."

4. The effect, therefore, of a deed of transfer executed in pursuance of this section is to substitute the Administrator-General, for the original executor in all respects and for all purposes connected with the estate of the testator. The Administrator-General therefore, by the deed of transfer, acquired the power of disposition which the original executors possessed under Section 90 of the Probate and Administration Act. This section does not make an executor's power to dispose of property dependent upon the permission of the Court, except where a restriction is imposed by the Will. In that case the section provides that the power of the executor is subject to such restriction, 'unless probate has been granted to him; and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction to dispose of any immoveable property specified in the order in a manner permitted by the order.'

5. Now looking to the terms of the Will appointing the original executors, it appears that the testator does not authorize, or contemplate, the sale of any property for the payment of debts. There is a discretion given to the executors to sell, but it is given for the purpose of enabling the executors, who are also appointed trustees, to change the investment if desirable, for the benefit of the trust, and the property in its new form is to be held subject to the same trusts as the property in its original form. It may be said, therefore, that the discretion to sell was impliedly only to be used for the purposes of the trust, and for no other purpose.

6. These provisions in the Will do not, however, in my opinion, amount to a restriction on the powers of the executors to dispose of properties vested in them for the purpose of paying the debts of the estate. There being; there fore no restriction on the executor's power of disposition within the meaning of Section 90 of the Probate and Administration Act, this Court has no jurisdiction to make the order asked for. I was asked, if I came to the conclusion that the Administrator-General's application could not be granted, to disallow him his costs; but I do not think I ought to adopt that course. Having regard to the terms of the Will, and the fact that this is admittedly the first time that the question as to the effect of Section

31 of the Administrator-General's Act, when read with Section 90 of the Probate and Administration Act, has arisen for consideration, I cannot say that there was no element of doubt in the case; and that the application was unnecessary and improper. There will be liberty to the Administrator-General to pay out of the estate the costs of the parties appearing on this application.

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