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Court : Kolkata

Decided On : Jul-12-1915

Reported in : 31Ind.Cas.319

Judge : Lawrence Jenkins, C.J., ;Asutosh Mookerjee and ;Holmwood, JJ.

Appellant : Panchumoni Dassi and anr.

Respondent : Chandra Kumar Ghose and ors.

Judgement :

Lawrence Jenkins, C.J.

1. This appeal comes before us under Clause 15 of the Letters Patent by reason of the difference of opinion between the two learned Judges of the High Court, who on the first instance heard the original appeal.

2. It has been suggested that no appeal lies to us under the Letters Patent. But we have overruled that objection and we think that it is perfectly clear that an appeal does lie under Clause 15 of the Letters Patent. Any other conclusion would lead to a very anomalous result.

2. Having said so much in favour of the appellants, I think there is nothing more to be said in their favour in this case. It is a pure question of fact as to whether the Will was executed or not. Mr. Richardson, as he then was, the District Judge of Alipur, decided in favour of the Will and he did not do so lightly and without

thought, because at the very outset of his judgment he made it clear that there were circumstances which made it clear, in his opinion incumbent, that the evidence should be examined with more than usual care. He certainly did not fail in carrying out that obligation. His judgment is a very careful judgment, in which he gave specific reasons for accepting the oral evidence that had been adduced in favour of the Will. On appeal to this Court, the same view was taken by Mr. Justice Coxe. Mr. Justice Harinath Roy, however, thought that the case had not been rightly decided. In that he was very greatly influenced by his inspection of the signatures on the Will and his estimate of these signatures as derived from a comparison with other admitted signatures, written seven or eight years before the signature on the Will. This is at all times a dangerous ground on which to proceed and to reverse the appreciation of fact by the trial Judge. In this case it seems to me that there really was very little that justified the learned Judge's conclusion. First, he seems to think that the learned District Judge was not fully able to appreciate all that calligraphy suggested to him. But it is well known to us that the learned District Judge, as he then was, was very familiar with Bengali writing and there can be no doubt that he carefully did study these signatures, and I find that both my learned colleagues, who are certainly in a position to pronounce a very valuable opinion, so far from agreeing with Mr. Justice Harinath Roy, take the opposite view and think that there are remarkable and significant characteristics in the signatures on the Will and the admitted signatures which go to prove the identity of the authorship. I have looked at the signatures and I am unable to form any conclusion which would lend any support to Mr. Justice Harinath Roy's view.

3. This is how the whole matter stands. Two learned Judges including the trial Judge were satisfied on the facts that the Will had been proved. One learned Judge, however, from an examination of the hand writing principally, thinks otherwise.

4. Something has been said to us as to the provisions of the Will. I must confess that the provisions seem to me not unnatural. Having regard to all the circumstances of the case, e.g., the propriety and the desire of people in the position of the testator to keep the immoveable property in the family, I think there is nothing improbable in the provisions of the Will.

5. In my 'opinion we ought to dismiss this appeal. But we will say nothing as to costs.

Mookekjee, J.

6. I agree.

Holmwood, J.

7. I agree.

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