

Catchick and anr. Vs. Pogose

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Court : Kolkata

Decided On : Mar-14-1878

Reported in : (1878)ILR3Cal709

Judge : Markby and ;Prinsep, JJ.

Appellant : Catchick and anr.

Respondent : Pogose

Judgement :

Markby, J.

1. In this case we think that the order of the Subordinate Judge, so far as it makes the present applicant, Mr. P. N. Pogose, a party to these execution proceedings, must be set aside.

2. The original judgment-debtor was dead. He was an Armenian, and, therefore, succession to his estate is governed by the Succession Act, and the only person who could be his representative is the person indicated by that Act. The only difficulty at all about the matter is whether there is an appeal against this order of the Subordinate Judge or not. Whatever our own opinion may be, however, it is better that in this particular case we should follow the decision of Mr. Justice Ainslie and Mr. Justice Mc Donell given in a somewhat similar case on the, 28th August 1877, in which it was held that no appeal lies,[1] and for the purposes of

this case adopting that decision, we hold that no appeal lies in this case also. But nevertheless, although no appeal lies, we think it clearly a case in which we ought not to allow this erroneous order of the Subordinate Judge to stand. It is quite clear that it must lead to the greatest possible confusion and injury to the interest of the parties in this case, if this execution is proceeded with in the shape in which the proceedings now stand. Warning has already been addressed to the Subordinate Judge in the very judgment to which I have referred. Possibly, that judgment was not 'before him when he made the order now complained of. But it appears that there was before him another order of this Court in which it was distinctly pointed out that lie had done entirely wrong in putting Mr. P.N. Pogose upon the record in defiance of the Succession Act. We are wholly at a loss to understand why the Subordinate Judge in spite of warnings of this Court insists on persevering in this course, and we think that on this occasion we are justified in interfering under Section 15 of the Charter Act. We do not intend to differ from what the Chief Justice said in the case, which was heard before himself and Mr. Justice Mitter. The 10th September, 1877. The Subordinate Judge had no doubt jurisdiction to decide who was the legal representative of the deceased and, if he had decided that, we should not have thought it right, having regard to what has been said by the Chief Justice in his judgment, to interfere under Section 15. Put he has not decided that question in this case. He could not venture to decide that Mr. P.N. Pogose was his fathers representative in the face of the Chief Justice's judgment and the Succession Act. What he really does is this: He chooses to take upon himself to say that the proceedings pointed out by the law would be very inconvenient to the parties, and thinks that he would do some good to them by taking the course which lie has taken. As I have already said, the result of taking that course must be disastrous to the parties, and we think we are fully justified in interfering in this case. The order of the Subordinate Judge putting Mr. P.N. Pogose upon the record as the legal representative of the deceased without enquiring whether he is so or not, is an order which cannot be allowed to stand. Properly there ought to have been a formal application under Section 15; but as there has been some difference of opinion between the Judges of this Court upon this matter, we think that we are justified in treating this case substantially as an application under Section 15, without putting the parties to further expense.

3. Dealing with this case under Section 15, we direct that the order of the Subordinate Judge putting Mr. P.N. Pogose upon the record as the representative of the deceased be set aside. We make no order as to costs.

[1] See *Raygo v. Pogose* Misc. Sp. Appeal No. 104 of 1877 (Ainslie and McDonnell, JJ.) in which the learned Judges hold that Section 304 of Act VIII of 1859 prohibited an appeal from an order made on proceedings taken under Section 210 of the same Act. The rule applicable on such cases being analogous to that laid down in respect of Section 208 by the Privy Council in *Abidunnissa Khatoon v. Amirunnissa Khatoon* I.L.R. 2 Calc. 327.

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