

In Re: Goods of Mt. Golab Daye

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SooperKanoon Citation : sooperkanoon.com/875261

Court : Kolkata

Decided On : Apr-18-1939

Reported in : AIR1939Cal718

Appellant : In Re: Goods of Mt. Golab Daye

Judgement :

ORDER

Sen, J.

1 This is an application for the revocation of a grant of letters of administration limited for the purpose of representing the deceased in a suit and for grant of probate to the executors named in the will of one Mt. Golab Daye, deceased. The petitioners are the executors named in the will. The application is opposed by the administrator ad litem and the plaintiffs in the suit in which the administrator was appointed. Mt. Golab Daye was the defendant in a mortgage suit instituted by certain persons; she died pending that suit. The plaintiffs in that suit tried to get the heirs and legal representatives of Mt. Golab Daye substituted and a long correspondence ensued between the plaintiffs and the attorney for one of the executorss named Baijnath Khettri. Although the executors were asked repeatedly to get themselves substituted in the suit they took no steps. Thereafter an application was made in that suit for the appointment of an administrator ad litem and citations were issued on all the executors. They did not appear and an administrator ad litem was appointed. The executors now apply for a revocation of

this grant of letters of administration and also for a grant of probate to them.

2. The plaintiffs in the mortgage suit object to the revocation of letters of administration and they contend that if the letters are now revoked it would lead to unnecessary delay; they suggest that this application has been brought for the purposes of delay. In my opinion no case has been made out for revocation of the grant of letters of administration. The executors had ample opportunity of getting themselves represented in the suit. They deliberately refrained from taking any steps in the matter and they cannot now complain because an administrator ad litem has been appointed. The Court may revoke a grant of letters of administration on the ground mentioned in Section 263, Succession Act. In my opinion, no just cause has been shown to exist within the meaning of that Section. It seems to me that this application, so far as it relates to the revocation of the grant, has been made for the purpose of harassing the plaintiffs in the mortgage suit and for delay. That part of the application is therefore dismissed.

3. As regards the question whether the petitioners can get probate it seems to me that there is no reason why they should not be given a supplementary grant of probate keeping the grant to the administrator ad litem intact. I have not been shown any provision in the Succession Act or any Indian authority regarding this matter. Learned Counsel on behalf of the petitioners has referred me to the case in *In the Good of Brown* (1877) L.R. 2 P.D. 455. There it was held that a supplementary grant may be made in circumstances similar to the present one. I consider that the English practice should be followed in this case. I therefore direct that a caeterorum grant of probate will issue to the applicants. The grant to the administrator ad litem shall remain. The respondents other than the administrator ad litem will get their costs as between attorney and client. So far as the administrator ad litem is concerned, he will get party and party costs. The executors will get their costs of obtaining probate out of the estate.