

Naba Gopal Goswami Vs. Sri Gopal Alias Ram Gopal Bhattacharjee

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Court : Kolkata

Decided On : Mar-24-1915

Reported in : 33Ind.Cas.14

Judge : D. Chatterjee and ;Chapman, JJ.

Appellant : Naba Gopal Goswami

Respondent : Sri Gopal Alias Ram Gopal Bhattacharjee

Judgement :

1. This appeal arises out of an application for revocation of Letters of Administration granted to one Ram Gopal Bhattacharjee in respect of the Will by one Raghupati Bhattacharjee, his deceased brother. An application was made in August 1896 and in this application the only heir left by the deceased was not named, nor was any citation issued upon her. Upon ex parte evidence of another brother of the applicant named Sripati Bhattacharjee Letters of Administration were ordered to be granted. Immediately thereafter, the learned Judge was informed by an anonymous letter that there was a daughter in existence and that the Will was not a genuine one. The learned Judge then issued notice upon the maternal uncle and the maternal grandmother of the daughter of the deceased. The maternal uncle Durga Das then made an application on his behalf for the revocation of the Letters of Administration which had not then been issued. Durga Das thereafter made an application for the appointment of a guardian ad litem of the minor and an order to that effect seems to have been made. Then a few days

after, Durga Das made an application for withdrawing his application for revocation on the allegation that he had made enquiries and had been satisfied that the Will was a genuine one. Upon this application being made Durga Das's revocation case was struck off and Letters of Administration were issued.

2. It is contended by the learned Vakil for the respondent that this was tantamount to a contentious proceeding in which the minor was represented, that in fact the application was made on behalf of the minor herself and that after attaining majority she was not entitled to object to the ultimate grant that was made. But the difficulty that we find in accepting this contention is this, namely, that as soon as the learned Judge was informed of the existence of the minor heir of the deceased in case of intestacy, it was his duty to issue notice upon the minor and to have a guardian ad litem appointed for her. It was so held in the case of *Walter Rebbels v. Maria Rebbels* 2 C.W.N. 100. It is stated in that case that if an application is made for the Probate of a Will which affects the interests of a minor, the proper course is to serve the minor with a notice and have a proper guardian ad litem appointed for him. Now in this case, it is admitted that the minor was not served with notice. It might be that the service of notice on the minor, who was then living in the custody of the applicant, for Letters of Administration would not have been of much use still there was that want of notice. There was, however, that order for the appointment of a guardian ad litem but the appointment was made in the revocation case which was a quite separate case from the Probate case. If this guardian ad litem had been appointed in the Probate case, it would have been the duty of the Court to proceed with the case as a contentious case in the presence of the minor represented by her guardian ad litem. In that case fresh evidence would have had to be taken and an order made upon the contention. That has not been done. Therefore the representation by Durga Das cannot be said to have been effective for the purpose of making the order ultimately passed an order in solemn form.

3. Another application was made by another relation of the minor named Nakuleswar Bhattacharjee on the same allegation as was made by Durga Das. In this case Ram Gopal put in a written statement. Therein he stated that this Nakuleswar was indebted to the deceased testator and tried to get himself discharged from the debts due to the estate and failing therein he threatened to

harass him with litigation regarding the Will. There is evidence in this case by a nephew of Nakuleswar to the effect that Nakuleswar was made to give up that proceeding ultimately, when it was before the High Court, on the consideration of his getting back all the ornaments which he had pledged with Raghupati and of his being paid a certain sum of money. There is no order in the lower Court by which Nakuleswar was allowed to proceed as a next friend of the minor and in its absence we do not think that the interests of the minor were properly represented by Nakuleswar or that the minor was at all represented in this litigation. If the minor was neither cited nor properly represented in this litigation, she is entitled to come in and to have the Will proved in solemn form in her presence. If the Will is a genuine one, it will be proved in her presence. Of course there may be paucity of evidence on account of the lapse of time but however great the lapse of time may be, such evidence as is available will be considered and such an order made as will leave no reason for the complaint that the case of the minor has never been properly placed before the Court.

4. In this view of the case we think that the Court below should have made an order for revocation and ordered the Will to be proved in solemn form.
5. The appeal is, therefore allowed, and the decree of the lower Court is set aside. Costs of this appeal will be costs in the cause. We assess the hearing fee at three gold mohurs.