

Moheswar Panda and ors. Vs. Sundar Narain Pattanaik and ors.

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SooperKanoon Citation : sooperkanoon.com/882304

Court : Kolkata

Decided On : Apr-21-1915

Reported in : 33Ind.Cas.342

Judge : Fletcher and ;Teunon, JJ.

Appellant : Moheswar Panda and ors.

Respondent : Sundar Narain Pattanaik and ors.

Judgement :

1. This is an appeal by the plaintiffs from the judgment of the learned Subordinate Judge of Midnapore, dated the 19th August 1912, reversing the decision of the Munsif of Contai. The points which have been raised in the appeal concern only the manner in which the learned Judge of the lower Appellate Court dealt with certain portions of the documentary evidence that had been admitted by the Munsif.

2. The first document which has been dealt with in this appeal is a partition decree (Exhibit B), that is, a decree in a partition suit between the first defendant and his brothers. The learned Judge in the lower Appellate Court remarks that the partition decree is hardly admissible in evidence. The qualification of the word 'admissible' by 'hardly' shows that the learned Judge did not reject that evidence altogether. That appears to be clear from the rest of the judgment where he proceeds to an analytical examination of the decree. It is stated that the learned Judge is wrong.

We have not got a copy of the decree and we cannot say that the result which the learned Judge considered to be perfectly clear is wrong. There is nothing in the face of the judgment to show that the result arrived at by the learned Judge is wrong and that arrived at by the Munsif is right. We, therefore, decline to interfere on that account.

3. The next point urged is that the learned Judge of the lower Appellate Court refused to consider two Wills that had not been admitted to Probate but had been admitted in evidence by the Court of first instance. The learned Judge refused to admit these documents on the ground that they had not been admitted to Probate. It is stated that these documents though not proved are admissible in evidence under the provisions of Sections 13(a) and 32(7) of the Indian Evidence Act. In order that a document can be admissible in evidence under Section 32(7), the document must amount to a transaction. The question is, do these two alleged unproved Wills amount to a transaction. First of all, the evidence in this case does not satisfy the provisions of Section 50 of the Indian Succession Act. The Will has not been proved to have been executed in the manner stated therein. Therefore these two documents do not amount to unprivileged Wills and under the provisions of the law the learned Judge in the Court of first instance ought not to have admitted them, which are alleged to be unprivileged Wills, except on proof by one of the attesting witnesses that the documents had been executed in accordance with the Statute, namely, Section 50 of the Indian Succession Act. That being so, the documents ought not to have been admitted in evidence as they do not amount to a transaction within the meaning of Section 32(7). Every statement that a person makes on a piece of paper is not entitled to be admitted in evidence under the provision of Section 32(7) of the Indian Evidence Act; what is admissible has already been extended and includes not only public but private rights; and further extension would lead to trouble.

4. That being so, the result arrived at by the learned judge of the lower Appellate Court is correct though our reason for arriving at that result are somewhat different from that of the learned judge the present appeal, therefore, fails and must be dismissed.

