In Re: Pasupati Mukherjee

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SooperKanoon Citation : sooperkanoon.com/885984

Court : Kolkata

Decided On : Aug-21-1919

Reported in : 56Ind.Cas.431

Judge : Rankin, J.

Appellant : In Re: Pasupati Mukherjee

Judgement :

Rankin, J.

1. In this case I think there is power on the facts of the present case to make the order which is asked for under Section 11 of Act HI of 1913. This estate consists of shares, some of which, though by no means necessarily all of which, may want looking after in the sense that their value may be going up and down, also in the sense that dividends require to be collected, and farther in the sense that bonus shares may require to be applied for and obtained in order that the most may be made of the deceased's estate. It is not disputed that the suggestion that the Administrator-General should have the estate tinder Section 11, would be anything except' a convenient and cheap method to make sure that this property should not come to any harm; but on behalf of the respondents to this motion, Mr. Sen has argued before me that in view of the fast that the applicant here alleges that there is a Will and a valid Will, of which he had been appointed executor, and notwithstanding the fact that the execution of the Will is disputed and the validity,

even if it were duly executed, is also disputed, Section 11 does not apply. Now it seems to me that there being no difficulty with regard to the condition as regards this testator having left estate within the local limits of the jurisdiction of this Court; and the applicant not alleging that there is no person immediately available who is legally entitled to the succession of this estate, I have to look at the second condition mentioned in the second part of Section 11: Such Court is satisfied that dancer is to be apprehended of misappropriation, deterioration, or waste of such assets before it can be determined who may be legally entitled to the succession thereto. ' Mr. Sen has argued that if it is even 'alleged by the party applicant that there is a valid Will, that prevents him, and I rather gather that he thinks it prevents 'anybody else, having recourse to that 'section. I do not think so. I do not see why the word succession ' should be read as meaning ' intestate succession.' I think that the executor, as in this particular in-'stance, is the universal successor to his testator. It seems to me that it would be a very extraordinary thing if such a very common case were left out of the benefit of Section 11, it being a well-known fact that the commonest case, when difficulties of this kind arise, is a case where one person propounds a will and the other person says that there is no Will at all. Another way If looking at the matter is this: When you have two parties, one of whom affirms that there is a will and the other that there is no Will, it seems to me perfectly, clear that at all events on an application of the latter party, the powers of Section 11 would apply. I think that although, as a matter of fact, where a party is going to propound a Will, it will in general be the better course for him to make an application for probate and get an administrator pendente lite, nevertheless when the Administrator-General does apply, and one party intends to contend that there is a valid Will and the other party contends that there is no valid Will, he comes within that section. Sections 12 and 13 are explained by Mr. Sen as applying only to oases where a person comes forward and unexpectedly propounds a Will. I think there is no reason in sections 12 and 13 which requires a condition of unexpectedness at all. I think the words ' before it can be determined who may be legally entitled to succession thereto ' include what is perhaps the commonest case of all, namely, a contest between two people, one of whom propounds a Will and the other of whom alleges that there was an intestacy. That being so, I think the application is within the powers of Section 11. There is no reason why the

power should not be exercised in view of the fact that nobody can suggest a - better or more businesslike course.

2. I should like to say, however, that the express directions in the Will with regard to the selling of these shares should be care-fully observed and applied by the Administrator-General. I do not propose to give the Administrator General any special directions in the matter, but I do want to point out to him that his petition is just a little reaklessly expressed and might lead persons, who are a little timorous, to suppose that he was going to sell these shares wholesale and convert them into cash, It is not intended that be should do anything of the sort. He has a discretion in the matter, but he must exercise that discretion wisely and carefully and not on large and general principles. The application is allowed, Both parties will get their costs out of the estate. Mr. Mitter will get his costs as between attorney and client.