

In Re: Taramoni Dasi

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Court : Kolkata

Decided On : Feb-17-1898

Reported in : (1898)ILR25Cal553

Judge : Sale, J.

Appellant : In Re: Taramoni Dasi

Judgement :

Sale, J.

1. I have considered the question of costs, and it appears to me the rule is this: The executor of the will of the testator is entitled, in the same way as the next of kin would be, to call upon the executor of a prior will to prove in solemn form and to cross-examine the witnesses in support of the will, supposing there are any suspicious circumstances in connection with the execution of that will.

2. In the present case I think the executor of the former will has done nothing more than discharge the duty cast on him. There were circumstances undoubtedly of suspicion in connection with the execution of the subsequent will. The testatrix very shortly after executing the former will left her place of residence, and, while living under the care and protection of her nephews, executed a will in their favour, which was certainly inconsistent with the terms of the provisions of the previous will. It is quite true the learned counsel for the executor of the first will did not confine himself to cross-examining the witnesses to the subsequent will, but also

called evidence; but this was to allow the executor of the former will to give his version of an interview which took place after the death of the testatrix between him and the nephew of the deceased. Taking all the circumstances together, I prefer the account given by the nephews, but I think this circumstance should not disentitle the executor of the former will to his costs. The evidence given on his behalf was very short, and I think the litigation was produced by the conduct of the testatrix herself; and under the circumstances I think the order I should make is that the costs of both parties shall be paid in the first instance out of the estate, and, as the estate is a very small one, so far as the costs would not be covered by the estate, each party must bear his own costs.

3. The costs of the plaintiff and defendant will be paid rateably out of the estate, if the estate should be insufficient to pay the costs of both parties in full. So far as the estate may not be sufficient to pay these costs, each party will pay his own costs.

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