

## Shama Charan De Vs Srimati Reebala Dassi

**Court:** Calcutta High Court

**Date of Decision:** April 21, 1925

**Citation:** AIR 1926 Cal 792 : 96 Ind. Cas. 682

**Hon'ble Judges:** Mukerji, J; Ewart Greaves and, J

**Bench:** Division Bench

### Judgement

Mukerji, J.

This appeal arises out of, certain proceedings in connection with revocation of a Probate granted in respect of a Will of one

Basanta Kumar De. Basanta. Kumar De died leaving a widow Reebala Daesi, his brother Sital Chandra De, and-three nephews, Biman Chandra

De, Probodh Chandra De and Shama Charan De. The last mentioned person is the appellant in this appeal. After the death of Basanta Kumar De,

the widow, Reebala Dassi, and her brother one Poran Chandra Sen applied for Probate of the Will. The application was made on the 9th January,

1923, and the usual notices and special citations were ordered to be issued upon the brother Sital Chandra De and the nephews Biman Chandra

De, Probodh Chandra De and Shama Charan De. The nephews did not enter appearance, but the brother Sital Chandra De, on the 10th March,

1923, put in an objection to the grant of the Probate and in the application which he filed on that day he stated that the Will had not been executed

by Basanta Kumar De and had not been duly attested; and he contested the genuineness of the Will upon various grounds to be found set up in the

petition. On the 21st March, 1923, Sital Chandra De filed another petition in which he stated that he had come to learn on enquiry that the Will

propounded was a genuine document; and upon that petition being put in, the learned Judge on the same day. recorded an order to the effect that

the objection of Sital Chandra De having been withdrawn, and the usual affidavits having been put in, Probate should issue. On the 16th June,

1923, the appellant appeared through one Nani Lal De and alleged that he was a minor living under the guardianship of Nani Lal De who was his

maternal uncle. In the petition which he filed on that date he-stated that no notice of the proceedings had been served on him, that he was residing

with his said maternal uncle Nani Lal at Jangipara Krishnagore within the District of Hooghly, and that as a matter of fact he had been described as

a major in the application for Probate and that the notice that had been issued in his name appeared to have been served at Jadavbati which was

quite a different place. He stated further that the applicant for Probate in collusion with Sital Chandra De had obtained Probate in respect of the

Will. He applied for revocation of the Probate u/s 50 of, the Probate and Administration Act--Act V of 1881. The learned District Judge on the

6th February, 1924, refused the application of Shama Charan De on the preliminary ground that he had no locus standi. The learned Judge was of

opinion that Shama Charan De being the nephew of the testator was not an immediate reversionary, heir and he held that the Probate having, been

granted in, the presence of the immediate reversionary"" heir, namely, Sital Chandra De, the"" petitioner had no locus standi to come in and apply u/s

50 of the Probata and Administration Act Shama Charan De has thereupon preferred this appeal.

2. On behalf of the appellant reliance has been placed on the decision of this Court in the case of Brindaban Ghunder Shaha v. Sureshwar Saha

Paramanick 3 Ind. Cas. 178 : 10 C.L.J. 263. That was a case in which a question arose as to whether the reversioner was entitled to come in and

oppose the grant of Probate. The reversioner in that case was an immediate reversioner. In that case it was laid down that any interest, however

slight, and even the bare possibility of an interest, is sufficient to entitle a party to oppose a testamentary paper or instrument, It is not necessary to

consider in the present case whether the proposition that was laid down in that case is really applicable in this, country or whether the rule

enunciated there as having been laid down in the English cases is applicable to cases like this. I would prefer to rest my decision upon the particular

facts of the present case.

3. It cannot be disputed that, as a matter of fact, the appellant being one of the next reversioners has an interest in this matter. The only question is

whether he should be allowed to come in, having regard to the circumstances to which I have referred. Now the principle applicable to such a case

seems to be well-settled. In the case of Abinabh Chandra Mazumdar v. Harinath Shaha 32 C. 62 : 9 C.W.N. 25, which was a case relating to a

declaratory suit by a remote reversioner it was laid down that where the nearest reversioner precludes himself or herself from maintaining a

declaratory action by omitting to sue within the statutory period and has practically allowed improper alienations, the remote reversioner is entitled

to maintain the suit. What is necessary to be investigated in a case like this is whether the interest which the appellant undoubtedly has, would or

would not be affected by reason of his not being allowed to come in to oppose the grant of the Probate. The circumstances of the present case are

somewhat, peculiar. A petition was filed by the immediate reversioner challenging the genuineness of the Will in distinct and definite terms and

within a short time of the filing of the petition he put in a petition not merely withdrawing his objections, but stating that he was satisfied upon

enquiry that the Will was a genuine one and that Probate should issue. These circumstances seem to me to indicate that there may have been some

sort of arrangement between Sital and the propounder of the Will and in this view of the matter the case comes within the principles laid down in

the case of *Satindra Mohan Tagore v. Sarala Sundari Debi* 45 M.W.N. 49 : 27 C.L.J. 320 and I hold that upon the circumstances of the present

case the appellant had sufficient interest which would entitle him to come in and contest the proceedings. In this view of the matter we think that the

learned Judge's order cannot be supported.

4. We, accordingly, set aside the order of the Additional District Judge and send the case back to him in order that he may take further steps to

have the Will proved in solemn form before him. The appellant will be entitled to intervene and cross-examine the witnesses and examine witnesses

on his own behalf. If, however, the appellant takes undue or unreasonable advantage of the opportunity thus granted it will be open to the learned

Judge to make such orders as he thinks fit for the purpose of compensating the propounder of the Will with regard to the costs of the proceedings.

5. Costs--hearing fee, three gold mohurs--will abide the result.

Greaves, J.

6. I agree.