

(1926) 01 CAL CK 0044**Calcutta High Court****Case No:** None

Kalisadhan Mitra and Another

APPELLANT

Vs

Prafulla Chandra Mittra

RESPONDENT

Date of Decision: Jan. 21, 1926**Citation:** AIR 1926 Cal 1061 : 95 Ind. Cas. 848**Hon'ble Judges:** Hugh Walmsley, J; Chakravarti, J**Bench:** Division Bench**Judgement**

Walmsley, J.

The question raised in this appeal is as to the effect of a declaration made by an employee of the Eastern Bengal State Railway regarding the disposal of the sum standing to his credit in the Railway Provident Fund on his death.

2. The facts are as follows:---Dwarka Nath Mitter was a widower without children in 1902, and when he was called upon under the Rules of the Fund to make a declaration as to the payment of the money deposited by him on his death, he named his brother Prafulla Chandra Mitter. He married a second wife subsequently, and had two sons and two daughters by her, but he did not change his declaration. He died in 1922. Then the widow applied for a certificate under Act VII of 1899, and Prafulla opposed the application. Later he applied for Letters of Administration on the footing that the declaration is a Will. The widow, and, after her death, the sons opposed this application, but the learned Judge has held that the declaration is a Will, and has granted Letters of Administration limited to the money at the credit of the deceased in the Fund. The minor sons are the appellants.

3. The declaration is in this form: "I hereby declare the following to be the name and address of the person who in the event of my death, will be entitled to receive payment of my deposit in the Railway Provident Fund and I make this my Will so far as regards such deposit." Opposite a note "whether the above (the nominee) is next of kin or obtains the deposit by bequest of depositor" are the words "by bequest of depositor." The declaration is duly attested by two witnesses.

4. In the revised form of declaration now in use the wording has been changed slightly, and the declaration ends with the words "I hereby appoint...to be the executor/executrix of this my Will so as regards such deposit."

5. It is clear, I think, that those who framed the form of declaration intended to give it a testamentary character, and that the object which they had in view was to insure that there should be some nominee competent to give the Railway Company a valid discharge.

6. In this case the learned Judge has held that the declaration amounts to a Will, and he has given the petitioner Letters of Administration with a copy annexed.

7. The arguments before us proceeded on the footing that by holding the document to be a Will the learned Judge decided that the petitioner took a beneficial interest in the money. The learned Judge does not say so, however, arid this is not the proceeding in which the effect of the document is to be determined. That is a question which can be raised hereafter.

8. It is said that the document is not a Will, because it was made under a certain measure of compulsion, and because, after being lodged with the authority controlling the Fund, the testator's ability to revoke it was curtailed. It is quite true that freedom of the Will and ability to revoke on the part of the testator are two characteristics of a Will, but it cannot be said that the Rules of the Fund do more than put some limitation on those features, and I do not think that the limitation is of such a kind as to prevent the declaration from being a Will.

9. Another argument is that the balance at the credit of the deceased does not form part of his estate, and attention is drawn to the fact that it cannot be attached at the instance of a creditor or withdrawn at the option of the depositor. These facts are not, I think, sufficient to show that the balance did not form part of the deceased's estate. The Rules of the Fund contemplate that a subscriber should have the power of disposing of the balance on his death, and the deceased did purport by the declaration to make a disposition to take effect after his death. Whether the disposition was effective or not is a question which the Probate Court cannot decide: but that fact need not deter us from holding, in view of the circumstances mentioned, that the balance did form part of the deceased's estate.

10. In my opinion, therefore, the document must be regarded as the Will of the deceased, and the only question that remains is whether the petitioner should receive the right to administer this part of the estate. He is the brother of the deceased and the uncle of the minor children. Their mother is now dead, and the only competitor is the mother's brother. As the petitioner was named in the declaration, I think that the learned Judge was right in holding him to be the person who should receive Letters of Administration.

11. Inasmuch, however, as the effect of the declaration remains to be determined, the Judge's order as to the amount of security must be revised, and the petitioner must be required to give security to the full extent of the sum to the credit of the deceased in the Fund.

12. Subject to this modification the appeal is dismissed.

13. The parties will bear their own costs in this appeal.

Chakravarti, J.

14. I agree.