(1910) 03 CAL CK 0058

Calcutta High Court

Case No: None

Bhuban Mohini Debi	APPELLANT
Vs	
Kiran Bala Debi	RESPONDENT

Date of Decision: March 1, 1910

Acts Referred:

- Probate and Administration Act, 1881 - Section 34

Citation: 9 Ind. Cas. 215

Hon'ble Judges: Teunon, J; Mookerjee, J

Bench: Division Bench

Judgement

1. We are invited in this Rule to appoint an Administrator pendente lite, u/s 34 of the Probate and Administration Act of 1881, during the pendency of an appeal against an order for revocation of probate of a Will alleged to have been executed by one Syama Charan Singh, who died on the 1st April 1906. After the death of the alleged testator, his nephews propounded the Will, the effect of which in substance was to leave the estate to Bhubaneswari, the daughter of the testator, and practically to the disinherit the widow, Kiran Bala, the step-mother of that daughter. Probate was granted in common form on the 30th June 1906. On the 10th August, 1908, an application for revocation of probate was made by the widow, on the ground that the Will was a forgery, and the grant had been obtained by fraud. On the 20th September 1909, the District Judge held in favour of the widow and revoked the probate. The daughter has appealed to this Court, and the present application has been made by her for appointment of an Administrator pendente lite till the disposal of the appeal. In her petition, it is alleged that the widow is incompetent to manage the property, and that if an Administrator is not appointed, the estate is likely to be wasted. These allegations have been repudiated on the side of the widow; and it has been argued that there is no necessity for the appointment of an Administrator pendente lite, inasmuch as the widow is prepared to deposit with the Collector. Government securities as a protection against the sale of the estate for

arrears of revenue; and she undertakes not to alienate any portion of the estate during the pendency of the appeal. It has also been suggested that as the name of the widow has already been registered under the Land Registration Act, she can, without difficulty, collect the rents from the tenants. In reply, it has been contended on behalf of the daughter, that the Court has no discretion in the matter, and is bound to appoint an Administrator pendente lite, as otherwise there would be no one to represent the estate and legally entitled to receive or to hold the assets or to give discharges. In support of this proposition, reliance has been placed upon the case of Bellew v. Bellew (1865) 4 SW and Tr. 58 : 34 L.J.P. 125 : 11 Jur.(N.S.) 588 : 13 L.T. 247. In our opinion, sufficient grounds have not been made out for the appointment of an Administrator pendente lite at the present stage of the proceedings.

2. Section 34 of the Probate and Administration Act provides that pending any suit touching the validity of the Will of a deceased person, or for obtaining or revoking any probate, or any grant of Letters of Administration, the Court may appoint an Administrator of the estate of such deceased person. It is manifest from the language used by the Legislature, that the Court has a discretion in the matter. No doubt, the exercise of such discretion is judicial and not arbitrary; that is, circumstances are established which justify the appointment of an Administrator pendente lite, it is the duty of the Court to make such appointment. It cannot, however, be affirmed as an inflexible rule that whenever there is a suit pending, touching the validity of a Will, or for obtaining or revoking any probate, or grant of Letters of Administration, it is obligatory upon the Court to appoint an Administrator.

3. The section to which we have just referred, is substantially identical with Section 70 of the Court of Probate Act, 1857 (20 and 21 Vict. Chap. 77). Under that statute, it has, been held that before granting Administration pendente lite, the Court must be satisfied of the necessity for the appointment of an Administrator, and would appoint such Administrator in all cases where the Court of Chancery would appoint a Receiver. To put the matter in another way, the Court expects a necessity to be shown for the temporary grant, namely, that there is something required to be done and there is no person empowered to do it. The case of Bellew v. Bellew (1865) 4 SW and Tr. 58 : 34 L.J.P. 125 : 11 Jur.(N. s.) 588 : 13 L.T. 247 upon which reliance has been placed on behalf of the petitioner, and which was followed in Brindaban Chandra v. Sureswar Shaha 10 C.L.J. 263 : 3 Ind. Cas. 178 is really not opposed to this view. This is clear from the decision in Horrell v. Witts (1860) L.R. 1 P. and. D. 103 : 12 Jar. (N.S.) 673 14 L.T. 137 : 14 W.R. 515 : 35 L.J.P. 55 where Lord Penzance referred to this decision, as authority for the proposition that the Court will only grant administration pendente lite in cases were a necessity for the grant is made out; so that, where the necessity does not appear, the Court will refuse to make it. Young v. Brown (1828) 1 Hagg.54. We may mention as illustrations, cases of partnership transactions Horell v. Witt (1860) L.R. 1 P. and. D. 103 : 12 Jar. (N.S.) 673 14 L.T. 137 :

14 W.R. 515 : 35 L.J.P. 55 where the Court does not appoint an Administrator pendente lite against the wish of the surviving partner, unless a strong case is made that he has dealt improperly with the business. Similarly, the Court will not appoint an Administrator pendente lite where there is a person named in the Will as executor whose appointment is not questioned (the dispute, for instance, relating to a codicil only, not affecting the appointment of executors), because there is an executor who can discharge the duties of such an Administrator. Mortimer v. Paull (1870) L.R. 2 P. and D. 85 : 39 L.J.P. 47 : 22 L.T. 631 : 18 W.R. 901. It may be added that previous to the creation of the Probate Court in England, it had been ruled in a series of cases, Sutton v. Smith (1753) 1 Cas. Temp. Leo. 207; Maskeline v. Harrison (1756) 2 Cas. Temp. Lee. 25?; Walker v. Wollaston (1731) 2 P. Wms. 575 that administration pendente lite ought not to be granted without due cause, although some cases, for instance, Northey v. Coch (1822) 1 Add. 326 went further to hold that actual danger to the estate must be proved in order that the appointment might be justified. We must, therefore, hold that an Administrator pendente lite will be appointed u/s 34 of the Probate and Administration Act only when the Court is satisfied that such appointment is necessary to preserve and protect the estate, while the litigation is pending, and that unless such necessity is made out, the estate ought not to be subjected to the cost and incumbrance of such an administration. This is the view which was taken in the case of Brindaban Chandra v. Sureswar Shaha 10 C.L.J. 263 : 3 Ind. Cas. 178 and Jogendra Lall v. Atindra Lall 13 C.L.J. 34 : 2 Ind. Cas. 638. We must, therefore, proceed to consider whether in the present case, necessity for the appointment of an Administrator pendente lite has been clearly made out.

4. The evidence on both sides makes it reasonably plain that the estate consists principally of valuable zemindaris and Government securities. So far as the former are concerned, the widow as the heiress-at-law in the event of intestacy, has got herself registered under the Land Registration Act, and under the provisions of that Act read with Section 60 of the Bengal Tenancy Act she is entitled to realise rent from the tenants. In so far as the Government securities are concerned, the widow has offered to deposit them with the Collector for the due discharge of Government demands in accordance with the provisions of the Revenue Sale Law. She is not anxious to draw the interest as it accrues due, and no harm is likely to result to the estate if such interest accumulates for a short time. There is no suggestion that any claim for sum due to the estate or otherwise, has to be enforced, nor is there any indication that the estate is liable to be sued for the enforcement of any claim against it. No question, therefore, arises as to any necessity for the due representation of the estate in any litigation. It was suggested on behalf of the daughter, that the rents, in any event, have to be collected, and matters may be mismanaged, as the widow is a lady of somewhat feeble intellect. This has been denied on the side of the widow, though not very explicitly, but there is no suggestion that the arrangements made by the widow, for the collection of rents,

are otherwise than satisfactory and should on that ground be superseded. The widow has, however, given an undertaking not to alienate in any manner, the properties belonging to the estate, and also to pay regularly all Government demands and to meet other necessary expenses. She has denied that her acts, during the time that she has been in possession of the estate, have been in any way injurious to the best interests thereof, and we are unable to hold that there are any substantial grounds to justify the inference, either that the estate has been mismanaged in the past or is likely to be mis-managed in the immediate future. Under such circumstances, we must hold that the necessity for the appointment of an Administrator pendente lite, has not been clearly made out. The Rule must consequently be discharged; but as the estate is of considerable value, it is desirable that the question of the genuineness of the Will of the last owner should be decided without delay. It is accordingly directed that the hearing of the appeal be expedited. We make no order as to the costs of the Rule.