Ghanashyam Mohanti and Others Vs Jagabandhu Jena and Another

Court: Calcutta High Court

Date of Decision: Dec. 22, 1909

Judgement

1. This appeal is directed against a judgment and decree of the District Judge of Cuttack, dismissing an application for probate of a certain

document, dated the 10th September 1879, which is described to be the Will of one Pabitra Das, a mohunt. The present appellants are persons

who came forward as Superintendents of the math and they brought the suit in, that capacity in order to obtain probate of this document which

they describe as a Will in order, it is said, to acquire authority to deal with one Ajodhya Das, who after the death of the Mohunt Pabitra Das

appears to have occupied the post of mohunt of the math. The learned District Judge before whom the suit was brought has dealt with the

document propounded as a Will and has come to the conclusion that it does not come within the definition of a Will as given in Act X of 1865,

namely, that it does not contain the legal declarations of the intentions of the testator with respect to his property which he desires to be carried into

effect after his death. The learned Judge was of opinion that the document in question dealt with property which belonged to the idol of the math

and in which the testator had himself no right at all. He, therefore, dismissed the application and the present appeal has been preferred in this

Court.

2. It has been argued in support of the appeal that the decision of the lower Court is wrong because the document in question includes properties

other than those which are the admitted properties of the idol; and, in support of this contention, the following passage in the document is relied on:

The said Guru out of the proceeds of those properties acquired some other lands and, in respect of all the movable and immovable properties thus

acquired he remained and on his death, I have been in absolute possession."" It is argued that from this passage it clearly appears that there were

properties to which the testator had title outside the properties which actually belonged to the idol. We have considered this argument and we do

not think that it can be accepted. In the first place, these additional properties are stated to have been acquired out of the proceeds of the

properties belonging to the idol and the terms of the document seem to us to have no doubt whatever that the person who executed it regarded

these properties as well as the other properties previously referred to in the document as the properties of the idol.

3. The second point taken is that the learned District Judge was wrong in holding that there was no disposition of the properties belonging to the

testator in the document because, in fact, the document in question conferred on the present appellants a power of appointment; and, in support of

this contention that a power of appointment may be regarded as a portion of the estate of a deceased person, we have been referred to certain

English authorities. In our opinion, the-authorities to which we have been referred can afford no possible assistance in determining the present

question and there seems to be some confusion as to the meaning of a power of appointment as understood in the English Law. The document, so

far as we understand it, is one executed by the executant for the purpose of providing for the succession to the mohunt-ship after his death. It

provides that he himself should remain as the mohunt up to the time of his death and that after his death, Ajodhya Das should become the mohunt

of the math. There is a proviso in the document that, if Ajodhya Das does anything wrong and misuses the math properties, certain persons, who

are described as Superintendents or their representatives, shall be competent to dispossess him and then appoint a fit person in his place as the

malik of the math properties. The persons referred to as Superintendents are the plaintiffs in the present case; but we are of opinion that the power

given to them to dismiss Ajodhya Das for misconduct and appoint another person is not such a power of appointment as is contemplated by the

authorities in the English Law to which we have been referred. In our opinion, the view taken by the learned District Judge is correct. The

document in question is not a document which purports to provide for the disposition of the properties of the testator after his death but merely

indicates the person who on his death should be selected to undertake the duties of the mohunt of the math. We understand that Ajodhya Das has

died since this suit was instituted and the object of the present appellants is to obtain authority to enable them to institute suits against persons to

whom Ajodhya Das during his life-time transferred some properties belonging to the math. We are of opinion that the present applicants cannot

succeed; for, we agree with the learned; District Judge in holding that the document of which probate is sought cannot be described as a Will and

that the appellants cannot obtain probate under that document or take out letters of administration to the estate on the basis of that document, as,

being a Will, so as to give them the authority which they require. In our opinion the document is not a Will and the learned District Judge was right

in refusing to grant probate or letters of administration. The appellants, supposing that they hold the position which they allege they hold as

Superintendents of the math, which position seems to a certain extent to be confirmed by the terms of the document in respect of which this

application has been made, may, if so advised, bring a separate suit in their capacity as Superintendents making such use as they may think fit of

the document in question in order to support their authority and prove their title to bring such a suit and to obtain the reliefs claimed. The result,

therefore, is that the appeal fails and is dismissed with costs. We assess the hearing fee at three gold mohurs.