

(1936) 11 CAL CK 0018

Calcutta High Court**Case No:** Appeal from Original Decree No. 69 of 1934Bhupendra Nath Naskar and
Another

APPELLANT

Vs

Bhusan Chandra Mandal and
OthersRESPONDENT

Date of Decision: Nov. 26, 1936**Final Decision:** Allowed

Judgement

1. This appeal has arisen out of a proceeding for revocation of probate of a Will. One Doyal Chand Naskar died on the 20th May, 1920, leaving a Will executed by him on the 1st of April, 1920. The application for probate of the Will left by Doyal Chand Naskar was made by his brother Parbati Charan Naskar, on the 8th December, 1920; and probate was granted to him on the 6th April, 1921, after notices of the probate proceeding were issued on the parties who were or could claim to be the immediate reversioners to the estate left by Doyal Chand Naskar, namely, Jaba Dasi and two daughters of Jaba Dasi, Barada and Sarada. It would appear that notices of the proceeding for grant of probate of the Will of Doyal Chand Naskar were not issued on the three sons of Sarada, one of the daughters of Jaba Dasi, presumably on the ground that the persons in the position of these sons Bhusan, Dhirendra and Surendra. were not entitled to notice of the proceeding for grant of probate of a Will and the Court issuing grant of probate did not consider it necessary to issue citations on these persons. Parbati Charan Naskar to whom probate of the Will of Doyal Chand Naskar was granted on the 6th April, 1921, died in July, 1925. On the 17th April, 1930. an application for revocation of the probate granted to Parbati Charan was made by Jaba Dasi. The application for revocation made by Jaba Dasi was rejected by the trial Court before which the said application was made. The decision of the trial Court was given on full consideration of the materials placed on record on the 1st August, 1931; and the appeal preferred by Jaba Dasi from the decision rejecting her application for revocation of probate, to this Court, was dismissed, and in the judgment of this Court, full concurrence with the decision

arrived at by the trial Court on the material issues arising for consideration in the case was expressed. On the question of non-citation of Jaba Dasi in the probate proceeding, this Court, in agreement with the decision of the trial Court, came to the definite conclusion that Jaba Dasi had been cited in the probate proceeding. An issue appears to have been raised on the question of genuineness of the Will. In the proceedings in revocation of probate started at the instance of Jaba Dasi before the trial Court; and this Court on appeal came to the definite conclusion that the Will of which probate was granted on the 6th April, 1921, was a genuine Will.

2. Before the decision of the trial Court was given on the application for revocation made by Jaba Dasi an application was made by Bhusan and Surendra, two sons of Sarada, a daughter of Jaba Dasi. That application giving rise to this appeal, was made on the 29th July, 1931; and the decision against which this appeal was preferred was given by the learned Subordinate Judge in the Court below on the 20th December, 1933, by which the probate granted to Parbati Naskar on the 6th April, 1921, was revoked, and direction was given by the Subordinate Judge for proof of the Will of Doyal Chand Naskar in solemn form. The ground for the decision directing revocation of probate of the Will of Doyal Chand Naskar and proof of the Will in solemn form, was based upon the conclusion arrived at by the Judge in the Court below, that the Petitioners for revocation of probate, Bhusan and Surendra, ought to have been cited in the proceeding for grant of probate started at the instance of Parbati Charan Naskar, on the 8th December, 1920. In the judgment of the trial Court dated the 20th December, 1933, it was said, with reference to the decision of the Subordinate Judge rejecting the previous application for revocation, that the case was sub judice at the time, and the decision arrived at in that proceeding should not be taken into account. As it has been mentioned, the decision of the trial Court in the revocation proceeding has now become final, in view of the decision given by this Court on the 5th March, 1935.

3. The Defendants Nos. 1 and 2, Bhupendra and Sarat, who were objectors before the lower Court in the proceeding for revocation started by Bhusan and Surendra, appealed to this Court, from the decision of the trial Court granting revocation of probate and directing proof of Will in solemn form.

4. The case for the Appellants for revocation of probate giving rise to this appeal was that they had not been cited by the parties and ought to have been cited in the proceeding for grant of probate, started at the instance of Parbati Charan Naskar, on the 8th December, 1920. The case of the objectors, Appellants in this Court, was that the applicants for revocation of probate were remote reversioners of the second decree and having only a spes successionis of the barest character, were not necessary parties to the probate proceeding, and as such it could not be said that they had any locus standi, so far as the application for revocation made by them, giving rise to this appeal, was concerned. That was the main question for consideration in the case, so far as this appeal is concerned. The other points arising

for consideration in the case, which could be considered to be relevant and material, were decided in favour of the objectors. As has been indicated above, the basis of the decision in pursuance of which, a direction was given for revocation of the grant of probate and for proof of the Will in solemn form, was that the applicants for revocation were persons who should and ought to be cited in the probate proceeding started at the instance of Parbati Charan Naskar on the 8th December, 1920.

5. The question that was urged before the Court below with reference to the locus standi of the applicants for revocation of probate, was this that the estate of Doyal Chand was represented by the widow Jaba Dasi who would have inherited the estate as a widow if there had been no Will propounded by Parbati and the suit for revocation by Jaba Dasi was filed and conducted by her in her representative capacity as a widow, representing the estate of her deceased husband, that; the decree in the said suit was binding on the reversioners including the applicants for revocation, and operated as res judicata in the present suit. It was further urged before the Court below that the widow Jaba Dasi made an application for revocation to avert a common danger to the estate of Doyal to which the reversioners, including the remote reversioners (including in that category the applicants for revocation; so far as the present proceeding is concerned), were interested; and the decree passed in that suit was binding on the entire body of reversioners, unless it could be proved that there was any fraud or collusion between the widow and the Defendant. As has been dearly pointed out by the Judge in the Court below there was no sufficient evidence of fraud or collusion between the widow Jaba Dasi and the Defendants. It may be added that Jaba Dasi has now lost the case, regard being had to the final decision of this Court given on the 5th March, 1935. The question for consideration then is, what would be the effect of the decision disentitling Jaba Dasi from any relief, so far as her application for revocation of probate of the Will of Doyal Chand was concerned. In our judgment, there could be only one possible answer to the question, namely, that the reversioners in the position of the applicants for revocation of probate, Respondents in this Court, were bound by the decision given in the revocation proceeding started by Jaba Dasi. In our opinion, the position cannot be disputed that Jaba Dasi at the time when she applied for revocation of probate, represented the estate of Doyal Chand. and as such, any decision given for or against her in the proceeding for revocation bound not only the reversioners Bhupendra and Sarat, who were parties not only to the probate proceeding started by Parbati Charan, but also to the proceeding started at the instance of Jaba Dasi for revocation of grant of probate, but was also binding against Bhusan, Dharendra and Surendra, the sons of Sarada. This is the most important aspect of the case; and in our judgment our decision on this question concludes the appeal in favour of the Appellants, objectors to the application for revocation of grant of probate to Parbati Charan, made by the Respondents on the 6th April, 1921.

6. One further question raised before the Court below in connection with the locus standi of the Respondents Bhusan and Surendra to maintain an application for revocation of probate has received our consideration, as it did receive the consideration of the Judge in the Court below. It appears to be clear that so far as citation in the probate proceeding started at the instance of Parbati Naskar on the 8th December, 1920, was concerned, the reversioners in the position of the applicants for revocation of probate, Bhusan and Surendra. Respondents in this Court, were not parties, on whom it could be said that it was incumbent under the law to issue citation. As has been indicated already in connection with the question we have dealt with, the estate of Doyal Chand was fully represented by Jaba Dasi at the time when the application for probate was made. In addition to this, the fact has to be taken into consideration that not only Jaba Dasi but also Barada and Sarada were parties on whom citations were issued and who had full notice of the proceeding started on the application of Parbati Charan for grant of probate of the Will of Doyal Chand Naskar. In view of tin"s, the decision of this Court in the case of Durgagati Devi v. Saurabini Devi ILR 33 Cal. 1001: s.c. 10 C.W.N 955 (1906) based upon a correct principle that a decision dismissing an application made by the widow and the heiress of the deceased testator for revocation of the letters of administration which had been granted to his mother is binding on the daughter who would, if the Will were set aside, be a next heir, unless the latter can make out that there was collusion between the mother and the widow of the testator. In the case before us it can very well be held, as we do hold, that the proceeding started by Jaba Dasi for revocation of the grant of probate and the decision given in the same, conclude the case against the applicants for revocation of probate, Respondents in this appeal. In our opinion, there could be no question of want of proper citation so far as the probate proceeding was concerned; neither Bhusan nor Surendra was a party who had such an interest in the estate of Doyal Chand at the time when grant of probate was applied for by Parbati Naskar, which could entitle them to a citation. On behalf of the Respondents in this appeal reliance was placed on the decision of this Court in the case of Haridasi Dasi v. Bidhumukhi Dasi 35 C.L.J. 66 (1921). We are unable to see that that decision supports the case of the Respondents, applicants for revocation of probate. What was decided in that case was that where the immediate reversioner was a daughter and she had rendered herself by her conduct unable to maintain an application for revocation of a grant of probate, the application for revocation might be made by the daughter"s sons, who as the ultimate reversioners were the proper parties. In the case before us. there is absolutely nothing to indicate that Jaba Dasi had rendered herself, by her conduct, unable to maintain an application for revocation of the grant of probate. On the other hand, as has been indicated already, the Judge In the Court below has pointed out that there was no sufficient evidence of fraud and collusion between the widow and the Defendants. In view of that position, it cannot be said that the decision to which reference has been made above, is of any assistance to the Respondents in whose favour a decision was given by the Court below.

7. The case has received our careful attention and on the materials placed before us, we have no hesitation in coming to the conclusion in it the decision of the learned Subordinate Judge in the Court below against which this appeal is directed cannot be supported on principle, on authority, and on the materials placed on the record.

8. The appeal is allowed, and the decision of the trial Court and the directions given by it are set aside. The application for revocation of the grant of probate made by Bhusan and Surendra on the 29th of July, 1931, giving rise to this appeal, stands distressed. The Appellants are entitled to get their costs in this Court and in the Court below. The hearing fee in this Court is assessed at five gold mohurs.