
(1880) 02 CAL CK 0009

Calcutta High Court

Case No: None

Mohun Dass

APPELLANT

Vs

Lutchman Dass

RESPONDENT

Date of Decision: Feb. 9, 1880

Acts Referred:

- Succession Act, 1925 - Section 234

Citation: (1881) ILR (Cal) 11

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

The petitioner, who is the appellant before us, moved the Judge of the District of Moorshedabad to revoke the probate of a will under which the respondent had been designated as mohunt at the head of a certain religious institution. It was alleged that this mohunt had, since he took charge of the office, taken to a certain course of conduct whereby he has tarnished his name, and in consequence whereof he has been excluded from the community of the mohunts. The Judge considered that this was not a case in which the provisions of Section 234 of the Indian Succession Act authorized him to revoke or annul the grant of probate; and the petitioner, being dissatisfied with this decision, has appealed to this Court, and before us it is contended that the section referred to does apply to such a case, and that the proof of that is to be found in illustration (h) attached to that section. Illustration (h) refers to the case of a "person to whom probate was, or letters of administration were, granted, and who has subsequently become of unsound mind"; and it is argued that as the Court is entitled so to act in the case of a person mentally disqualified, so it is also entitled to act in the case of persons who are proved to be morally disqualified.

2. It appears to us that this contention is founded upon an entire mistake, and there is a considerable difference between the case of a person contemplated in the

illustration and that of a person against whom the present suit is directed. Illustration (h) has reference to the case of an executor who is [14] acting under a probate and whose lunacy subsequently of course disables him from acting under the will, that lunacy being established by a regular enquiry under the direction of the Court under the Act relating to that subject. The respondent now before us is not an executor. He obtained probate of the will of the late mohunt, and under the operation of that will is now at the head of the institution, and until any just cause for revocation of the grant of probate is made out under the law, he cannot be removed. The proper course, as it seems to me, for depriving the respondent of the office, would be to bring a suit under the Religious Endowment Act, or any other suit for a declaration that he has disqualified himself, and if in that suit a decree is obtained and duly certified to the Court which granted probate, that Court, no doubt, would direct the revocation of the probate. The present appeal will be dismissed with costs.