

(1890) 01 CAL CK 0006

Calcutta High Court

Case No: None

Okhoy Coomar Bonnerjee

APPELLANT

Vs

Koylosh Chundor Ghosai and
Others

RESPONDENT

Date of Decision: Jan. 17, 1890

Acts Referred:

- Presidency Small Cause Courts Act, 1882 - Section 18

Citation: (1890) ILR (Cal) 388

Hon'ble Judges: W. Comer Petheram, C.J; Pigot, J

Bench: Division Bench

Judgement

W. Comer Petheram, C.J.

This is a reference from the Small Cause Court in a case in which two Judges of that Court have differed. The suit was a suit in which the plaintiff was in these words: The plaintiff states that one Durgamoney Dassee, late of so and so, duly made her last will, dated 28th August 1887, and codicil, dated 3rd December 1887, and thereof appointed the defendants abovenamed executors, and by such will bequeathed to the plaintiff a legacy of Rs. 300; that probate of the said will was granted by the High Court on 13th January 1888; that the defendants had possessed themselves of the moveable properties of the deceased as also the proceeds of the moveable property, and had not paid the plaintiff his said legacy though demanded;" and the question which arose for consideration was whether the Small Cause Court had jurisdiction to try that suit.

2. The jurisdiction of the Small Cause Court, as given by Section 18 of the Presidency Small Cause Court Act of 1882, is limited by Section 19 of the same Act; and Section 18 provides that, subject to the exceptions in Section 19, the Court shall have jurisdiction to try all suits of a civil nature when the amount or value of the subject-matter does not exceed two thousand rupees; and one of the suits in Section 19 which the Court has not jurisdiction to try is "a suit for an account of

property and its due administration under a decree of Court."

3. This is a suit to recover a legacy, but it is to be noticed that in the plaint there is no assertion either that the defendants are in possession of sufficient assets to pay the legacy, or that they have ever assented to the legacy being paid to the plaintiff; and, so far as I know, no Court, either of Common Law or Equity, in a suit of a civil nature, has any jurisdiction to decree a legacy simply, unless the executors have assented to that particular legacy, or unless the whole matter of the estate is before them for administration.

4. In this case there is no allegation whatever that the defendants ever had assented to this legacy, and consequently, the only relief, supposing the facts stated in the plaint to be proved and those facts only, which the Court could give to the plaintiff, would be to decree administration of the estate, so that the accounts must be taken and the estate divided; and Section 19 says that a Small Cause Court has no jurisdiction to entertain such a suit.

5. For these reasons and for those stated by him in his judgment we agree with the opinion of the Officiating Third Judge of the Small Cause Court, and this reference will be returned to the Small Cause Court with this expression of our opinion.