
(1870) 03 CAL CK 0021

Calcutta High Court

Case No: None

In Re: Ganga Prasad
Gosain

APPELLANT

Vs

RESPONDENT

Date of Decision: March 10, 1870

Judgement

Norman, Officiating C.J.

1. Gopal Chandra Gosain prayed for an order that probate of the will of his father, Gangaprasad Gosain, should be granted to him under a power reserved to him for that purpose upon a grant of probate to his elder brother, Hem Chandra Gosain. Gangaprasad Gosain, the deceased, was in his life-time, and at the time of his death, a Hindu, living at Serampore, in the Zilla of Hooghly. He died in December 1864, leaving a will, which contained the following paragraph:--

In order to look after the affairs, to conduct suits and "manage the debts and dues relative to my real and personal estates, my eldest son, Sriman Hem Chandra Gosain, who has attained the age of majority, remains executor, for my younger son, Sriman Gopal Chandra Gosain, is an infant; but as my eldest sister, Srimati Harumani Dabi, is prudent and sensible, all the affairs of the estates shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, Sriman Gopal Chandra Gosain, will then come of age, both the brothers shall be competent personally to manage the affairs; at that time the advice and superintendence of my said sister shall "not remain.

Gopal Chandra Gosain, having now attained the age of 16 years, applied for probate to Mr. Justice Macpherson, and that application was rejected.

2. The question is whether, under the terms of the will of Gangaprasad Gosain, Gopal Chandra Gosain is entitled to probate as executor, jointly with his brother, at the age of 16 years, or whether he will not be so entitled until he attains the age of 18 years. Now the

first thing which it is necessary to observe is that the parties were all domiciled at Serampore, and therefore Gopal Chandra Gosain is clearly a person, whose minority and the right to appoint a person to take charge of whose property as a minor, is regulated by the provisions of Act XL of 1858. It is clear that, until Gopal Chandra Gosain attains his full age of 18 years, he would be liable either to have his property taken charge of by the Court of Wards, or by a relative or friend, or other person appointed by the Court on a petition under Act XL of 1858.

3. The will of Gangaprasad Gosain provides for the time at which Gopal Chandra Gosain is to be associated as executor with Hem Chandra Gosain. It says that, when he comes of age, both the brothers shall be competent personally to manage their affairs. Now it is clear that it cannot be said that Gopal Chandra Gosain will be personally competent to manage his affairs, as long as he is liable as a minor to have his person and property put under the charge of a guardian. The coming of age to which the father alluded in his will means, in my opinion, coming to an age when Gopal Chandra Gosain will be no longer under any such disability.

4. The decision in the case of Madhusudan Manji v. Debigobindo Newgi 1 B.L.R., F.B., 49 goes very much further than it is necessary for us to go for the purposes of this decision. For the purposes of Act XL of 1858, in ascertaining whether Gopal Chandra Gosain is a minor, for the custody of whose person and property orders may be made under that Act, it is clear that Gopal Chandra Gosain must be held to be a minor, until he has attained the age of 18 years.

5. I am therefore of opinion that Gopal Chandra Gosain has not attained the age at which by his father's will it is provided that he shall be joined in the executorship with his brother; and I am confirmed in that opinion, by the consideration, that his father must have contemplated his coming of age at one single certain time. There is nothing in the will to show that the father meant that, as to property in Calcutta, Gopal Chandra Gosain should come of age, and obtain probate at the age of 16 years, but that he should not come of age, and not be entitled to a certificate, with respect to property at Serampore, until he attains the age of 18 years. For these reasons I am of opinion that the decision of Mr. Justice Macpherson is correct, and must be affirmed.

Markby, J.

I am of the same opinion.