

(1880) 09 CAL CK 0014

Calcutta High Court

Case No: None

Umanath
Mookhopadhya

APPELLANT

Vs

Nilmoney Singh

RESPONDENT

Date of Decision: Sept. 10, 1880

Acts Referred:

- Probate and Administration Act, 1881 - Section 69

Citation: (1881) ILR (Cal) 429

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

(who, after stating the facts, proceeded as follows):-The first question that arises is, whether Nilmoney Singh, as creditor of Taranath, has any locus standi? Whether he has such an interest in the estate of the deceased Bamon Dass as gives him a right to apply for revocation of the probate granted of his will? In support of the proposition that he cannot apply for the revocation of probate, several authorities have been cited. In In the matter of Mee Tsee (15 W. R. 351), Mr. Justice Norman, delivering the judgment of the Court, says: "We have no doubt of the soundness of the proposition that a person who is not next-of-kin, and who has no interest in the estate of a testator, has no right to oppose the grant of the probate or dispute the validity of the will. In England it has been held, that even a creditor cannot controvert the validity of a will, because it is a matter of indifference whether he should receive his debt from the executor or from an administrator." Then the case of Baij Nath Shahai v. Desputty Singh I. L. R. 2 Cal. 208: S.C. 25 W. R. 489 is quoted to show that the learned Judges there considered that, in this country also, the creditors of next-of-kin to the deceased are not entitled to have citations served upon them u/s 250 Act X of 1865, calling upon them "to come and see the proceedings before the grant of probate or letters of administration." But this case

came subsequently under the consideration of another Bench of this Court, of whom a member of the present Bench was one, in connection with the case of Komollochun Dutt v. Nilruttun Mundle (I. L. R. 4 Cal 360); and Mr. Justice Markby, in giving the judgment of the Court, made the following observations: "If we thought that the decision in Baij Nath Shahai v. Desputty Singh I. L. L. 2 Cal 208; S.C., 25 next-of-kin of the deceased attaching the property as belonging to his debtor has a right to file a caveat:-Ibid. Subomongala Dasi v. Shoshi Bhoshan Biswas (1884) 10 Cal. 413. He can oppose the will u/s 69 of the Probate and Administration Act:-(1901) 28 Cal. 441.]