

(1920) 10 BOM CK 0012**Bombay High Court****Case No:** None

Motibhai Shankerbhai Patel

APPELLANT

Vs

Nathabhai Naranbhai

RESPONDENT

Date of Decision: Oct. 20, 1920**Citation:** (1921) ILR (Bom) 1053**Hon'ble Judges:** Shah, J; Norman Macleod, J**Bench:** Division Bench**Judgement**

Norman Macleod, Kt., C.J.

This is an application under the civil extraordinary jurisdiction of this Court. The plaintiff filed an administration suit for the administration of the estate of the deceased Manorbhai against the defendant who, it is alleged, had taken possession of the whole of the property of the deceased together with the documents, papers and account books relating thereto. A preliminary decree was passed directing an account to be taken of the estate of the deceased. An administrator was appointed to take evidence and to report as to the nature of the properties and the rights of the parties thereto. The administrator made and inquiry and filed a report. Objections were raised by the parties to that report, and in the course of the argument the defendant objected to the jurisdiction of the Court to deal with certain property on the ground that the Court had no jurisdiction to deal with any properties in his possession which he contended did not belong to the estate of the deceased. The learned Judge upheld that contention, and the result was that the object of the inquiry was frustrated. No doubt if, in the course of an inquiry as to the assets belonging to the estate of a deceased person, any assets in possession of persons, not parties to the suit, are claimed as forming part of the assets of the estate of the deceased, the person appointed by the Court as representing the estate of the deceased to take such steps as may be necessary for the proper administration of the estate could not have decided whether such assets belonged to the deceased or not. Such questions could not be decided against persons who were not parties to the suit. In this case the assets are in the possession of the

defendant. There is no reason why the Court should not decide as between the parties to the suit whether those assets belonged to the estate of the deceased or not. If that is not done, the only result would be that another suit would have to be filed in which the contesting parties would be the same and the issues would be the same as have already been raised in this suit. It seems to me, therefore, that this is a case in which a preliminary decree has been passed, but the carrying out of that preliminary decree has been obstructed by the defendant's contention, and that the Court has taken a wrong view in acceding to that contention. It is certainly desirable, therefore, that, in the interests of Justice, we should express the opinion that the conclusion which the Judge arrived at on the 9th of February 1920 declining to go on with the inquiries with regard to the assets of the deceased was incorrect, and that the learned Judge should be directed to continue the inquiry with regard to the objections raised by the defendant to the administrator's report. If the result is unsatisfactory to the defendant, then he will be able to appeal against the final decree. The Rule, therefore, will be made absolute with costs.

Shah, J.

2. I agree.