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present case both the lower Courts have found that the judgment-debtors failed to prove that they have suffered any substantial loss by the sale, and, in these circumstances, we consider that both the lower Courts were justified in the conclusion at which they arrived that the sale could not be set aside.

The result, therefore, is that the appeal is dismissed with costs.

S. C. G. *Appeal dismissed.*

APPELLATE CIVIL.

Before Justice Sir Cecil Brett and Mr. Justice N. R. Chatterjea.

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May. 8.

GOUR CHANDRA DAS

v.

SARAT SUNDARI DASSI.*

Letters of administration—Revocation—Probate and Administration Act (V of 1881), s. 50, Expl. (4)—"Just cause"—"Useless or inoperative," meaning of—Disagreement between administrators, whether a just cause for annulling letters of administration.

A mere disagreement between administrators is not a "just cause" for annulling the letters of administration under s. 50, expl.(4) of the Probate and Administration Act.

The words "becomes useless and inoperative" in s. 50, expl. (4) of the Probate and Administration Act, imply the discovery of something which if known at the date of the grant would have been a ground for refusing it *e.g.*, the discovery of a later will or codicil, or subsequent discovery that the will was forged, or that the alleged testator is still living.

Bal Gangadhar Tilak v. *Sakwarbai* (1) and *Annoda Prosad Chatterjee* v. *Kalikrishna Chatterjee* (2) followed.

APPEAL by the petitioner, Gour Chandra Das.

*Appeal from original Decree, No. 545 of 1909, against the decree of W. S. Coutts, District Judge of Dacca, dated Sept. 18, 1909.

(1) (1902) I. L. R. 26 Bom. 792. (2) (1896) I. L. R. 24 Calc. 95.

One Chaitan Krishna Poddar died leaving behind him a widow, his brother's son's wife, Sreemati Sarat Sundari, and an adopted son of the latter named Gour Chandra Dass. He left a will, dated the 21st Jaista, 1283 B.S. (19th June 1876). On the death of the widow of Chaitan Krishna Poddar, who took out letters of administration under the will, Sreemati Sarat Sundari Dassi obtained letters of administration. There being some difference of opinion between Sarat Sundari Dassi and her adopted son, the present petitioner, a compromise was arrived at, and joint administration was granted to both on the 31st of August, 1903. The petitioner then made an application on the 26th of May, 1909, in the Court of the District Judge of Dacca, in which he charged the adoptive mother with taking several *hatchittas* in her name only at the time when she was the sole administratrix; and he prayed that his name should be added in those *hatchittas*. He further, made a complaint against Sarat Sundari Dassi that she had not paid the allowance due to him regularly, and that she had not paid the municipal taxes for his house which she was bound to pay. On the 16th of July, 1909, Sarat Sundari Dassi put in a petition stating, *inter alia*, that if there had been a failure to pay the allowance and the municipal taxes, it was due to the action taken by the petitioner and his father-in-law. On the 17th of September, 1909, a fresh application was put in by Gour Chandra Dass asking that Sarat Sundari should be removed from the administration, and the grant of letters of administration should be revoked.

The learned District Judge rejected the application holding that there was absolutely no ground for revoking the letters of administration as prayed for.

Against that decision the petitioner preferred this appeal to the High Court.

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Babu Kritanta Kumar Bose (*Dr. Sarat Chandra Basak* with him), for the appellant. Question is, when two persons have got joint administration and they do not agree, whether one of them can apply for annulling the letters of administration under section 50 of the Probate and Administration Act, I submit that is a "just cause" within the meaning of section 50, expl. (*d*) of the Act. On account of the disagreement, the grant has become useless and inoperative.

Babu Harish Chandra Roy, for the respondents. Disagreement between the administrators is not a "just cause" within the meaning of section 50 of the Act. It has been held in the case of *Annoda Prosad Chatterjee* v. *Kali Krishna Chatterjee* (1), that mismanagement is not a "just cause."

[CHATTERJEA J. referred to *Bal Gangadhar Tilak* v. *Sakwarbai* (2).]

Babu Kritanta Kumar Bose, in reply, referred to Illustration (*h*) of section 50 of the Act.

BRETT AND N. R. CHATTERJEA JJ. This is an appeal against an order passed by the District Judge of Dacca on the 18th September 1909 refusing an application made by the present appellant for the removal of Sarat Sundari Dassi from the administration of the estate of Chaitan Krishna Poddar. It appears that the appellant and Sarat Sundari Dassi are related to each other as adopted son and adoptive mother, and that letters of administration to the estate of Chaitan Krishna Poddar were granted to them after the death of the widow of Chaitan Krishna, in whose favour as the first beneficiary under the will letters of administration had previously been granted. There was some difference of opinion between the parties at first, and, on the 31st August 1903, a compromise was arrived at

(1) (1896) I. L. R. 24 Calc. 95. (2) (1902) I. L. R. 26 Bom. 792.

and joint administration was granted to both. On the 26th May 1909, the petitioner made an application to the Court which contained several allegations against Sarat Sundari Dassi. Amongst them one was that she had taken *hatchittas* from various debtors to the estate during the time when she was the sole administratrix, and that those *hatchittas* had been taken in her name only. It was asked that the name of the present appellant as joint administrator should be added in those *hatchittas*. The learned Judge took action on that complaint with the result that the addition asked for was made in most of the *hatchittas*; but, in the order recorded on the 3rd September 1909, it was stated that, in certain *hatchittas*, the addition prayed for had not been made, and, therefore, they would remain in Court in the record until the change could be made. There was also in the same petition a complaint against Sarat Sundari Dassi that she had not paid the allowance due to the appellant regularly and that she had not paid the municipal tax for his house which she was bound to pay. Sarat Sundari put in, on the 16th July 1909, a petition in which with reference to these later complaints she made certain statements and alleged that, if there had been any failure on her part to pay the allowance as it fell due and the municipal tax, it was not the result of any fault on her part, but was owing to the action taken on the part of the appellant and his father-in-law That matter does not appear to have been dealt with in the proceedings before the Judge on that application; but, on the 17th September 1909, a fresh application was put in by the present appellant asking that Sarat Sundari should be removed from the administration and that the grant of letters of administration to her should be revoked. It is not quite clear whether the learned Judge in passing the order, which

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he did, dismissing that application, did so in view of the action which had been previously taken on the previous application, but the question which we have to consider in this case is whether we should interfere with the order passed by the District Judge on the ground that that order was not in accordance with law or not justified by the circumstances of the case. The learned pleader who appears in support of the appeal admits that the application was made under the provisions of section 50 of the Probate and Administration Act, and he contends that "the cause" for which it was asked that the grant of letters should be revoked or annulled in respect of Sarat Sundari was "a just cause" within the meaning of that section. He refers to the 4th Explanation attached to that section, and argues that, in this case, the grant has become useless and inoperative through "circumstances." On being pressed to explain what the circumstances are, the learned pleader is unable to advance any other circumstance than the one that the lady and her adopted son have quarrelled, and he says that in consequence of this quarrel it has become impossible to carry on the administration. It has also been suggested, but not very strongy pressed before us, that the allegations that she had not administered the estate properly would be a sufficient ground for annulling the grant of letters of administration. In our opinion, the grounds which have been advanced in support of the contention that the decision of the learned Judge should be set aside on the ground that he was not right in holding that just cause for annulling the letters of administration had not been made out cannot be sustained. It has been held by this Court in the case of *Annada Prosad Chatterji* v. *Kali Krishna Chatterji* (1), that a mal-administration is

(1) (1896) I. L. R. 24 Calc. 95.

not, under section 50, Expl. (4) of the Probate and Administration Act, a just cause for revoking the probate. It has also been held by the Bombay High Court in the case of *Bal Gangadhar Tilak* v. *Sakwarbai* (1), that the words "become useless and inoperative" in section 50, clause (4) of the Probate Act imply the discovery of something which, if known at the date of the grant, would have been a ground for refusing it, *e.g.*, the discovery of a later will or codicil or the subsequent discovery that the will was forged or that the alleged testator was still living. We see no reason to differ from the view which has been taken by the learned Judges in these two cases, and, following that view, we are of opinion that the only ground which has really been pressed in support of this appeal, namely, that the grant has become useless and inoperative because of the disagreement between the administrators, is not a just cause for annulling the letters. In these circumstances, we are of opinion that we cannot interfere with the decision of the lower Court and that the appeal must be dismissed with costs. At the same time, we desire to say that, if the appellant considers that he has any sufficient ground for pressing the complaints which were made in his application of the 26th May 1909 supposing that those complaints have not up to date received the consideration of the District Judge, it will certainly be open to him to apply to the lower Court, in order that an inquiry may be made into the substance of the complaints, and such action taken as to that Court may seem fit.

S. C. G. *Appeal dismissed.*

(1) (1902) I. L. R. 26 Bom. 792.