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SADAGAR CHAUDHURI v. KING-EMPEROR.

MUKERJI J.

must hold that he was examined, he merely denied having committed the offence. If that was the fact, the entry was sufficient.

The Rule should, therefore, be discharged, and I order accordingly.

G.S. *Rule discharged.*

## TESTAMENTARY JURISDICTION.

*Before Lort-Williams J.*

1929.

Feb. 5.

### IN THE GOODS OF SHIB CHARAN DAS, DECEASED.*

*Hindu law—Will—Probate—Remote reversioner, when may oppose—Grant—Practice.*

Where the nearest reversionary heir to a Hindu testator refuses without sufficient cause to oppose grant of probate, the next person in the line of succession may intervene.

The principle enunciated in the case of *Rani Anand Kunwar* v. *The Court of Wards* (1) applied.

APPLICATION by the Administrator-General of Bengal for grant of probate of a will.

It was alleged that, on the 2nd of April, 1928, one Shib Charan Das died leaving, amongst others, his brother Harinath Das, his nephew (the said brother's son) Anath Nath Das and a young widow Ranibala Dasee. On the 5th of June, 1928, the Administrator-General of Bengal obtained an order under section 11 of Act III of 1913 to take possession of the assets belonging to the estate of the deceased and to hold, deposit, release, sell, and invest the same in approved securities at his discretion. Probate of a will, dated the 22nd of October, 1914, left by the said Shib Charan Das was then applied for by the Administrator-General of Bengal, who was thereunder appointed the sole executor and trustee. Thereupon, the said Anath Nath Das, who had entered caveat, opposed the same although his father Harinath Das, the nearest reversioner to the testator, was then alive. Thereafter, the Administrator-General of Bengal made the

*Application in Original Civil suit.

(1) (1880) I. L. R. 6 Calc. 764; L. R. 8 I. A. 14.

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present application praying, amongst others, for the discharge of the caveat and for grant of probate of the said will of Shib Charan Das to him. During the hearing of the application, the caveator, Anath Nath Das, put in evidence a letter written by his father which ran as follows :—

149-B, Maniktala Street,
Calcutta, 4th February, 1929.

*In the goods of Shib Charan Das, deceased.*

Dear Anath,

With reference to the suggestions thrown out by His Lordship, I have given the matter very careful consideration and have come to the conclusion that in the present state of my health it is not advisable for me to personally contest the alleged will of your dead uncle. I am unable to stand any excitement and at the same time to ruin my health and am also unwilling to lose my peace of mind over this matter in which my interest is the same as yours or rather less. It is quite certain that I shall not survive the young widow and shall, therefore, never personally inherit the property. What I want is peace of mind at this the closing period of my life and whatever rights I have in the property of your deceased uncle I am prepared to surrender in favour of you, your brothers and cousins.

Yours affectionately,
HARINATH DAS.

*Mr. H. D. Bose* (with him *Mr. Westmacott*), for the Administrator-General of Bengal. Here the caveator has no present interest. Until the widow dies, it is impossible to say who will be the actual reversioner. Refers to *Rani Anand Kunwar* v. *The Court of Wards* (1), *Brindaban Chandra Shaha* v. *Sureswar Shaha Paramanick* (2), *Abinash Chandra Mazumdar* v. *Harinath Shaha* (3), *Satindra Mohan Tagore* v. *Sarala Sundari Debi* (4) and *Akhileswari Dasi* v. *Hari Charan Mirdha* (5). Refers to section 283 of Act XXXIX of 1925.

The caveator, *Anath Nath Das*, in person, put in the letter, dated 4th February, and signed by his father Harinath Das.

LORT-WILLIAMS J. In my opinion, the law on this point is not sufficiently clear and definite to induce me to discharge this caveat.

(1) (1880) I. L. R. 6 Calc. 764; L. R. 8 I. A. 14.
(2) (1909) 10 C. L. J. 263.
(3) (1904) I. L. R. 32 Calc. 62.
(4) (1917) 27 C. L. J. 320
(5) (1923) 40 C. L. J. 297.

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The next reversioner is an old man of 70 who has stated in writing that he has no expectation of surviving the young widow for whose benefit the will was made and that he has no expectation, therefore, of personally inheriting the property and that, because he wants peace of mind in the closing period of his life, he is not disposed to take any action in the matter, but is quite willing to surrender whatever rights he has in favour of the caveator, his brothers and cousins. In these circumstances, I think I am justified in applying the rule laid down in *Rani Anand Kunwar* v. *The Court of Wards* (1). At p. 772, Sir R. Collier says: "Their Lordships are of opinion that although "a suit of this nature may be brought by a contingent "reversionary heir, yet that, as a general rule, it must "be brought by the presumptive reversionary heir,— "that is to say, by the person who would succeed if the "widow were to die at that moment. They are also "of opinion that such a suit may be brought by a more "distant reversioner if those nearer in succession are "in collusion with the widow, or have precluded themselves from interfering. They consider that the "rule laid down in *Bhikaji Apaji* v. *Jagannath* "*Vithal* (2) is correct. It cannot be the law that any "one who may have a possibility of succeeding on the "death of the widow can maintain a suit of the present nature, for, if so, the right to sue would belong "to every one in the line of succession, however "remote. The right to sue must, in their Lordships' "opinion, be limited. If the nearest reversionary "heir refuses, without sufficient cause, to institute "proceedings, or if he has precluded himself by his "own act or conduct from suing, or has colluded with "the widow, or concurred in the act alleged to be "wrongful, the next presumable reversioner would be "entitled to sue. See *Kooer Goolâb Sing* v. *Ras* "*Kurun Sing* (3) . . . . The Court must exercise a judicial discretion, in such a case . . . . and would

(1) (1880) I. L. R. 6 Calc. 764; L. R. 8 I. A. 14.

(2) (1873) 10 Bom. H. C. Rep. A. C. J. 351.

(3) (1871) 14 M. I. A. 176.

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" probably require the nearer reversioner to be made a " party."

In my opinion the facts of this case come within the first reason stated by their Lordships and I think that the next reversioner has refused without sufficient cause to institute proceedings. I say that because he has been communicated with at my suggestion. It has been pointed out to him that all he would have to do would be to sign two documents, that he would not incur any liability for costs, and would not be troubled in any way, but inspite of that he writes that he is unwilling to take even these steps. I think his refusal is without sufficient cause.

If I am at liberty to apply common sense to cases of this kind it seems to me unreasonable that this caveator, who is the next in succession to his father, should be shut out because of what I have held to be an unreasonable refusal. I quite agree that some limit must be imposed, and that it would be impossible to hold that every person in the line of succession however remote should have the right to intervene. I think that in every case the circumstances of the particular case must be considered and because in this case the caveator is the next person in succession to the person who has refused to take any steps that it is not unreasonable to allow him to intervene. For these reasons, the application for discharge of the caveat is refused.

The matter is set down as a contentious cause. The father need not be added as a party. There will be cross order for discovery within 14 days. The suit will appear on the appropriate Warning List 14 days thereafter.

The executor's costs will come out of the estate as between attorney and client including fees of two counsel.

Attorneys for the applicant: *Leslie and Hinds.*

The caveator in person.

A. K. D.