APPELLATE CIVIL.

Before Mukerji and Guha JJ.

1932

Feb. 25;
Mar. 2.

NALINCHANDRA GUHA

v.

NIBARANCHANDRA BISWAS.*

Probate—"All persons claiming to have any interest in the estate of the deceased"—"Possibility of an interest"—Who can approve grant of probate—Appeal, right to—Indian Succession Act (XXXIX of 1925), ss. 283, 299—Probate and Adminstration Act (V of 1881), ss. 53, 86.

Where an objection by a person (who had purchased at court auction from an heir some of the testator's property after his death) claiming a *locus standi* to oppose the grant has been rejected and an *ex parte* grant of letters of administration made, section 299 of the Succession Act clearly gives a right of appeal.

Khettramoni Dasi v. *Shyama Churn Kundu* (1) and *Radha Raman Chowdhry* v. *Gopal Chandra Chuckerbutty* (2) discussed and distinguished.

The words in section 283 of the Indian Succession Act "all persons claiming to have any interest in the estate of the deceased" have from time to time been explained by judicial decisions as follows:—

Any interest however slight and even the possibility of an interest is sufficient to entitle a party to oppose a testamentary paper. That apparently is the rule of English practice.

Brindaban Chandra Shaha v. *Sureswar Shaha Paramanick* (3) referred to.

"Possibility of an interest" does not apply to the possibility of a party filling a character which would give him an interest, but to the possibility of his having an interest in the result of setting aside the will.

Crispin v. *Doglioni* (4) referred to.

Whether this rule should be taken to be applicable in its entirety in British India seems to have been questioned in *Satindra Mohon Tagore* v. *Sarala Sundari Debi* (5).

Taking the words of section 283 in their natural meaning, it is sufficient to interpret them as implying a real interest, which is or is likely to be prejudicially or adversely affected by the will.

Akhileswari Dasi v. *Hari Charan Mirdha* (6) referred to.

*Appeal from Original Decree, No. 263 of 1930, against the decree of H. C. Stork, District Judge of Bakarganj, dated June 13, 1930.

(1) (1894) I. L. R. 21 Calc. 539.
(2) (1919) 24 C. W. N. 316.
(3) (1909) 10 C. L. J. 263.
(4) (1860) 2 Sw. & Tr. 17; 164 E. R. 897.
(5) (1917) 27 C. L. J. 320.
(6) (1923) 40 C. L. J. 297.

A purchaser from an heir after the death of the testator has a *locus standi* to oppose a grant by a probate court. It is not necessary for the objector to show that he had an interest in the estate at the time of the testator's death.

Komollochun Dutt v. *Nilruttun Mundle* (1) and *Muddun Mohun Sircar* v. *Kali Churn Dey* (2) referred to.

An assignee from an heir of the testator after the latter's death has a *locus standi* to apply for revocation of a probate already granted.

Azim v. *Chandra Nath Namdas* (3) and *Mokshadayini Dassi* v. *Karnadhar Mandal* (4) referred to.

FIRST APPEAL by one of the defendants.

The facts of the case and the arguments advanced at the hearing thereof appear fully in the judgment.

Sateendranath Ray Chaudhuri for the appellant.

Abinashchandra Guha and *Bhupendranath Das* for the respondents.

Cur. adv. vult.

MUKERJI AND GUHA JJ. This is an appeal from a decision of the District Judge of Bakarganj, by which he has granted letters of administration with a copy of the will annexed of one Madhabchandra Mistri to the respondent, Nibaranchandra Biswas. The will is alleged to have been executed by the testator, Madhabchandra Mistri, on the 9th December, 1898, and appears to have been registered on his own admission as to execution on the 14th of that month. The testator is said to have died in *Mâgh* 1305, B. S., that is to say, about two months after the will and to have left 3 daughters. On the 9th July, 1929, the respondent Nibaranchandra Biswas, the only son of one of those daughters, who is dead, applied for letters of administration with a copy of the said will. The appellant, Nalinchandra Guha, who was named as a defendant in the said petition, filed an objection, but the District Judge held that he had no *locus standi* to oppose the grant. Immediately thereafter, he examined the applicant and made an order *ex parte* for grant of letters of administration. From this order the present appeal has been taken.

(1) (1878) I. L. R. 4 Calc. 360.
(2) (1892) I. L. R. 20 Calc. 37.
(3) (1904) 8 C. W. N. 748.
(4) (1914) 19 C. W. N. 1108.

1932

Nalinchandra Guha v. *Nibaranchandra Biswas.*

The appellant happens to have purchased one of the properties disposed of by the will at an auction-sale held in 1918 in execution of a decree for rent thereof, which was obtained by the landlord. This decree had been obtained by the landlord in a suit laid against one of the daughters of the testator—the other two daughters having died long before—on the footing that she was the sole heir of the said testator. It should be pointed out here that, under the will, all the properties were to vest in the three daughters after the testator's death and in case any of the daughters predeceased him, her sons and heirs would get her share. The District Judge observed in his order:—

> He is not a legatee. He is not an heir and he has derived no interest in the estate from the deceased himself. To permit him to contest the grant merely on the ground of a subsequent derivation of title to some of the deceased's property would be to introduce an issue, which a probate court has no jurisdiction to determine. It is a bare issue on a question of title raised by a stranger on a transaction subsequent to the testator's death and this is not within the scope of a court sitting in probate.

A preliminary objection has been taken on behalf of the respondent to the competency of the appeal and two decisions of this Court have been relied upon in support, *viz.*, *Khettramoni Dasi* v. *Shyama Churn Kundu* (1) and *Radha Raman Chowdhry* v. *Gopal Chandra Chuckerbutty* (2). In the former case the appeal was preferred by a person, whose application to be made a party to the proceeding and to intervene was refused by an order passed on a certain date and, on a subsequent date, the case was heard and order was made for grant of probate and it was from the former order that the appeal was preferred. This Court in that appeal held that no appeal lay, as, reading sections 86 and 53 of the Probate and Administration Act (V of 1881) together, it appeared that an appeal was permissible only in a case, in which such an appeal would lie under the Code of Civil Procedure. The learned Judges pointed out that the Code did not allow an appeal from an order

(1) (1894) I. L. R. 21 Calc. 539. (2) (1919) 24 C. W. N. 316.

refusing to add the name of a person as plaintiff or defendant and so no appeal would lie from the order refusing the application, which the appellant had made in the court below to be made a party. There was no appeal in that case, as there is in the case before us, from the order which was made for the grant. In the case of *Radha Raman Chowdhry* v. *Gopal Chandra Chuckerbutty* (1), the appeal had been preferred by certain persons, who wanted to oppose the grant but were refused on the ground that they had no *locus standi*, and the appeal, as far as may be made out, was from the said order of refusal, in which it was also stated that "probate "would be granted to the respondent on proof of the "will in common form." The appellants had, it appears, filed an application for revision under section 115 of the Code in the alternative. The learned Judges said :—

> It has been held in several cases that no appeal lies against such an order. The order, however, can be revised upon the application under section 115 of the Code of Civil Procedure,

and proceeded to revise the order complained of. That also, therefore, was not a case where, as here, the appeal was preferred from the order granting the probate. That an order refusing a caveator to oppose a grant is not appealable has been held in other cases as well, *e.g.*, *Proshad Narain Singh* v. *Dulhin Genda Koer* (2), *Indubala Dasi* v. *Panchumani Das* (3). These apparently were the class of cases, which Chatterjea J. had in mind when he made the observations in the case of *Radha Raman Chowdhry* v. *Gopal Chandra Chuckerbutty* (1), which have been quoted above. We are of opinion that section 299 of the Succession Act clearly gives a right of appeal from the order complained of in the present case, and we must, accordingly, overrule the preliminary objection.

It was next urged on behalf of the respondent that, inasmuch as there is nothing illegal or wrong on the

(1) (1919) 24 C. W. N. 316. (2) (1913) 18 C. L. J. 612.
(3) (1914) 19 C. W. N. 1169.

1932

Nalinchandra Guha v. *Nibaranchandra Biswas.*

face of the order complained of, its validity can only be challenged on behalf of the appellant by showing that the decision of the District Judge on the question of *locus standi* is erroneous. This must be so. To show that that decision is correct it has been urged that the appellant has no interest within the meaning of section 283 of the Indian Succession Act. The words in that section are "all persons claiming "to have any interest in the estate of the deceased." These words have from time to time been explained by judicial decisions. *Brindaban Chandra Shaha* v. *Sureswar Shaha Paramanick* (1) may be taken as an authority for the proposition that any interest however slight and even the possibility of an interest is sufficient to entitle a party to oppose a testamentary paper. That apparently is the rule of English practice. And "possibility of an interest" does not apply to possibility of a party filling a character, which would give him an interest, but to the possibility of his having an interest in the result of setting aside the will [*Crispin* v. *Doglioni* (2)]. Whether this rule should be taken to be applicable in its entirety in this country seems to have been questioned in the case of *Satindra Mohan Tagore* v. *Sarala Sundari Debi* (3). Taking the words of section 283 in their natural meaning, it is, in our opinion, sufficient to interpret them as implying a real interest, which is or is likely to be prejudicially or adversely affected by the will. [See *Akhileswari Dasi* v. *Hari Charan Mirdha* (4).] It is difficult to say that the appellant does not fulfil this requirement. The purchase that he has made stands the chance of being affected, if the terms of the will were effective at the date of the suit, for then, in certain events and circumstances, what he purchased might be held to be only the right, title and interest of the judgment-debtor and not the holding itself. A purchaser from an heir after the death of the testator has a *locus*

(1) (1909) 10 C. L. J. 263.
(2) (1860) 2 Sw. & Tr. 17 (22); 164 E. R. 897 (899).
(3) (1917) 27 C. L. J. 320.
(4) (1923) 40 C. L. J. 297.

1932

Nalinchandra Guha v. *Nibaranchandra Biswas.*

standi and to have it, it is not necessary for the objector to show that he had an interest in the estate at the time of the testator's death. [*Komollochun Dutt* v. *Nilruttun Mundle* (1), *Muddun Mohun Sircar* v. *Kali Churn Dey* (2).] So also it has been held that an assignee from an heir of the testator after the latter's death has a *locus standi* to apply for revocation of a probate already granted [*Azim* v. *Chandra Nath Namdas* (3), *Mokshadayini Dassi* v. *Karnadhar Mandal* (4).] For these reasons, we hold that the second contention of the respondent as also the view, on which the learned Judge has proceeded, must be overruled.

The result is that this appeal will succeed. The order of the court below is set aside and the application of the respondent for letters of administration should be dealt with on giving the appellant an opportunity to contest the proceedings.

Costs of this appeal, hearing-fee being assessed at 2 gold mohurs, will abide the result of the case in the court below.

Appeal allowed, case remanded.

G. S.

(1) (1878) I. L. R. 4 Calc. 360.
(2) (1892) I. L. R. 20 Calc. 37.
(3) (1904) 8 C. W. N. 748.
(4) (1914) 19 C. W. N. 1108.