

CIVIL REVISION.

Before Mukherjea and Roxburgh JJ.

JNAN KUMAR DAS

v.

RAM KUMAR DAS.*

1939

Aug. 8, 10.

Executor—*Removal*—*Application for removal of an executor, if can be made to the High Court in its Revisional Jurisdiction—"High Court", Meaning of—Indian Succession Act (XXXIX of 1925), ss. 300, 301.*

An application under s. 301 of the Indian Succession Act, 1925, for the removal of an executor appointed under the will of a deceased testator, cannot be dealt with by a Bench of the High Court exercising Revisional Jurisdiction. Such an application should be made to the Judge on the Original Side of the Court, who is exercising jurisdiction in matters of testamentary and intestate succession.

The expression "High Court" as used in ss. 300 and 301 of the Indian Succession Act, 1925, means the High Court as a whole, but a litigant who intends to make an application under the sections must make it to the particular Bench on the Original Side of the Court which deals with matters of testamentary succession of an original nature.

CIVIL RULE.

Facts of the case and arguments at the hearing of the Rule are sufficiently set out in the judgment.

Chandra Sekhar Sen for the petitioner.

Narendra Kumar Das and *Durgesh P. Das* for the opposite parties.

Cur. adv. vult.

MUKHERJEA J. This is an application for removing or discharging an executor appointed under the will of one Magan Chandra Das, an inhabitant of Rangunia in the district of Chittagong. The application is made by one of the sons of the deceased

*Civil Revision, No. 1025 of 1938, against the order of H. G. Waight, District Judge of Chittagong, dated Sept. 18, 1937.

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testator, who is also a beneficiary under the will, under s. 301, Indian Succession Act, 1925, and it seeks to remove the executor who is opposite party No. 1 in the case on various allegations of misconduct, waste and personal disability to carry on the work of administration.

A preliminary point was taken on behalf of the opposite party, raising the question as to whether the application could be dealt with by this Bench, or it should be presented to the Judge on the Original Side who is exercising jurisdiction in matters of testamentary and intestate succession.

Section 301 of the Indian Succession Act provides that the High Court may, on application made to it, suspend, remove or discharge any private executor or administrator. The expression "High Court" has not been defined in the Act, but it is clear that the words have the same meaning in this section as they have in s. 300 of the Act.

In the case of *In the goods of Mahendra Narain Roy* (1), it was held by Sale J., that the "High Court" in s. 87 of the Probate and Administration Act, 1881 (which corresponds to s. 300 of the present Succession Act), was not intended merely to be limited to the High Court in its Appellate Jurisdiction but also included the High Court exercising Original Jurisdiction. It was pointed out by the learned Judge that if the definition of the expression given in the General Clauses Act, as the highest Court of Appeal, meant only the High Court in its Appellate Jurisdiction, serious consequences might ensue, and it would be difficult also to see how a Court of Appeal could exercise concurrent jurisdiction with a District Judge in issuing probate and letters of administration. This decision was followed by Fletcher J. in *Nagendra-bala Debi v. Kashipati Chowdhry* (2).

(1) (1900) 5 C. W. N. 377.

(2) (1909) I. L. R. 37 Cal. 224.

These cases are not direct authorities on the question which has arisen in the present case, and they only go to show that the Original Side of this Court can exercise jurisdiction under s. 300, the expression "High Court" being not confined to the Appellate Side. It seems to me that the expression High Court, as used in ss. 300 and 301 of the Indian Succession Act, means the High Court as a whole, and the litigant has got to approach the particular department of the Court which deals with the matter in dispute. As the dispute in the present case relates to a matter of testamentary succession of an original nature, the application, in my opinion, should be presented to that department which exercises original testamentary jurisdiction. So far as this Court is concerned there is a definite allotment of work in this respect and all matters relating to testamentary and intestate succession are dealt with by a *particular* Judge on the Original Side. There is of course no specific rule laying down the procedure to be followed when applications are made in respect of wills probated in the *mofussil* Courts, but in the absence of definite rules, the ordinary procedure that obtains on the Original Side regarding applications of this description, may, I think, be followed. The result is that the application is returned to the advocate for being presented to the proper Court. No order as to costs.

ROXBURGH J. I agree.

*Application returned for being
presented to proper Court.*

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