

ORIGINAL CIVIL.

Before Mr. Justice Shephard.

EX PARTE VITTAL DOSS AND ANOTHER, PETITIONERS.*

1891.
October 6.*Succession Act—Act X of 1865, s. 182—Executor, appointment of by implication—
Administration with will annexed.*

A Hindu died leaving a will whereby he bequeathed all his property whatever (including debts) to two of his sons, who now applied for probate of the will on the ground that they were appointed executors by implication :

Held, that the sons were not entitled to probate of the will.

PETITION for probate of the will of Govindoo Doss Jey Kistna Doss deceased, the father of the petitioners, Balu Chiroonjeev Vittal Doss and Chiroonjeev Krisan Doss who claimed to be entitled to probate as executors constructively appointed.

The will propounded was as follows :—

“ Written by Sha Govindoo Doss Jey Kistna Doss. I the under-
“ signed write and give the following with my voluntary consent
“ and while in the enjoyment of my senses. Balu Chiroonjeev
“ Vittal Doss Chiroonjeev Krisan Doss are the heirs to my outstand-
“ ings, debts, my house, Takoorjees Seva (or idols), utensils, &c.,
“ and my property whatever it may be. Chiroonjeev Nunoo Pa-
“ ramanund Doss has no right whatever in respect of my property.
“ I have put my signature here below with my voluntary consent
“ and while in the enjoyment of my senses in the presence of all.
“ This is written at 4 o'clock at night on the 12th June of the year
“ 1886.

(Signed) GOVINDOO DOSS, JEY KISTNA DOSS.

“ What is written above is correct. This was written while in
“ the enjoyment of my senses. Therefore Chiroonjeev Vittal Doss
“ and Krisan Doss are the owners of everything. No one should
“ question them.

“ Witness 1.—Sookha Deva Lakhotia Govinda Dossjee signed
“ this while in the enjoyment of his senses in my presence.

“ Witness 1.—Mathura Doss Pashesia Govinda Dossjee signed
“ this while in the enjoyment of his senses in my presence.

* Application for probate.

“Sha Moothoora Doss Nathoo, witness.

“This was written and given with the voluntary consent of the owner (or master).”

EX PARTE
VITAL DOSS.

“This was written by Tukker Devalshand Narayanjee at the dictation of the owner (or master).”

P. V. Krishnasami Chetti for petitioners.

The applicants are declared the heirs to the properties and of all outstandings and liabilities, *i.e.*, they are directed to recover outstandings and pay debts. In other words they are charged with the duties of an executor. See *In the matter of Monohur Mookerjee*(1), *In the goods of Radhika Mohan Sett*(2), *Mun Mohan Ghosal v. Puresh Nath Roy*(3) and *Wilkinson v. Adam*(4).

JUDGMENT.—I do not think that the language used in this will is such that Krisan Doss can be said to be constructively appointed executor. My attention was called to the decision *In the goods of Radhika Mohan Sett*(2) in which the words of the will being somewhat similar the opinion was expressed that probate might be granted to the applicant as executor according to the tenor of the will. The case there mentioned does not bear out the proposition for which it is cited. In that case there was a direction that the person named should collect the testator's estate and pay all just debts in other words, that he should discharge the function of executor. That therefore is a totally different case from the present. On the other hand, when the testator left all his property and effects to his wife without giving any further directions, the Court held *In the goods of Thomas Henry Oliphant*(5) in accordance with the practice which had actually prevailed, that the wife was entitled to administer with the will annexed and not to probate.

(1) I.L.R., 5 Cal., 756.

(2) 7 B.L.R., 563.

(3) 22 W.R., 174.

(4) 1 Ves & B., 466.

(5) 1 Sw. & Tr., 525.