YELLAMMAL v. AYYAPIA NAICK.

WHITE, C.J.

would have been made against the judgment-debtor's alleged debtor if he had not asked to be allowed to make the payment. In *Jagjivan Jaherdas* v. *Gulam Jilani Chaudhri*(1) the question whether the attachment of the debt constituted a seizure does not seem to have been considered.

On behalf of the appellant it has been contended, in the alternative, that article 86 applies. I am clearly of opinion that it does not.

I think this case is distinguishable from *Narasimha Rao* v. *Gangaraju*(2) where the majority of the Court were of opinion that article 29 applied. There the attached property was ordinary moveable property.

I am of opinion that either article 62 or article 120 applies and I would dismiss this appeal with costs.

SANKARAN NAIR, J.

SANKARAN NAIR, J.—I agree.

OLDFIELD, J.

OLDFIELD, J.—I agree.

S. V.

ORIGINAL CIVIL.

Before Mr. Justice Bakewell.

1915. September 22.

ALAMELAMMALL, PLAINTIFF,

v.

P. N. K. SURYAPRAKASAROYA MUDALIAR, DEFENDANT.*

Indian Succession Act (X *of* 1865), *sec.* 187—*Conditional order of Judge for grant of probate—Non-issue of probate owing to non-payment of Court fees—Heir of legatee, same as legatee—Probate or Letters of Administration alone, evidence of right under section* 187.

A Hindu executing a will in the town of Madras made a bequest in favour of his son. After the death of the father the son died leaving his mother, the plaintiff, as his heir.

On the application of the executor (the defendant) for a probate, the *fiat* of the Judge was obtained but there was no actual order for the issue of the probate and the probate was not issued owing to the failure of the executor to pay the requisite Court-fees for the same. In a suit by the testator's widow as mother of his deceased son for an order of the Court directing the defendant to apply for probate of the will and for an administration of the estate:

---

(1) (1884) I.L.R., 8 Bom., 17. (2) (1908) I.L.R., 31 Mad., 431.

* Civil Suit No. 64 of 1915.

Held, (*a*) for the purposes of section 187 of the Indian Succession Act which governed the case, the plaintiff, though only an heir of a legatee, was in the position of a legatee, (*b*) that the fiat of the Judge for grant of Probate was only conditional and was not equivalent to an actual grant of the Probate within the meaning of section 187, (*c*) that in the absence of a grant of Probate or Letters of Administration which was the only proof of right allowed by the section the plaintiff was debarred from claiming any rights flowing from the will and (*d*) that the mere production, proof and exhibition of the will as an ordinary exhibit in the case, were not equivalent to proof of the right by the production of the Probate or the Letters of Administration as required by the section.

Lakshmamma v. *Ratnamma* (1915) I.L.R., 38 Mad., 474, followed.

Mungniram Marwari v. *Gursahai Nand* (1889) I.L.R., 17 Calc., 347 (P.C.), distinguished.

The facts of the case appear from the judgment.

C. P. Ramaswami Ayyar and *N. Chandrasekhara Ayyar* for the plaintiff.

V. V. Srinivasa Ayyangar for the defendant.

JUDGMENT.—The plaint in this suit alleges that the husband of the plaintiff died in 1911 possessed of certain properties and having made a will appointing the defendant as his Executor, who entered into possession and management of the properties immediately after the testator's death but has taken no steps to obtain Probate of the will. It alleges various acts of mismanagement by the defendant and that the plaintiff is interested as the mother of the testator's son, who died subsequently to the testator and to whose interest the plaintiff has succeeded as heir. The prayer of the plaint is that the defendant may be directed to apply for Probate of the will, that he may be ordered to account for the administration of the estate of the deceased and the monies collected by him or that ought to have been collected by him but for his wilful default or negligence, and that an account may be taken of the estate and the same be duly administered under the orders of this court. BAKEWELL, J.

It is stated that the defendant did apply for Probate and that the fiat of the Judge was obtained upon his application, but that the actual grant has not been issued through the failure of the defendant to pay the stamp duty leviable under the Court Fees Act, 1870. The will is one to which the Probate and Administration Act and the Hindu Wills Act apply, and, therefore, the case is governed by section 187 of the Indian Succession Act which applies to wills of Hindus under the Hindu Wills Act. In the first place, I think that the fiat of the Judge upon the

ALAMELAM MALL v. SURYA-PRAKASAROYA MUDALIAR.

BAKEWELL, J.

defendant's petition can only be read as an order that Probate shall issue to the petitioner upon his complying with the statutory provisions and the rules of the Court. One of the statutory provisions with which the petitioner must comply is that he must bring in the necessary stamps. Section 4 of the Court Fees Act directs that no document of the kind specified in the schedules to the Act shall be received or furnished by any of the High Courts unless the prescribed fees have been paid.

The decision of their Lordships of the Privy Council reported in *Mungniram Marwari* v. *Gursahai Nand*(1), is strongly relied upon by the learned vakil for the plaintiff as showing that the order of the Court is sufficient without an issue of the actual grant. But it is clear from the observations of their Lordships at page 357 that they were interpreting a particular Act—Act XL of 1858—which was passed prior to the Court Fees Act of 1870 and that they disregarded the latter Act in putting a construction upon the former. The decision may also be distinguished on the ground that in the present case there has been no actual order for the issue of probate; and also the point in that case was as to whether a minor had been properly represented or not and their Lordships held that he was, as a matter of fact, represented in the proceedings and they refused to treat them as invalid merely because the formal order had not been carried out. I do not intend to discuss the English cases which have been cited by the learned vakil for the plaintiff. They relate to cases of executors *de son tost* in which the Court has evidently strained its powers in order to prevent misapplication of the assets of a testator. I do not think that it is useful to refer to cases decided under a totally different system from that which obtains in India and under statutes different in wording.

The term "Probate" is defined in section 3 of the Probate and Administration Act as "the copy of a will certified under the seal of a Court of competent Jurisdiction, with a grant of administration to the estate of the testator," and Section 187 of the Indian Succession Act provides that, "No right as executor or legatee can be established in any Court of Justice unless a Court of competent Jurisdiction within the province shall have

(1) (1889) I.L.R., 17 Calc., 347 (P.C).

granted probate of the will under which the right is claimed, or shall have granted Letters of Administration under section 180." The words, I think, are perfectly plain, and the intention of the Legislature is clear that the party claiming an interest under a will must prove the execution of the document and its terms by the particular procedure which has been laid down by the Legislature. *Lakshmamma* v. *Ratnamma*(1) supports this construction. It is not sufficient if the actual document be produced in the suit and the plaintiff prove it in the way in which ordinary documents are proved; that is what the plaintiff apparently sought to do in this case—to go into Court and to put the document in as an ordinary exhibit. The plaintiff claims as heir of a legatee, and is, therefore, under the section only in the position of legatee, and I hold that she must establish her title by production of the evidence required by the section, that is, a grant of Probate issued by a Court of competent Jurisdiction. On this ground the suit fails and must be dismissed with costs.

BAKEWELL, J.

N.R.

ORIGINAL CIVIL.

Before Mr. Justice Bakewell.

1915 September 29.

V. RAMASWAMI IYER (PLAINTIFF),

v.

THE MADRAS TIMES PRINTING AND PUBLISHING COMPANY, LIMITED (DEFENDANTS).*

Company—Directors—Appointment of a director as officer under the company—Personal interest of a director clashing with his duty to shareholders—Meeting of directors—No right for such director to vote on his appointment—Invalidity of appointment if no quorum of directors without counting him—Duties of an editor of a newspaper—Incapacity to perform—Propriety of dismissal for incapacity.

The directors of a company are agents of the company and trustees for the shareholders of the powers committed to them. A director who has an interest in a matter which is the subject of discussion of a meeting of the directors, in which his interests conflict with his duty to the shareholders is incompetent to vote.

Hence even when the articles of association of a company permit a director to hold any other office under the company in conjunction with his directorship

(1) (1915) I.L.R., 38 Mad., 474.

* Civil Suit No. 71 of 1914.