APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

1926, March 23.

JAMMI HANUMANTHA RAO (PLAINTIFF), APPELLANT,

v.

ARATLA LETCHAMMA (DEFENDANT), RESPONDENT.*

Probate and Administration Act (V of 1881), sec. 69—Probate, grant of—"Persons claiming to have an interest in the estate of deceased," meaning of—Persons who can object to grant of probate—Widow claiming a right of maintenance out of the estate of deceased, whether can object—Court of Probate Act, 20 and 21 Vict., Ch. 77, sec. 61.

A person, who is entitled to any portion of the estate left by a deceased or to a right to claim maintenance from such estate, has an interest within the meaning of section 69 of the Probate and Administration Act (V of 1881), and is entitled to object to the grant of probate of the will of the testator. It is not necessary that he should claim through the testator in order to enable him to oppose the grant of probate: consequently the widow of an undivided brother of the husband of a testatrix is entitled to object to the grant of probate of her will.

Keshan Dai v. *Satyendra Nath Dutt*, (1901) I.L.R., 28 Calc., 441, followed.

APPEAL against the decree of H. D. C. REILLY, District Judge of Ganjām, in Original Suit No. 35 of 1923.

The material facts appear from the judgment.

B. Jagannada Das for appellant.

T. A. Anantha Ayyar amicus curiae for respondent.

JUDGMENT.

The appellant applied for the probate of the will of one Narasamma, dated 4th June 1920, the grant of probate was opposed by the respondent who is the

* Appeal against Order No. 491 of 1923.

widow of the brother of Narasamma's husband, and the District Judge held that it was not proved that Narasamma executed the will and dismissed the application.

Mr. Jagannada Das for the appellant raises the contention that the respondent was not entitled to oppose the grant of probate as she had no interest in the estate of the deceased so as to be entitled to enter caveat under section 69 of the Probate and Administration Act (V of 1881). As there is a conflict of authority on this point and as the respondent has not appeared to oppose the appeal, we asked Mr. Anantha Ayyar to appear as *amicus curiae*, and we are thankful to him for bringing to our notice the cases opposed to the contention of the appellant. Under section 69

> "In all cases it shall be lawful for the District Judge, if he thinks fit, to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration."

What is the nature of the interest which a person should have in order to entitle him to enter a caveat? The contention of the appellant is that the person who enters a caveat should claim a right to the property under the testator, and if he claims the property adversely to the testator he is not entitled to oppose the grant of probate, for his right would not be affected by the grant of probate or letters of administration with the will annexed. The respondent claims the right to maintenance out of the income of the property devised under the will as she is the widow of the undivided brother of the testatrix's husband. The relationship is not denied, and the only question is whether the claim to maintenance against the property devised by the will, granting that the allegation of the respondent is true, would entitle her to oppose the grant of probate. In

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Garabini Dassi v. *Pratap Chandra Shaha*(1) it was held that the right to maintenance was not such an interest as would entitle a person to oppose the grant of probate. This is a direct authority in favour of the appellant. In *Abhiram Dass* v. *Gopal Dass*(2) it was held by a Bench of the Calcutta High Court that

> "a person not claiming any of the property of the testator but disputing the right of the testator to deal with certain property as his own has not such an interest in the estate of the testator as entitles him to come in and oppose the grant of probate."

The learned Judges observe at page 52:

> "The term (meaning interest in section 69) does not necessarily refer to any particular property, but to the claim of any person to succeed by inheritance or otherwise to any portion of the estate of the deceased by reason of an interest, not on an adverse title to the testator to any particular property, but in the estate itself, whatever that may consist of. The form of the caveat too would seem to show that the person who enters a caveat admits that the particular property forms a portion of the estate of the testator, but objects either to the execution of the will or to the proposed manner of dealing with any portion of the estate."

The learned Judges declined to follow the two previous decisions of the same Court in *In the matter of the petition of Bhobosoonduri Dabee*(3) and *In the matter of the petition of Hurrolal Shaha*(4). The case in *Abhiram Dass* v. *Gopal Dass*(2) has been followed by other High Courts. In *Pirojshah Bikhaji* v. *Pestonji Merwanji*(5) it was held, following *Abhiram Dass* v. *Gopal Dass*(2), that a person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or otherwise. The Patna High Court takes the view in *Kalajit Singh* v. *Permeshar Singh*(6).

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(1) (1900) 4 C. W.N., 602.
(2) (1890) I.L.R., 17 Calc., 48.
(3) (1881) I.L.R., 6 Calc., 460.
(4) (1882) I.L.R., 8 Calc., 570.
(5) (1910) I.L.R., 34 Bom., 459.
(6) (1917) 1 Pat. L.W., 308.

The words of section 99 are "claiming to have any interest in the estate of the deceased." There is nothing in the wording of the section to show that the caveator should claim interest through the testator. All that is necessary to entitle a person to enter caveat is to claim interest in the estate of the deceased. The words "interest in the estate" do not necessarily convey the idea that the interest should be claimed through the testator. If that was the intention of the legislature, the clause could have been differently worded so as to make the meaning clear. In India under the Hindu law, the widow of a co-parcener is entitled to maintenance and if a person disposes of the property as his self-acquisition in favour of the legatees, the widow of a co-parcener will be driven to the necessity of filing a suit against the executor or legatee and proving that it is joint family property. A person claiming to be the undivided brother of the testator claims an interest not through the deceased, but independently of him. Can he enter a caveat on the ground that the property devised is the joint property of himself and the testator? It has been consistently held that a reversioner is entitled to oppose the grant of probate. In *Syama Charan Bavsya* v. *Prafulla Sundari Gupta*(1) it was held by MOOKERJI, J., and CHAPMAN, J., after an examination of the authorities, "that although a reversioner under the Hindu law has no present alienable interest in the property left by the deceased he has substantial interest in the protection or devolution of the estate and as such is entitled to appear and be heard in a probate proceeding." See also *Akhileswari Dasi* v. *Hari Charan*(2). Can it be said that a reversioner claims through the testator? If the principle of law enunciated in *Pirojshah Bikhaji* v. *Pestonji Merwanji*(3) and *Abhiram Dass* v. *Gopal Dass*(4)

(1) (1915) 19 C.W.N., 882.
(2) (1924) 40 C.L.J., 297.
(3) (1910) I.L.R., 34 Bom., 459.
(4) (1890) I.L.R., 17 Calc., 48.

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is correct, a reversioner who does not claim through the testator cannot oppose the grant of probate. A Hindu will may contain a power to adopt. A reversioner who has interest in preventing the estate from going to a third person by reason of a forged will containing a power to adopt is entitled to protect the estate from going to strangers. If a reversioner who has no present interest in the estate is entitled to come in and oppose the grant of probate, it is difficult to see how a person who claims right to maintenance from the estate devised by the testator is not entitled to oppose the grant of probate. Under the English law the personal estate is his absolute property and nobody has any right to it till he dies. But under the Hindu law a widow has the right to claim maintenance and the widow of an undivided co-parcener is entitled to maintenance. If the property devised is joint family property the reversioner is entitled to see that the reversion is not endangered. In *In the matter of the Petition of Bhobosoonduri Dabee*(1) FIELD, J., after a very exhaustive examination of the authorities, held that, under section 242 of the Succession Act, any person who can show that he is entitled to maintain a suit in respect of property over which probate would have effect, possesses a sufficient interest to entitle him to enter a caveat and oppose the grant. In that case the testator left his widow and two sons and purported to give the entire property to his widow for her life and after her death to his two sons. A mortgagee of the son's share and a decree-holder against the other son opposed the grant of probate. Both the Judges who heard the case (WHITE and FIELD, JJ.) held that the mortgagee of the son's share was entitled to oppose the grant of probate as by the will they would be left without a remedy.

In the Court of Probate Act, 20 & 21 Vict., C. 77, section 61, the wording is

(1) (1881) I.L.R., 6 Calc., 460.

"others having or pretending interest in the personal estate affected by a will should be cited or summoned and may be permitted to become parties or intervene for their respective interest."

A portion of that section is practically copied in section 69 of the Probate and Administration Act (V of 1881) and section 242 of the Indian Succession Act (X of 1886) with slight modification. Instead of the words "having or pretending interest in the personal estate" the wording in the Indian enactment is "claiming to have an interest." FIELD, J., observed at page 471:

"As to the test of what constitutes a sufficient interest to entitle any particular person to be made a party, according to the view which I have already stated, I think it comes to this, that any person has a sufficient interest who can show that he is entitled to maintain a suit in respect of the property over which the probate would have effect under the provisions of section 242 of the Indian Succession Act."

The learned Judges who decided *Abhiram Dass* v. *Gopal Dass*(1), differed from *In the matter of the Petition of Bhobosoonduri Dabee*(2), on the ground that the rule laid down by FIELD, J., was not adopted by WHITE, J. Though WHITE, J., did not lay down the rule in such broad terms as FIELD, J., yet he held that the mortgagee of the son's share was entitled to oppose the grant of probate of the father's will. In *In the matter of the Petition of Hurrolal Shaha*(3), it was held that a presumptive reversioner to property with which a will deals has a sufficient interest in such property to entitle him to maintain a suit in respect of such property and that he is entitled to maintain a case for the revocation of probate. The learned Judges followed the decision in *In the matter of the Petition of Bhobosoonduri Dabee*(2). In *Kishen Dai* v. *Satyendranath Dutt*(4), a Bench of the Calcutta High Court held that

(1) (1890) I.L.R., 17 Calc., 48.
(2) (1881) I.L.R., 6 Calc., 460.
(3) (1882) I.L.R., 8 Calc., 570.
(4) (1901) I.L.R., 28 Calc., 441.

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"The words 'interest in the estate of the deceased' in section 69 of the Probate and Administration Act mean 'interest in the estate left by the deceased' and that a judgment-creditor who but for the will would in execution of his decree have a right to seize the property or that share of it which should descend to his debtor and who alleges that the will has been set up for the purpose of defrauding the creditors, is a person claiming an interest in the estate of the deceased and as such has a *locus standi* in opposing the grant of the probate of the will."

It cannot be said that a Hindu son claims through his undivided father. If the father devises his property as his self-acquisition, is not the son entitled to oppose the grant of probate on the ground that it is a forgery? And it cannot be said in such a case that he claims through the father. In *Arakal Bastian Ansap* v. *Narayana Ayyar*(1), it was held that the judgment-creditors of the son of the deceased, who had attached the son's interest in his deceased father's estate before the application for probate, were entitled to oppose the grant of probate. It is contended that the Privy Council in *Nilmoni Singh Deo* v. *Umanath Mookerjee*(2) disallowed the contention that an attaching creditor of a son's share was entitled to oppose the grant of the probate of the father's will. Their Lordships did not decide the point, but only expressed a doubt. They observe at page 28:

"They entertain grave doubts whether an attaching creditor can do so, at least in a case which is not founded on the ground that the probate has been obtained in fraud of creditors."

They give no final opinion upon it. If a testator purports to devise his property as his self-acquisition in order to defeat his undivided brother or to defeat the claim for maintenance of the widow of his co-parcener, does he not commit fraud? and is not the brother or the widow entitled to question the genuineness of the will?

(1) (1911) I.L.R., 34 Mad., 405. (2) (1884) I.L.R., 10 Calc., 19.

In *Rahamtullah Sahib* v. *Rama Rau*(1) it was held that a legatee under a will or a creditor of the testator had not such interest as to entitle him to oppose the grant of probate. In the case of a creditor the estate is liable, whether the will is genuine or not. The executor, and if there is no executor the administrator, is bound to pay the debts of the testator out of the estate and the creditor will not ordinarily suffer in any way by a false will being propounded and probate thereof being obtained. There may be cases where it may be to the interest of the creditor to oppose the grant of probate if by obtaining probate an unscrupulous person or a person of no means is enabled to make away with the property of the deceased and thereby defeat the creditor. If the probate proceedings are fraudulent, any person who would suffer thereby is entitled to object to such proceedings. In *Crispin* v. *Doglioni*(2) the natural son of the testator objected to the grant of probate on the ground that by the law of Portugal he was entitled to the whole of the deceased's property and that he had instituted a suit in Portugal against the executor in which he obtained a decree that he should be put in possession of the property. The declaration did not state the nature of the suit, nor the questions involved in it, nor did the judgment show that the plaintiff was in the same position as a legitimate son. The learned Judges held that the foreign judgment alone did not show such an interest in the party in whose favour it was made as to entitle him to dispute the will. If the judgment of the foreign Court had given the property to him the learned Judges might probably have allowed him to contest the grant of probate. In *Brinda Chowdhrani* v. *Radhica Chowdhrani*(3) it was held that the widow of a Hindu testator who had died leaving sons had sufficient interest

(1) (1894) I.L.R., 17 Mad., 373. (2) (1860) 2 Sw. & Tr., 17.
(3) (1885) I.L.R., 11 Calc., 492.

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to call upon the executor to prove the will in solemn form *per testes*. At page 494 they observe:

"She is entitled to maintenance and, if she pleases, to institute a suit, to have her maintenance made a charge upon the estate of her deceased husband."

The true principle deducible from the cases is that a person who is entitled to any portion of the estate left by the deceased or a right to claim maintenance from the estate of the deceased has an interest within the meaning of section 69 of the Probate and Administration Act. It is not necessary that he should claim through the testator in order to enable him to oppose the grant of probate of the will of the testator. If a person is likely to suffer by the grant of the probate of a forged will or an invalid will he has sufficient interest to enter a caveat.

The next contention is that the judgment of the learned Judge is opposed to the evidence in the case.

His Lordship dealt with the evidence and proceeded as follows:—We see no reason to differ from the finding of the learned Judge that it has not been satisfactorily proved that the will was executed by Narasamma or that at the time of the alleged execution of the will she was in a sound disposing state of mind.

WALLER, J.

WALLER, J.—On both points I agree. I think that the words in section 69 of the Probate and Administration Act "claiming to have any interest in the estate of the deceased" are intended to bear the same meaning as the words in the English Act "having or pretending interest in the (personal) estate affected by the will." That is the view taken in *Kishen Dai* v. *Satyendranath Dutt*(1), which I would follow. On the merits, I see no reason to dissent from the conclusion of the District Judge. The appeal must be dismissed.

K.R.

(1) (1901) I.L.R., 28 Calc., 441.