1934

NATHI LAL v. KEWAL RAM

King, J.

assignment in his favour, and in my opinion the claim remains a claim for arrears of rent. The right to recover the arrears of rent is a right of property which is transferable and I can find nothing in the Agra Tenancy Act which restricts a suit for arrears of rent to a suit by the landholder himself so as not to include a suit by the assignee of the landholder. This view is strongly supported by the language of serial No. 4 of group A of the fourth schedule of the Agra Tenancy Act, 1926. This serial number provides in express terms for a suit for arrears of rent including suits by an assignee. I think that the word "assignee" can only mean an assignee of the rent and cannot be held to mean an assignee of the interest in land. If a landholder transfers his interest in the land, then the transferee is undoubtedly entitled to sue for arrears of rent because he becomes a landholder himself. This is clear from the language of section 3(1) which shows that the word "landholder" must be deemed to include a successor in right, title and interest of a landholder. The word "assignee" therefore must be taken to mean the assignee of rent. The legislature therefore clearly contemplated a suit by an assignee of rent for arrears of rent under section 132 of the Agra Tenancy Act. Under section 230 of that Act it is clear that a suit of that nature is only cognizable by a revenue court. I agree with his Lordship the CHIEF JUSTICE that the appeal should be dismissed.

TESTAMENTARY JURISDICTION

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice King

IN THE GOODS OF SUKHI SUNDARI DASI*

1934 April, 5

Succession Act (XXXIX of 1925), sections 222, 224—Executor, appointment of—Appointment by necessary implication—Expressly appointed executor authorised to nominate another—Probates, successive grants of.

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*Testamentary Case No. 14 of 1900.

1934

IN THE GOODS OF SUKHI SUNDARI DASI

Where the testator expressly appointed an executor and also authorised him to nominate an executor if he liked; and probate was granted to him but before the entire estate could be realised he died, leaving a registered will appointing his son as the executor for continuing the administration of the testator's estate; and the son applied for the grant of a fresh probate of the unadministered portion of the testator's estate: *Held,* that the applicant must be deemed to have been appointed executor by necessary implication and a fresh probate could be granted to him.

Mr. *A. P. Bagchi,* for the applicant.

SULAIMAN, C.J., and KING, J.:—This is an application for the grant of probate of the unadministered portion of the estate of Sukhi Sundari Dasi of Benares who died about 1900. She left a registered will under which she had appointed Biswanath Koosary, who was the father of the present applicant, as the executor and had also authorised him to nominate an executor if he liked. Probate was granted to Biswanath Koosary but he was not able to realise the entire estate. He died some 17 years ago, but before his death he executed a registered will appointing his son, the present applicant, as the executor to administer the estate.

The present application is made for a fresh probate being granted to the applicant.

Under section 222 of the Indian Succession Act (Act XXXIX of 1925) probate can be granted only to an executor appointed by the will, but such appointment may be expressed or by necessary implication. Section 224 also shows that when there are several executors so appointed, probate may be granted to them all simultaneously or at different times. The illustration to that section shows that where *A* is an executor of *B's* will by express appointment and *C* an executor of it by implication, probate may be granted to *A* first and then to *C*.

It is therefore quite clear that if the present applicant can be treated as a person who was appointed under the will by necessary implication as the executor he is entitled to apply for a fresh probate in his own favour.

In *Moosa Haji* v. *Haji Abdul* (1) Sir LAWRENCE JENKINS, C.J., pointed out that there was nothing in the Probate and Administration Act which imposed upon a testator an obligation himself to name his executor and that there was nothing which precluded a testator from appointing as his executor such person as some one selected by him may name for that purpose. The learned CHIEF JUSTICE cited some English cases as showing that such an appointment has been held to be good consistently in England.

1934

IN THE GOODS OF SUKHI SUNDARI DASI

It therefore seems to us that inasmuch as Mst. Sukhi Sundari Dasi in her will had authorised Biswanath Koosary to nominate an executor and he has done so, it must be taken that the present applicant has been appointed under the will by necessary implication.

We accordingly direct that probate be granted to the applicant of the will of Sukhi Sundari Dasi.

APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice King

DAL CHAND (DEFENDANT) *v.* MUL CHAND (PLAINTIFF)*

1934
April, 12

Civil Procedure Code, section 64, Explanation; order XXI, rule 55 (as amended)—Attachment of same property in execution of two decrees—Application for rateable distribution by a third decree-holder—Notified to sale officer—Private alienation by judgment-debtor—Execution sale satisfying one decree, and the other decree paid off privately—Rights of applicant for rateable distribution.

The same property was attached in execution of *D. P.*'s decree of the Subordinate Judge's court and of *M. R.*'s decree of the Munsif's court, and both execution cases were transferred to the Collector for sale of the property. A third decree-holder, *D. C.*, applied, in the execution case in the Munsif's court, for a rateable distribution, and his application was notified to the sale officer. After this, but before the auction sale, the judgment-debtor made a private sale of the attached

*Appeal No. 52 of 1932, under section 10 of the Letters Patent.

(1) (1903) 5 Bom., L.R., 639 (641).