

MISCELLANEOUS CIVIL.

1930

April, 25.

Before Mr. Justice Bisheshwar Nath Srivastava.

CHHEDA LAL AND OTHERS (APPLICANTS-APPELLANTS) v.
MUSAMMAT RAM DULARI (OBJECTOR-OPPOSITE
PARTY-RESPONDENT).*

Indian Succession Act (XXXIX of 1925), sections 299 and 317—Executors filing accounts and inventories—Appointment of auditor for checking of accounts and inventories and for local inquiries—Court's power to appoint auditor for checking accounts—Fees of auditor, liability of executors for payment of—Interlocutory orders—Appeal against interlocutory orders, whether lies under section 299 of the Indian Succession Act.

Held, that the provisions of section 299 of the Indian Succession Act are very wide. They allow an appeal against every order made by a District Judge in the exercise of the powers conferred on him by the Act and so an appeal lies under the terms of this section irrespective of whether the order has been passed in the course of interlocutory proceedings or whether it is a final order.

Where accounts and inventories are filed by the executors under section 317 of the Indian Succession Act, the appointment of an auditor for the checking and examination of the accounts and for local inquiries about the income and expenditure is beyond the scope of the authority of the court under that section, and the order directing his fees to be paid by the trustees is not regular and proper. The use of the word "exhibit" in the section is significant. The object of the accounts and inventories being exhibited seems to be that the accounts and inventories should be available for inspection by parties interested in the administration of the estate. The proceedings are of a summary character, and there is no provision in the Act to show that there was any intention that the court should embark upon any extensive, detailed or minute inquiry as regards the correctness or otherwise of the said accounts and inventories. *Sarat Sundari Barmani v. Uma Prasad Roy Chowdhry* (1) relied on.

*Miscellaneous Appeal No. 19 of 1930, against the order of E. M. Nanavutty, First Additional District Judge of Lucknow at Bara Banki in the exercise of his testamentary jurisdiction, dated the 25th of January, 1930.

(1) (1904) I.L.R., 31 Cal., 628.

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Mr. *Radha Krishna*, for the appellants.

Mr. *Haider Husain*, for the respondent.

SRIVASTAVA, J.:—These are two miscellaneous appeals arising out of orders passed by the Additional District Judge of Bara Banki in the exercise of his testamentary jurisdiction. They arise under the following circumstances.

One Janki Prasad died on the 1st of August, 1927 possessed of considerable property and leaving a will, dated the 13th of February, 1927, under which he appointed seven persons as executors and trustees. On the 5th of January, 1928 the aforesaid persons made an application for grant of probate. An order was made on the 2nd of March, 1928 granting the probate applied for. On the 30th of September, 1929 the executors filed an account of the estate, and on the 9th of January, 1930, they filed an inventory as required by section 317 of the Indian Succession Act (XXXIX of 1925). Musammat Ram Dulari, widow of Janki Prasad, testator, made an application, dated the 10th of December, 1929, praying for the accounts filed by the executors to be checked and also asking for certain maintenance allowance being paid to her and her daughters. She followed up this application with another dated the 25th of January, 1930 praying "that some Muhammadan legal practitioner be appointed to carry out the checking of the accounts." This is communalism *in excelsis*, though there is the saving grace of this extraordinary request being contained in an application made on behalf of a Hindu. The applicant also prayed "that clear directions may be given to the auditor to verify the entries in the *bhai khatas* on the spot as well as to make local inquiries about the income and expenditure if the auditor deems it necessary in the circumstances of the case."

These applications were disposed of by the learned District Judge by an order passed *ex parte* under which he appointed one Mr. Mahmudul Hasan Kirmani as

auditor to check the accounts of the Trust. It was further ordered that "the fees of the auditor will be fixed at the rate of 5 per cent. on the income of the Trust." This order, dated the 25th of January, 1930, forms the subject-matter of appeal No. 19 of 1930.

On the 13th of February, 1930 the executors filed an application complaining against the order for the appointment of the auditor and against his being entrusted with an inquiry into the allegations made by Musammat Ram Dulari against them. They also objected to the fee allowed to the auditor and complained that the order was vague as regards the person who was to be made liable for its payment. This application was disposed of by the present District Judge by his order, dated the 1st of March. The material portion of that order is to the following effect :—

"The auditor will be paid 5 per cent. of his fees on the annual income since the death of the testator. The costs will be borne by the Trustees if it is found that they had failed to keep proper, open and accurate accounts of the property or in any duty cast upon them by the will."

Appeal No. 20 of 1930 is directed against this order.

Mr. *Haider Husain*, the learned counsel for the respondent, Musammat Ram Dulari, has raised a preliminary objection against the maintainability of these appeals. He has contended that the appeals are directed against orders passed in interlocutory proceedings and that there is no provision in law for appeals against such interlocutory orders. I find myself unable to accede to this contention. Section 299 of the Indian Succession Act provides that every order made by a District Judge by virtue of the powers conferred upon him by the Act shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals. The provisions of this

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section are very wide. They seem to me to allow an appeal against every order made by a District Judge in the exercise of the powers conferred upon him by the Act. In my opinion an appeal lies under the terms of this section irrespective of whether the order has been passed in the course of interlocutory proceedings or whether it is a final order.

It is the common case of both parties that the account and the inventory in question were filed by the executors under section 317 of the Indian Succession Act. The contention urged by the learned counsel for the appellants is that the appointment of an auditor such as the one in question for the checking and examination of the accounts and for local inquiries about income and expenditure is beyond the scope of the authority of the court under the said section. I think the contention is correct and the appeals must be allowed on this ground. It is important to note that the section requires the executor or administrator to "*exhibit* in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character" and to "*exhibit* an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of." Clause 4 of the section further provides that "the exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code." The use of the word "*exhibit*" in the passages quoted above appears to me to be significant. The object of the accounts and inventories being exhibited seems to be that the accounts and inventories should be available for inspection by parties interested in the administration of the estate. The proceedings are of a summary character, and there is no provision in the Act to show that there was any

intention that the court should embark upon any extensive, detailed or minute inquiry as regards the correctness or otherwise of the said accounts and inventories. If the Legislature had any such intention it is to be expected that it should have made express provision for that purpose. I do not deny the right of the court to see that the accounts and inventories filed, *prima facie*, comply with the requirements of the section. The learned District Judge could very well have examined them from that standpoint either himself or ordered his Munsarim or some other member of his staff to do so. But I am unable to find any authority for his appointing an auditor for making local inquiries about the income and expenditure and for verification of the entries in the accounts as was prayed for and has been ordered in this case. If the accounts or inventories filed by an executor are false and untrue, the executor or administrator is liable to punishment under the Indian Penal Code. Further, it is open to any person interested in the administration of the estate to institute a regular suit against the executor or administrator questioning the correctness of the accounts and making him liable for any malfeasance or misfeasance on his part. The contention urged in support of the appeal is also supported by the decision of a Bench of the Calcutta High Court in *Sarat Sundari Barmani v. Uma Prasad Roy Chowdhry* (1). Discussing the provisions of section 98 of the Probate and Administration Act (V of 1881) which corresponds to section 317 of the Indian Succession Act (XXXIX of 1925), their Lordships observed that "the section nowhere imposes on the District Judge the duty of scrutinizing and auditing the papers and of undertaking for that purpose elaborate and expensive proceedings. Such a scrutiny would be an onerous charge which we cannot hold to have been laid on him unless the section clearly says so; and we find no such words. Nor again does the section give the District Judge power

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to hold a judicial inquiry into the inventory and account of his own motion; and to make the executor or administrator pay the costs of it. All that the District Judge has to do under the section is to see that the inventory and account *prima facie* satisfy the requirements of the section, that is, that the inventory appears on inspection to be a full and true estimate of all the property, credits and debts, and that the account on inspection appears really to be a true one showing the assets and their disposal. To ascertain this it would be necessary that the inventory and account should be passed under some examinations by the Judge's staff so as to detect manifest mistakes or omissions. If such were discussed, the papers would not satisfy the section; and the Judge would have power to require the executor or administrator to amend the account in order to comply with the section; and for this purpose the section empowers him to extend the time. This, in our opinion, is the scope of the Judge's duties under section 98. He has no power to institute an audit of the inventory and account at the expense of the executor or administrator. The section vests him with no such power, nor can such an authority be implied from the provisions of the Code of Civil Procedure as to the appointment of a commissioner to examine accounts, to which provisions the District Judge has referred."

I am, therefore, of opinion that the orders of the learned District Judge, which are under appeal, appointing an auditor in the case and directing his fees to be paid, under the circumstances mentioned in the order, by the trustees, were not regular and proper and must, therefore, be set aside.

The result, therefore, is that the appeals are allowed with costs and the orders of the District Judge, dated the 25th of January, 1930, and 1st of March, 1930, are set aside.

Appeal allowed.