

Before Mr. Justice Pigot and Mr. Justice Banerjee.

T. LUCAS AND ANOTHER (OBJECTORS) *v.* H. LUCAS (PETITIONER).*

1891
August 6.

Appeal—Order of District Judge as to security—Insufficiency of security—Succession Act (X of 1865), s. 263—Act XXVII of 1860, section C.

No appeal lies against an order made, whether in pursuance of the directions of the High Court or otherwise by a District Judge as to security, on the ground that such security is insufficient.

Monmohinee Dasse v. Khetter Gopal Dey (1) referred to.

In the matter of an application by the petitioner, the widow of one L. T. Lucas, for a certificate of administration under Act XXVII of 1860 to the estate of her husband, which application was opposed by the present appellants, the High Court directed the District Judge of Backergunge to take security in the sum of Rs. 10,000 from Mrs. Lucas, the security to be such as in his discretion he considered sufficient for that sum. Mrs. Lucas was accordingly called upon by the District Judge to furnish security, and she offered certain properties, which the District Judge, being of opinion that they were fully worth Rs. 10,000, accepted as sufficient.

Against that order of the District Judge the objectors appealed to the High Court, on the ground that the properties offered by Mrs. Lucas as security were insufficient.

Mr. Bell with Baboo *Boykant Nath Das* for the appellants.

The *Advocate-General* (Sir *Charles Paul*), with Baboo *Saroda Churn Sen*, for the respondent.

The judgment of the Court (PIGOT and BANERJEE, JJ.) was as follows:—

No authority has been shown to us for holding that an order of this kind is appealable on the ground suggested. We find that this Court has directed that the District Judge shall require security to an amount laid down by this Court, the security being

* Appeal from Order No. 165 of 1891, against the orders of A. E. Staley, Esq., Judge of Backergunge, dated the 4th and 15th of May 1891.

1891

 LUCAS
 v.
 LUCAS.

such as in his discretion he shall consider sufficient for that amount. It appears to us that it would be in the highest degree inconvenient to treat such an order as has been passed by the Judge as appealable. The Indian Succession Act provides by section 263 that orders made by the District Judge shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure so far as these rules are applicable. So far as that section furnishes us with a guide by analogy as to whether this order is appealable or not, the conclusion is that it is not so, because no provision is made by the Code of Civil Procedure for an appeal against an order made, whether in pursuance of the directions of this Court or otherwise, by a Subordinate Court, founded on the ground that security insufficient in point of quality has been accepted. Such orders are not appealable at all, and we think that we ought to follow that analogy in the absence of anything to the contrary being shown. Then it is said that this is in fact an appeal in which the whole matter is before us, that the whole of the matter of the grant of the certificate is before us, and that therefore, treating it in that way, we ought to deal with this question of security as arising in the appeal generally upon the whole matter. This Court in the case of *Monmohinee Dasse v. Khetter Gopal Dey* (1) declined to act upon that view in a case under Act XXVII of 1860, an appeal with reference to a security order, in which the Court in considering whether section 6 of that Act did or did not provide an appeal for such a case, held that it did not, saying with reference to an authority cited in favour of the appeal, there is nothing which affirms this Court's power to hear an appeal as to any other matters than those which are connected with the propriety or otherwise of an order made granting a certificate; apparently considering that the question of the kind now before us as security is not one involving the question of the propriety or otherwise of the granting of a certificate.

We think that we must hold that no appeal lies in this case. The appeal will accordingly be dismissed, and we think that the parties should bear their own costs.