

REVISIONAL CIVIL.

Before *Coutts and Das, J.J.*

MUSSAMMAT DULHIN SONA KOER

1922.

v.

May, 16.

SAIYID SHAH MAHMUDUL HAQUE.*

Administration of Estate—part of estate released by order of court—validity of order.

The District Judge has power, pending the administration of an estate, to direct the share of one of the heirs to be made over to him.

The facts of the case material to this report are stated in the judgment of Das, J.

Kulwant Sahay, Gurusaran Prasad and Ram Chandra Bhaduri, for the applicants.

Hasan Jan and Muhammad Ishfaq, for the opposite party.

DAS, J.—This application is directed against an order passed by the learned District Judge of Patna, on the 29th of September, 1921. That order was made in an administration action which was pending in his court.

It appears that one Mussammat Bibi Fasihah died some time ago leaving amongst others Bibi Saira as one of her heirs. The opposite party Mahmudul Haque is the heir of Bibi Saira. On the death of Mussammat Fasihah certain persons, whose names it is unnecessary to mention in this judgment, set up certain deeds of gift in their favour. Some of the heirs of Mussammat Bibi Fasihah thereupon brought a suit to set aside those deeds of gift. This court on appeal came to the conclusion that the deeds of gift were not genuine and that in the circumstances of the case a decree for

* Civil Revision No. 22 of 1922, against an order passed by R. L. Ross, Esq., District Judge of Patna, dated the 27th September 1917.

1922. administration of the estate should be passed. It appears that the learned District Judge, under the direction of this court, passed a preliminary decree for administration of the estate. A Receiver was appointed to take charge of the estate pending the administration of the estate.

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DAS, J.

An application was made before the learned District Judge on behalf of Mahmudul Haque for release of his share in the estate. The learned District Judge has made an order in his favour and it is against this order that the present application has been presented to this court.

Mr *Kulwant Sahay*, on behalf of the petitioner, contends that there was no jurisdiction in the learned District Judge to release the share of Mahmudul Haque until the administration of the estate was completed. I am of opinion that the learned District Judge had complete jurisdiction to pass the order which he did. It is unnecessary to determine the question whether in the circumstances the learned District Judge should have passed the order which he did. All that we are concerned in this application is the jurisdiction of the court. No authority has been shown to us to establish that pending the administration of the estate the court has no power to direct the share of one of the heirs to be made over to him. As a matter of fact the learned District Judge in passing the order has completely safeguarded the interest of the estate. He found that there were no claims against Mahmudul Haque except for his share in the outstanding debt of Rs. 4,000 and the possible claims under litigation by Girdhar Das and Dulhin Sona Koer and for any sums that may be due on account of funeral expenses of Bibi Fasihah and on account of advances made by the Receiver. But then Mahmudul Haque gave an undertaking to be responsible for his share in those debts. In my opinion, the order of the learned District Judge merely operates as an order of discharge of the Receiver so far as the share of Mahmudul Haque is concerned. It may be convenient to have a Receiver in the matter of the

working out of an administration decree, but it cannot be suggested that that is the only possible way of working out the administration decree; for the decree which has been passed by the court can well be carried into execution although the learned District Judge has directed the share of Mahmudul Haque to be made over to him.

I can see nothing wrong in the order passed by the learned District Judge and would dismiss this application with costs.

COUTTS, J.—I agree.

Application dismissed.

REVISIONAL CIVIL.

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QAZI SYED MUHAMMAD AFZAR

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Code of Civil Procedure, 1908 (Act V of 1908), section 151—consolidation of suit, whether consent of parties necessary to.

A Court has inherent power to consolidate suits and, therefore, the consent of the parties is not necessary for such consolidation.

Kali Charan Dutt v. Suraj Kumar Mondal(1), approved.

Application by the plaintiff.

The facts of the case material to this report are stated in the judgment of Coutts, J.

Siveshwar Dayal, for the applicants.

Bimola Charan Sinha, for the opposite party.

COUTTS, J.—This is an application in revision against an order of the Subordinate Judge of Patna,

* Civil Revision No. 7 of 1922, against an order of Babu L. Patnaik, Subordinate Judge of Patna, dated the 6th January, 1922.

(1) (1912-13) 17 Cal. W. N. 526.