

1921

RAKHYPAL
SINGHv.
LAL BIR
SUNJODAY
SINGH DEO.

DAS, J.

Land-Revenue Act. Section 76 of the Act authorizes the Settlement Officer to determine and record the village cesses, if any, which are leviable in accordance with village custom, and the persons by and from whom, and the rates at which, they are leviable; and it directs that such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly. Section 132 of the Act gives a similar power to the Deputy Commissioner if he has to determine the matter when the settlement is not in progress. Section 153 provides that—

“no suit shall lie in a Civil or Revenue Court for the recovery of any village cess which has not been sanctioned by the Chief Commissioner and also either recorded at a Settlement or under section 132, clause (h)”.

The argument of the learned vakil is that the Chief Commissioner must not only sanction the village cess, but must further sanction the rates at which such cess is leviable. I am unable to agree with this contention. It seems to me clear on a reading of section 76 of the Central Provinces Land-Revenue Act that all that the Board of Revenue has to do is to sanction the levy of the cess, not the rate at which such cess is leviable. In my opinion the view taken by the learned Judge is right.

These appeals must be dismissed with costs.

ADAMI, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Adami and Das, J.J.

KANHAI ROUT

v.

JOGENDRA ROUT.*

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Nov. 23.

Letters of Administration—person entitled to special citation, effect of not issuing citation on.

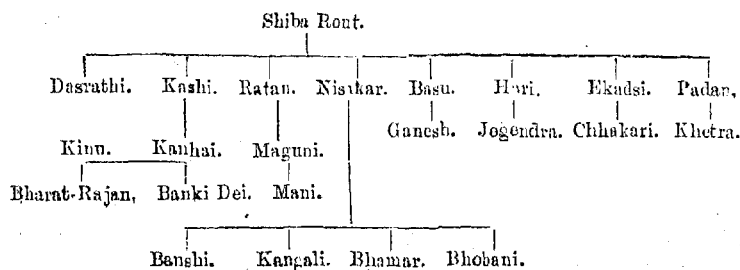
* Circuit Court, Cuttack. Appeal from Original Decree No. 8 of 1920, from a decision of D. H. Kingford, Esq., District Judge of Cuttack, dated the 24th April 1920.

Where a special citation is not issued upon a person entitled to it, a grant of Letters of Administration is nevertheless binding on him if he had knowledge of the application for the grant and had an opportunity of intervening.

Shyama Charan Baisya v. Prafulla Sundari Gupta(1), followed.

Newell v. Weeks(2), referred to.

The following genealogical table shews the relationship of the parties to the dispute.



On the death of Bharat an application for Letters of Administration to his estate was made by Jogendra on the 6th September, 1918, and Letters of Administration were granted to him on the 7th April, 1919. In his application Jogendra stated that the testator's only surviving relations were Rajan, his widow, and Banki, his sister. On the 26th April, 1919, Rajan applied for revocation of the Letters of Administration but this application was rejected on the 11th August, 1919. On the 15th January, 1920, Kanhai and Bhubani applied for revocation of the Letters of Administration. The applicants alleged that they did not become aware of the grant until after the widow had made her application, and that, as reversioners, they were entitled to have a special citation issued upon them. The opposite party, Jogendra, adduced evidence shewing that the receipt of the summons served upon Rajan, the widow, in the original application was signed by Kanhai on the 21st October, 1918. The evidence also shewed that in the original case both Kanhai and

(1) (1945) 21 Cal. L. J. 557.

(2) (1814) 2 Phill. 224.

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Bhobani were cited as witnesses on behalf of Rajan and that the summonses were served on them on the 24th February, 1919. The court held that both the applicants had notice of Jogendra's application, and dismissed their application for revocation of the grant to him. The petitioners appealed.

Subodh Chandra Chatterji, for the appellants.

Bichitrananda Das, for the respondent.

ADAMI, J.—This is an appeal against the order of the District Judge dismissing an application for revocation of Letters of Administration granted to one Jogendra Rout on the 7th April, 1919. The widow of the deceased testator had applied for revocation on the 26th April, 1919, but her application was dismissed and now the present appellants have come forward alleging that they had no knowledge of Jogendra's application of the 7th April, 1919, and that, therefore, the grant should have been revoked. The learned District Judge has found that both the appellants had as a fact notice of the application by Jogendra they being summoned by Rajan Dei the caveatrix in the first application of Jogendra and again on the 21st October, 1918.

The point taken by the learned vakil for the appellants is that Jogendra in his application stated, in paragraph 2, that the testator had left behind him only his married widow Rajan Dei and his sister Banki Dei and that the deceased had no relations except them. One appellant is uncle of the testator and the other is a cousin and it is urged that as reversioners they were entitled to have a special citation issued upon them at the time when Jogendra made his application. The learned vakil has relied on the case of *Shyama Charan Baisya v. Prafulla Sundari Gupta*⁽¹⁾ to the effect that where an incorrect statement as to the relations of the deceased is made, and, misled

(1) (1915) 21 Cal. L. J. 557.

thereby, the Court does not direct the issue of special citation on a person who is entitled to intervene, the proceeding to obtain the grant is defective in substance. But the same case lays down that a person is bound by proceedings to which he is no party but of which he has received knowledge and whereto he has had a capacity to make himself a party. The learned Judge in that case cited the judgment of Sir John Nicholl in *Newell v. Weeks* (1) to the effect that "the process of citing parties is a convenient one for all suitors, because when that is done, you need not prove actual privity—the law presumes actual privity after the legal process—the *lis pendens* is sufficient notice that persons should appear and protect their own interests but if you can prove actual privity, the legal process, in point of solid justice and sound reason, is superfluous; though *ex abundanti cautela*, it may still be convenient to resort to it and have it upon record".

In the present case the District Judge has found as a fact that at the time of the application of Jogendra for probate, Rajan Dei the widow issued summonses on the two appellants and those summonses were duly served upon them. They thus had full notice that an application was being made and they had an opportunity of intervening. The notice was served upon them a full month before a compromise was arrived at between Jogendra and the widow, but they took no steps. Under the circumstances it was unnecessary that special citations should have been served upon them and the failure to serve those citations cannot give a good ground for revocation of the grant of probate.

Under the circumstances, I do not consider that the appellants are entitled to the relief and I would dismiss this appeal.

DAS, J.—I agree.

Appeals dismissed.

(1) (1814) 2 Phillim. 224.

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ADAMI, J.