

summons were ordered to issue for February 16th. On the 16th February the objector's witnesses did not appear and the Court rejected their petition for more time and proceeded to hear the case. The petition for time on the 16th February stated that in spite of service of summons the witnesses had not come, and the petitioners heard that some witnesses were ill while others had gone to celebrate marriages. In my opinion the District Judge acted rightly in refusing further time; he had previously given warning to the objectors, and no good or sufficient reason was given for the absence of the witnesses. The original decree was passed in 1903 and the order on appeal to their Lordships of the Privy Council in 1912; it was plainly the duty of the Court to prevent the further protraction of the execution proceedings.

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AHMAD
KHAN.

ADAMI, J

As a result of my findings on the points put forward by the appellants the appeals must be dismissed with costs.

BUCKNILL, J.—I agree.

Appeals dismissed.

REVISIONAL CIVIL.

Before Jwala Prasad and Kulwant Sahay, J.J.

MUSSAMMAT DAHO KUER

v.

MUSSAMMAT TURAL DEI.*

1924.

March, 11.

Probate and Administration Act, 1881 (Act V of 1881), sections 3 and 51—"District Judge" whether includes Additional District Judge—Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887), section 8(2)—assignment of District Judge's functions relating to probate, to additional District Judge—power of latter to revoke probate granted by District Judge.

* Civil Revision No. 98 of 1924, from the order of A. T. Chatterjee, Esq., Additional District Judge of Patna, dated the 22nd February, 1924.

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The term "District Judge" in section 3 of the Probate and Administration Act, 1881, includes an Additional District Judge to whom the functions of the District Judge relating to the grant and revocation of probate have been assigned under section 8(2) of the Bengal, Agra and Assam Civil Courts Act, 1887.

An Additional District Judge to whom such functions have been assigned has power to revoke a probate granted by the District Judge.

Lal Behari Basak v. Akhil Chandra Santra(1), *Jogesh Chundra Sanyal v. Rasik Lal Saha*(2) and *Makhan Lal v. Sri Lal*(3), applied.

Rup Kishore Lal v. Neman Bibi(4), *Manho v. Williams*(5) *Komollochan Dutt v. Nilruttun Mundle*(6) and *Mohendra Narain Roy, In the goods of*(7), referred to.

Petition by the applicant.

The petitioners in this case applied to the District Judge for revocation of a probate granted some time previously by that Court.

The District Judge by his order of the 5th February, 1924, transferred the case to the Additional District Judge for disposal under the following order :

" Under section 8(2) of the Bengal, N.W.P. and Assam Civil Courts Act the functions of the District Judge under the Probate and Administration Act and the Indian Succession Act relating to grant and revocation of probate have been assigned to the Additional District Judge. Let this suit accordingly be sent to the Additional District Judge for disposal."

The petitioners objected to the trial of the case by the Additional District Judge upon the ground that the order passed by the District Judge transferring the case to the Additional District Judge was *ultra vires* and that the Additional District Judge had no

(1) (1921-22) 27 Cal. W. N. 315. (4) (1915) I. L. R. 42 Cal. 842, F. B.

(2) (1919) 50 Ind. Cas. 690. (5) 2 N. W. P. R. 268.

(3) (1912) I. L. R. 34 All. 382. (6) (1879) I. L. R. 4 Cal. 360.

(7) (1900-01) 5 Cal. W. N. 377.

jurisdiction to try the case. This application was refused by the Additional District Judge, and consequently the petitioners moved the High Court in revision.

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Guru Saran Prasad and *Anand Prasad*, for the petitioner.

Gangadhar Das and *S. N. Roy*, for the opposite party.

JWALA PRASAD AND KULWANT SAHAY, J.J., (after stating the facts, as set out above, proceeded as follows):—

The question before us is whether the Additional District Judge has power to deal with the application for revocation of the probate in question. Under section 51 of the Probate and Administration Act (V of 1881) jurisdiction is conferred on the District Judge as regards the granting and revoking of probate and Letters of Administration in all cases within his district. Section 3 of the Act defines "District Judge" to mean "the judge of a principal civil court of original jurisdiction." The Bengal, Agra and Assam Civil Courts Act (XII of 1887) deals with the constitution of Civil Courts in Chapter II. As regards Additional Judges, provision is made in section 8, clauses (1) and (2), of the Act, which says:

"When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the High Court appoint such Additional Judges as may be requisite."

"Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge."

It is clear from the aforesaid provision that the Additional District Judge exercises with respect to the cases transferred to him by the District Judge the same powers as the District Judge. Now, a class of cases or a particular case may be transferred to the

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Additional District Judge for the reason that he is to relieve the District Judge of the burden on account of accumulation of cases. When the Additional District Judge takes seizin of a case upon a transfer made to him he becomes the "principal Civil Court of original jurisdiction." Therefore the Additional District Judge exercises the same powers and in fact occupies the position of a District Judge in the sense that it is defined in the Probate and Administration Act referred to above. When the function of a District Judge under the Probate and Administration Act is transferred to an Additional District Judge he has the same jurisdiction as the District Judge with respect to the grant and revocation of probates and Letters of Administration. This is not seriously disputed, and in face of the statutory provisions and the authorities on the subject it cannot be seriously disputed.

Mr. *Rai Guru Saran Prasad*, however, contends that, although the Additional District Judge had jurisdiction in the matter of grant and revocation of probates and Letters of Administration, he had no jurisdiction as regards the revocation of probates granted by the District Judge. The foundation of this argument is that the District Judge who grants probates and Letters of Administration should alone have power to revoke the same. There is no authority to support this proposition. The authorities cited go only to show that probates and Letters of Administration should not be allowed to be disputed in any other form but in the Court which granted it. Now, the probate in the present case was granted by the District Judge, and the District Judge had power to revoke it. It is not the personnel of the District Judge, but the presiding officer of the Court of the District Judge will have power to revoke it. By virtue of the transfer made by the District Judge to the Additional District Judge in the present case under section 8 of the Bengal, Agra and Assam Civil Courts Act, the Additional Judge becomes the District Judge for the purpose of exercising functions under the Probate and Letters of

Administration Act. Therefore the contention of Mr. *Rai Guru Saran Prasad* must fail. 1924.

The following cases, namely, *Lal Behari Basak v. Akhil Chandra Santra* (1), *Jogesh Chandra Sanyal v. Rasik Lal Saha* (2) and *Makhan Lal v. Sri Lal* (3) show that in other statutes, such as, the Bengal Tenancy Act, the Land Acquisition Act and the Insolvency Act, the Additional District Judge exercises the powers of a District Judge in respect of cases transferred to him although the provisions in the particular Act state that the particular function should be exercised by the District Judge. It appears to us that the question raised by Mr. *Rai Guru Saran Prasad* can be answered by a reference to the reasons given in the order of reference in the Full Bench case of *Rup Kishore Lal v. Neman Bibi* (4). Those reasons were accepted by the Full Bench, the judgment of which was delivered by Sir Lawrence Jenkins, C.J. The cases referred to by Mr. *Rai Guru Saran Prasad* [*Mayho v. Williams* (5), *Komollachun Dutt v. Nilruttun Mundle* (6) and *Mohendra Narain Roy, In the goods of* (7)] only show, as has already been said, that the Court which grants a probate should have power to revoke it. The order in the present case passed by the District Judge and quoted above shows that the functions of the District Judge with respect to the Probate and Administration Act were generally transferred to the Additional District Judge, and as a part of that arrangement the present case was also sent to the Additional District Judge for disposal. The order purports to have been passed under section 2 of the Act and is a valid order.

We, therefore, dismiss this application with costs.

(1) (1921-22) 27 Cal. W. N. 315.

(2) (1919) 50 Ind. Cas. 690.

(3) (1912) I. L. R. 34 All. 382.

(4) (1915) I. L. R. 42 Cal. 842.

(5) 2 N. W. P. R. 268.

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(7) (1900-01) 5 Cal. W. N. 377.