

that the testatrix had no right to deal with it; he also raised the point that the will was not a genuine one. In that case on the basis of that objection the Calcutta High Court held that the objector had no *locus standi*. The judgment in the case of *Kalajit Singh v. Parmeshwar Singh*(¹) was not a reasoned judgment nor does it appear to be a judgment based on any authority but the principle which it laid down is binding upon us and has been applied in other cases as I have shown. In the case of *Jamni Hanmantha Rao v. Aratala Latchamma*(²) there is a decision questioning this view and in it the cases of the Calcutta High Court have been discussed.

For these reasons, in my judgment, the objector in this case had no *locus standi* with the result that, this appeal must be dismissed with costs.

FAZL ALI, J.—I agree that the appeal should be dismissed with costs particularly as I am satisfied that the will has been proved.

Appeal dismissed.

APPELLATE CIVIL.

Before Macpherson and Fazl Ali, JJ.

MAHANTH RAM DAS

v.

PREM DAS.*

Probate, application for the revocation of—allegation that the testator had no estate—applicant, whether has locus standi to maintain the application—person disclaiming interest in the estate, whether entitled to citation—Succession Act, 1925 (Act XXXIX of 1925), section 283(1)(c).

* Appeal from Original Decree no. 193 of 1929, from a decision of F. G. Rowland, Esq., District Judge of Patna, dated the 24th August, 1929.

(1) (1917) 1 Pat. L. W. 308.

(2) (1928) A. I. R. (Mad.) 1193.

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A citation is to be issued to all persons claiming to have any interest in the estate of the deceased and, therefore, a person disclaiming interest in the estate is not entitled to citation and has no locus standi in the Probate Court.

Where, in an application for the revocation of probate, the applicant had made a definite allegation that the testator had no estate and the substance of the application was that the properties which the testator purported to make over by will were properties which he held not in his personal but in his official capacity and which actually belonged to the math or the Thakur.

Held, that the applicant had no locus standi to maintain the application.

Abhiram Ram Das v. Gopal Das(1), *Srigobind Pershad v. Musammat Laljhari Koeri*(2), *Kalajit Singh v. Parmeshar Singh*(3), *Musammat Mahasundar Koer v. Babu Ratan Prasad Sahi*(4), *Debendra Prasad Sukul v. Surendra Prasad Sukul*(5), *Pirojshah Bikhaji v. Pestonji Merwani*(6), and *Gopal Chandra Bose v. Asutosh Bose*(7), followed.

Appeal by the applicants.

The facts of the case material to this report will appear from the judgment of Macpherson, J.

Baldeo Sahay (with him *Kishundeo Prasad* and *J. K. Prasad*), for the appellants.

A. A. Syed Ali and *Ahmed Reza*, for the respondents.

MACPHERSON, J.—In this appeal we have not found it necessary to call upon the respondents.

It is preferred from a decision of the District Judge of Patna rejecting an application of February, 1929, for revocation of a probate granted in 1916 of

(1) (1889) I. L. R. 17 Cal. 48.

(2) (1909) 14 Cal. W. N. 119.

(3) (1917) 1 Pat. L. W. 308.

(4) (1916) 1 Pat. L. W. 370.

(5) (1919) 1 Pat. L. T. 19.

(6) (1910) I. L. R. 34 Bom. 459.

(7) (1910) 20 Ind. Cas. 342.

the unregistered will of one Beni Das, dated the 21st Jeth, 1321 F.

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The first petitioner states that he is mahanth of the Piparpanti math in the district of Monghyr to which the Pundarak math in the Patna district, of which Beni Das, deceased, was mahanth, is subordinate. The other two petitioners state that they and Beni Das were descended from mahanth Nanak Baksh Das as shown in the genealogy annexed to the petition. They all set out that Prem Das who has obtained probate, having accepted the post of pujari under them and having in 1927 refused to account for the proceeds of the properties they made inquiry and learned of the will for the first time; whereupon they filed a regular suit but were confronted with the difficulty that the genuineness of the will could not be gone into except in the probate court. It is admitted that in the regular suit mentioned they claimed that the properties in suit did not belong to the testator but were properties of his math or of the Thakurji. In their application for revocation they also set out as follows in paragraph (9) :

" For that the applicant obtained the grant of probate fraudulently also by concealing from the Court the fact that Beni Das had no property of his own and all the properties detailed in his petition belonged either to the math or to the Thakurji and thus no citation was issued to the ultimate mahanth your petitioner no. 1."

Upon this issue no. 5 was framed

" Are the applicants disqualified from maintaining this application by their denial in paragraph 9 thereof that the testator had any estate of his own."

This reference is of course to section 283(1)(c) of the Succession Act under which a citation is to be issued to all persons claiming to have any interest in the estate of the deceased and the numerous decisions that a person disclaiming interest in the estate is not entitled to citation and has no locus standi in the Probate Court. When this issue was framed the petitioners appellants applied to withdraw paragraph

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(9) of their application on the ground that the averment therein contained that the properties detailed in the application for probate never belonged to Beni Das is liable to misconstruction, and purported to explain their ground for revocation as really heirship. The application was rejected by Mr. Wali Mahomed as inconsistent and confusing, and when the case came to trial his successor cited numerous rulings, including *Abhi Ram Das v. Gopal Das*⁽¹⁾, *Srigobind Pershad v. Musammatt Laljhari Kuar*⁽²⁾, *Kalajit Singh v. Parmeshar Singh*⁽³⁾, *Musammatt Mahasundar Kuar v. Babu Ratan Prasad Sahi*⁽⁴⁾, *Devendra Prasad Sukul v. Surendra Prasad Sukul*⁽⁵⁾, and came to the conclusion that, on the state of the authorities which could not be distinguished and which were binding upon him, he had no option but to hold that the petitioners had no locus standi to maintain the application to revoke the grant of probate.

Mr. Baldeo Sahay on behalf of the appellants eventually comes to the position that he cannot withstand the weight of authority which has been cited. Indeed there are also other decisions to the same effect: *Pirojshah Bikhaji v. Pestonji Merwanji*⁽⁶⁾ and *Gopal Chandra Bose v. Asutosh Bose*⁽⁷⁾ and the law may be taken to be settled. But the learned Advocate strenuously contends that the rulings cited do not cover his case inasmuch as petitioners 2 and 3 are heirs of the deceased in any view of the case. To my mind the petition itself in particular paragraph (3) taken with the genealogy by which it is expressly controlled, goes to show that the petitioners nos. 2 and 3 are not at all blood relations of the deceased Beni Das. The genealogy is a mixture of

(1) (1889) I. L. R. 17 Cal. 48.

(2) (1909) 14 Cal. W. N. 119.

(3) (1917) 1 Pat. L. W. 308.

(4) (1916) 1 Pat. L. W. 370.

(5) (1919) 1 Pat. L. T. 19.

(6) (1910) I. L. R. 34 Bom. 459.

(7) (1910) 20 Ind. Cas. 342.

blood and spiritual relationship and a perusal of it leaves no room for a claim that there is any actual relationship at all between the deceased and the petitioners 2 and 3. The application for revocation is really based upon the same dispute as to title as the civil suit is. There is indeed a definite allegation that the deceased had no estate, and the substance of the application is that the properties which the testator purported to make over by will were properties which he held not in his personal but in his official capacity and which actually belonged to the math or the Thakur. In my mind it is clear that the decision under appeal is correct and that the petitioners had no *locus standi* to maintain the application for revocation of the probate.

I would accordingly dismiss the appeal with costs: hearing fee five gold mohurs.

FAZL ALI, J.—I agree.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Macpherson and Dhavle, JJ.

GOPI MAHTO

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 103 and 165—search by Sub-Inspector of Police in presence of two "respectable" witnesses but not "inhabitants of the locality"—mere irregularity—search, resistance to, whether justified by law—section 165, violation of—preliminaries of search not complied with—absence of "due care and attention" on the part of the Sub-Inspector—Penal Code, 1860 (Act XLV of 1860), sections 52 and 99(1)—search resisted—Sub-Inspector pushed back—conviction under section 352, whether bad.

* Criminal Revision no. 10 of 1931, from an order of Rai Bahadur S. N. Mukharji, Additional Sessions Judge of Patna, dated the 3rd November, 1930, affirming an order of R. Jagmohan, Esq., i.c.s., Subdivisional Officer of Dinapore, dated the 26th September, 1930.

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