1931.

KHARRA MAJHI v. ABINASH CHANDRA CHAKRAVARTTI.

different holding according to the plaintiffs' case from the holdings in the other suits and in each one of those suits different holdings are involved; and the plaintiffs' plea was supported by different decrees in each case; so obviously no question of res judicata arises, the subject-matter of dispute being different in each case.

SCROOPE, J. For these reasons this appeal must succeed. The decision of the learned Judicial Commissioner is set aside and the plaintiffs' suit dismissed with costs throughout.

Appeal decreed.

APPELLATE CIVIL.

1931.

April, 14, 15.

Before Wort and Fazl Ali, JJ.

RAMYAD MAHTON

v.

RAM BHAJU MAHTON.*

Letters of Administration—objector claiming to be joint with the testator, whether has locus standi to object to the grant even where citation has been served on him—Succession Act, 1925 (*Act XXXIX of* 1925), section 283.

An objector who claimed that he was joint with the testator and that the property which the testator purported to dispose of by will was joint Hindu family property has no *locus standi* to object to the grant of the letters of administration even where citations have been served upon the objector.

Kalajit Singh v. *Parmeshwar Singh*(1), *Abhiram Dass* v. *Gopal Das*(2) and *Srigobind Pershad* v. *Mussammat Laljhari*(3), followed.

Jamni Hanmantha Rao v. *Aratala Latchamma*(4), referred to.

* Appeal from Original Decree no. 177 of 1929, from a decision of F. G. Rowland, Esq., I.C.S., District Judge of Patna, dated the 2nd September, 1929.

(1) (1917) 1 Pat. L. W. 308.
(2) (1889) I. L. R. 17 Cal. 48.
(3) (1909) 14 Cal. W. N. 119.
(4) (1928) A. I. R. (Mad.) 1193.

1931.

RAMYAD MAHTON v. RAM BHAJU MAHTON.

Appeal by the objector.

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

C. C. Das and *B. C. Sinha*, for the appellant.

L. N. Singh and *Bindeshwari Prasad*, for the petitioner.

WORT, J.—This appeal arises out of an application for Letters of Administration with the will annexed of one Puran Mahto.

The objector in the Court below contended that the will was not a genuine one, that it was not executed according to law, that it was a forgery, and that the testator had not testamentary capacity at the time; and as a fourth point he alleged that the objector was the own brother's son of the deceased, was living joint with him and had succeeded by survivorship to all the properties and is in possession of them.

The possession of the person in whose favour the will was made is beyond dispute. The case which was raised by the objector at any rate so far as this Court is concerned was that the will had not been proved to have been executed in accordance with law. It is true that Mr. C. C. Das on behalf of the objector appellant contended that there were suspicious circumstances surrounding the execution of the will more particularly regarding the provisions of the will. But the case which was made or attempted to be made in the Court below, that is to say, that the will was not genuine and a forgery was abandoned by him in this Court. His main contention, therefore, was that the will was not made in accordance with law.

Section 63 of the Indian Succession Act provides:

(*a*) "The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction:

1931.

RAMTAD MAHTON v. RAM BHAJU MAHTON.

WORT, J.

(b) "The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will:

(c) "The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator."

In this case there is no dispute that the testator was an illiterate person, and it is contended in the first place by Mr. C. C. Das that the evidence which was offered by the person propounding the will did not satisfy the law as provided in the section which I have just read.

For reasons which will presently appear, I do not propose to go into the details of that evidence; it is sufficient for me to say that the learned District Judge was satisfied with the evidence that was adduced before him. He seems to have been influenced by the fact that the will had been registered some three years before the death of the testator, and for this purpose he relied upon the decision of the Judicial Committee of the Privy Council in the case of *Gangamoyi Debi* v. *Troiluckhya Nath Chowdhury*(1). In that case the question was in regard to the execution of a will, and Sir Ford North in delivering the opinion of the Judicial Committee of the Privy Council made this statement:

"But they desire to put the case on a higher ground. The registration is a solemn act, to be performed in the presence of a competent official appointed to act as Registrar, whose duty it is to attend the parties during the registration and see that the proper persons are present and are competent to act, and are identified to his satisfaction; and all things done before him in his official capacity and verified by his signature, will be presumed to be done duly and in order."

(1) (1906) 3 Cal. L. J. 349, P. C.

And upon that statement Mr. Rowland, the District Judge, acted in coming to the conclusion that the proof adduced before him was sufficient to satisfy the conscience of the Court of Probate.

Mr. Das, however, raises a further question which does not seem to me to have been suggested in the Court below and that was that in this case of an illiterate person not only was the onus upon the propounder of the will to show that it had been executed in accordance with law but that it was necessary to show that the will had read over to the testator before it was executed, so that the Court could be satisfied that the testator understood the contents of the will. But for the reason which I stated a moment ago I do not intend to go into the question of whether the evidence was sufficient or not to prove the execution of the will in accordance with law, and for that reason I do not propose to go into this question which is one of some difficulty and depends to some extent at any rate upon a number of English authorities although there are a number of cases in the Indian High Courts bearing on the same question.

One matter that was raised before Mr. Rowland, the learned District Judge, was that the objector had no *locus standi* but he does not appear to have decided the merits of that point, because he said that the objector had come before him and, therefore, he must be heard.

I have read already paragraph 4 of the objector's petition which was to the effect that the testator and the objector were living joint and, therefore, the property which the testator purported to dispose of was joint family property.

Section 283 of the Indian Succession Act provides that:

"The District Judge shall, if he thinks proper to issue citations, call upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration."

1931.

RAMYAD MAHTON v. RAM BHAJU MAHTON.

WORT. J.

The case of *Kalajit Singh* v. *Parmeshwar Singh*(1) was decided precisely on similar facts, that the petitioner claiming as he did that he was joint with the testator was not a person who had an interest in the estate of the deceased. It is true that in that case the petitioner was applying for the revocation of the probate. In this case, as Mr. Rowland has pointed out, citations had been served upon the objector and that he had appeared before the Court, and on that ground Mr. C. C. Das attempts to differentiate the case of *Kalajit Singh* v. *Parmeshwar Singh*(1) from the case which is now before us. But it is difficult to support that contention because it seems to me quite clear from section 283, clause (*c*) of sub-section (*1*) that what was intended by the Legislature was that citations should be served upon all persons who have an interest in the estate: in other words, all persons who have a *locus standi* to be heard on the question of the grant of probate. But even assuming that that difference can be supported, it seems to me that when once the learned Probate Judge has pronounced for the will, the objector comes before this Court on appeal the petition is in substance a petition to have the grant revoked. Before the case of *Kalajit Singh* v. *Parmeshwar Singh*(1) was decided there was a case in the Calcutta High Court, the case of *Abhiram Dass* v. *Gopal Das*(2) in which the caveator claimed the property which the testator purported to leave as the property of the Muth; and it was held there that the objector had no interest in the estate of the deceased and, therefore, had no *locus standi*. A similar decision was arrived at in the case of *Srigobind Pershad* v. *Musammat Laljhari*(3). There it was claimed that the property with which the testatrix purported to deal was the property of the testatrix and it was contended by the principal objector who was a member of the joint family amongst other things

(1) (1917) 1 Pat. L. W. 308.
(2) (1889) I. L. R. 17 Cal. 48.
(3) (1909) 14 Cal. W. N. 119.

1931.

RAMYAD MAHTON v. RAM BHAJU MAHTON.

WORT, J.

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.*

1931.

April, 16.

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.