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we think that this clause is intended merely to define the position of a ryot in respect to a proprietor or tenure-holder, and to distinguish him from what is afterwards described as an under-ryot; for under the general definition of the term "ryot," unless the further definition were given, there would be no distinction between the class dealt with by the Act as under-ryots, and ryots the landlords of under-ryots and not themselves proprietors or tenure-holders.

It may seem anomalous that the defendants who have no title from the plaintiffs directly, or through their predecessors in estate, should thus be protected as non-occupancy ryots from ejectment as trespassers at the plaintiffs' free will; but it seems to us that this is in accordance with the general spirit of the Bengal Tenancy Act, which regards a landlord as a rent-receiver and as able to eject a tenant or cultivator of the soil, not an under tenant, only for certain specified reasons and conditions none of which here exist. If the defendants had acquired a right of occupancy by occupation for twelve years, they would have been protected from ejectment, and as non-occupancy ryots they are also protected, except as specially provided.

The appeal is, therefore, dismissed with costs.

J. V. W.

*Appeal dismissed.*

*Before Mr. Justice Prinsep and Mr. Justice Ghose.*

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June 19.

ABHIRAM DASS, MINOR, BY HIS MOHAFIZ AND EXECUTOR JAIRAM  
PARIDA (PETITIONER) v. GOPAL DASS (OPPOSITE PARTY).<sup>2</sup>

*Appeal—Probate and Administration Act (V of 1881), ss. 69, 86—Order of District Judge admitting person as caveator—Civil Procedure Code s. 588, cl. (2).*

Section 86 of the Probate and Administration Act (V of 1881) makes the Code of Civil Procedure applicable to orders passed under that Act. An appeal therefore lies to the High Court from the order of a District Judge admitting a person as a caveator under s. 69 of the Act; such an order is appealable under s. 588, cl. (2) of the Code.

A person not claiming any of the property of the testator, but disputing the right of the testator to deal with certain property as his own, has not

<sup>2</sup> Appeal from Order No. 85 of 1889, against the order of A. T. Staley, Esq., Judge of Cuttack, dated the 22nd of February 1889.

such an interest in the estate of the testator as entitles him to come in and oppose the grant of probate.

*Kamona Soondury Dasse v. Hurro Lall Shaha* (1) dissented from; *Behary Lall Sandyal v. Juggo Mohun Gossain* (2) and *Nanhu Koer v. Somirun Thakur* (3) followed in principle.

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THE judgment of the District Judge, which states the circumstances under which the order appealed from was made, was as follows:—"The petitioner, as executor of the will of Hari Dass Babaji, deceased, on the 13th April 1888, claims probate of that will. The will is dated 27th of Falgoun 1295 (corresponding with the 8th March 1888). The will contains a detailed list of the property purporting to be that of the deceased, and the value is stated in the petition to be about Rs. 4,000.

"The caveator objects that the will filed is spurious; that the testator never owned the property with which the will deals, and neither made nor had power to make the will. The caveator claims, that the property with which the will deals is the property of the *muth*, or residence of ascetics; that the petitioner was only a servant at the *muth*; and that the property was in the joint possession of the caveator and his spiritual brother, till the decease of the latter, and has since been in the possession of the caveator.

"On the case coming on for argument before me the petitioner objects that, as the caveator does not claim any interest in the estate of the deceased under s. 69, Act V of 1881, and denies that the property to which the will refers is the property of the deceased, he cannot be admitted to object, and that probate of the will should be granted to the petitioner.

"As I understand the section referred to, the words 'interest in the estate of the deceased' mean, interest in the estate purporting to be that of the deceased for the purpose of the Act, namely, the estate appearing to be that of the deceased under the will. As the caveator claims that the whole of this property is his own, it is obvious that he has sufficient interest under the provision quoted. Several reported cases justify this interpretation. In the case of *Kamona Soondury Dasse v. Hurro*

(1) I. L. R., 8 Calc., 570.

(2) I. L. R., 4 Calc., 1; 2 C. L. R., 422.

(3) 8 C. L. R., 287.

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*Lall Shaha* (1), it was held that, inasmuch as the plaintiff was the next presumptive reversioner, and he had sufficient interest in the property with which the will dealt to entitle him to maintain a suit in respect thereof, he had therefore sufficient interest to maintain a case for revocation of probate. In the case of *Behary Lall Sandyal v. Juggo Mohun Gossain* (2), one similar to the present, the caveator denied both the genuineness of the will and the right to dispose of the property to which it referred, and claimed the property as his own. His objection to probate was admitted. It was also decided in that case that, when an application for probate is made *bond fide*, it is not the province of the Court to go into questions of title with reference to the property of which the will purports to dispose. According to the principle *exceptio probat regulam*, then, if it be held that the present application is made *malâ fide*, it will be within the authority of the Court to go into the question of title. The objection to probate is admitted: the case will proceed under s. 55 of the Act."

The petitioner appealed from this order to the High Court on the following grounds:—

That the Judge was wrong in admitting the caveator's objection to probate, inasmuch as he did not claim any "interest in the estate of the deceased;" that the Court had put an erroneous interpretation on the words "interest in the estate of the deceased" in s. 69 of Act V of 1881; that the rulings referred to in the judgment of the Court below did not apply to the facts of this particular case; and that under the circumstances the Court below should have granted probate to the petitioner.

Baboo *Juggut Chunder Banerjee* for the appellant.

Baboo *Mon Mohun Dutt* for the respondent.

The judgment of the Court (PRINSEP and GHOSE, JJ.) was as follows:—

The matter under appeal before us is an order by the District Judge admitting the respondent as a caveator under s. 69 of the Probate and Administration Act (V of 1881).

(1) I. L. R., 8 Cal., 570.

(2) I. L. R., 4 Cal., 1; 2 C. L. R., 422.

A preliminary objection is taken that no appeal lies against such an order. We have been referred to s. 86 of that Act, which declares, that every order made by a District Judge, by virtue of the powers conferred upon him by the Act, "shall be subject to appeal to the High Court, under the rules contained in the Code of Civil Procedure applicable to appeals." It is contended on one hand that, inasmuch as this is not a decree, there is no appeal. We have been referred to the case of *Brojonath Pal v. Dasmoni Dassee* (1), in which the law in this respect has been clearly laid down by Sir Richard Garth, the late Chief Justice. The order in that case was found to be an order admitting a review of judgment, and it was there held that that order was not appealable under the Code of Civil Procedure, and therefore could not be brought before the Court. In our opinion s. 86 of the Probate and Administration Act makes the Code of Civil Procedure applicable to orders passed under that Act. The order admitting the respondent as a caveator was exactly the same in effect as if it had made him a defendant in the suit. We may refer, first of all, to s. 55 of the Probate and Administration Act, which declares that, except as specially provided, the proceedings under that Act shall be regulated, as far as the circumstances of the case will admit, by the Code of Civil Procedure. Section 83 provides that "in any case before the District Judge in which there is contention," that is to say, an objection is raised to the grant of probate or letters of administration, "the petitioner shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant." Consequently the position occupied by the respondent is clearly that of a defendant under the Code of Civil Procedure. Under such circumstances, it appears to us that the order passed admitting him as caveator is appealable under s. 588, cl. (2). We accordingly over-rule the objection.

On the merits of this appeal, we think that the order of the District Judge must be set aside. Admittedly the caveator has no interest in the estate of the deceased testator, but it is contended on his behalf that, inasmuch as he lays claim to the properties dealt with by the will, he is entitled to come in and

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oppose the grant of probate or letters of administration. The District Judge relies on the case of *Kamona Soondury Dasse* v. *Hurro Lall Shaha* (1) as authority for holding that the caveator has an interest in the estate of the deceased, because he disputes the title of the deceased to dispose of the particular property which he says is his. He lays no claim to succeed to any part of the estate of the testator, but claims some of the property said to form portion of that estate. We cannot agree in the rule laid down in that case, which is that expressed by Mr. Justice Field in the case of *Nobeen Chunder Sil v. Bhobosoonduri Dabee* (2), but not adopted by Mr. Justice White. A person disputing the right of a deceased testator to deal with certain property as his own cannot be properly regarded as having an interest in the estate of the deceased. His action is rather that of one claiming to have an adverse interest. The cases of *Behary Lall Sandyal v. Juggo Mohun Gossain* (3) and *Nanhu Koer v. Somirun Thakur* (4) proceed on the principle which we think should be adopted. If any further argument be necessary, we would refer to the terms of s. 69, which require the District Judge "to issue citations calling upon all persons claiming to have any interest in the estate of the deceased." The term used does not necessarily refer to any particular property, but to the claim of any person to succeed by inheritance or otherwise to any portion of the estate of the deceased by reason of an interest, not on an adverse title to the testator to any particular property, but in the estate itself whatever that may consist of. The form of the caveat too, would seem to show that the person who enters a caveat admits that the particular property forms a portion of the estate of the testator but objects either to the execution of the will or to the proposed manner of dealing with any portion of the estate. We therefore set aside the order of the District Judge admitting the respondent as caveator in these proceedings. The appellant will be entitled to his costs.

J. V. W.

*Appeal allowed.*

(1) I. L. R., 8 Calc., 570.

(3) I. L. R., 4 Calc., 1; 2 C. L. R., 422.

(2) I. L. R., 6 Calc., 460.

(4) 8 C. L. R., 287.