

ment removed, had found, as a matter of fact, that the property attached was the property of the judgment-debtor, it would not have been open to this Court to interfere, but that is not the finding. The property attached is admittedly trust property, and therefore, under the circumstances I have mentioned, the attachment is irregular.

Liberty will be reserved to the plaintiffs to take such steps as they may be advised to proceed against the trust property in the proceedings properly constituted for the purpose.

All that I at present hold is that the judgment-creditors cannot, under the decree they have obtained, attach trust property.

That being so, I must make the Rule absolute, and set aside the attachment, but without costs.

*Rule absolute ; attachment set aside.*

One of the petitioners in person.

Attorneys for the judgment-creditors : Messrs. *Foa* and *Mandal*.

B. D. B.

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## APPELLATE CIVIL.

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*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Benerjee.*

LALIT MOHAN BHUTTACHARJEE . . . DEFENDANT.

*v.*

NAVADIP CHANDRA KAPARIA . . . PLAINTIFF.

1901  
May 30.

*Letters of Administration—Probate and Administration Act (V of 1881), s. 50—Heir—Purchaser—Locus standi.*

A purchaser of properties from the heir of a deceased person has a *locus standi* to apply for revocation of Letters of Administration of a will said to have been executed by the deceased.

*Komollochun Dutt v. Nil. Buttun Mundle* (1) and *Muddun Mohun Sircar v. Kali Churn Dey* (2) referred to.

\* Appeal from Original Decree No. 276 of 1899, against the decree of S. J. Douglas, Esq., District Judge of Dacca, dated the 29th of May 1899.

(1) (1878) I. L. R. 4 Calc. 360.

(2) (1892) I. L. R. 20 Calc. 37.

1901

LALIT  
MOHAN  
BHUTTA-  
CHARYA  
v.  
NAVADIP  
CHANDRA  
KAPARIA.

THIS appeal arose out of an application for the revocation of Letters of Administration with the will annexed. The application was made on the 10th October 1898 by one Navadip Chander Kaparia, a purchaser of a large portion of properties left by one Raj Bullav Bhattacharjya, who died in November 1882, leaving two sons, Joy Chunder and Sashi Bhusan. The petitioner alleged that, on the death of Raj Bullav, his two sons inherited his properties, and they were in possession since then; that at a sale in execution of decrees obtained against them he (the petitioner) purchased certain properties; that on an application made by one Lalit Mohun, a grandson of Raj Bullav, in an *ex parte* proceeding Letters of Administration were issued on the 21st June 1892. The will set up is dated the 2nd October 1892, and it purported to have given away properties by Raj Bullav to the grandson, Lalit Mohun, disinheriting the sons, Joy Chunder and Soshi Bhusan. The opposite party (defendant) *inter alia* objected that the petitioner (plaintiff) had no *locus standi* to make the application, and that he was not entitled to any notice. The Court of First Instance, having overruled the objections, allowed the application and ordered the Letters of Administration to be revoked. Against this decision the defendant appealed to the High Court.

Babu Shurat Chunder Roy Chowdhury for the appellant.

Babu Bhuban Mohun Das and Babu Jnanendra Mohun Das for the respondent.

MACLEAN, C. J. - This appeal arises out of an application for revocation of Letters of Administration with the will annexed, the application being made on the 10th of October 1898, and the Letters of Administration having been granted on the 21st of June 1892. The will set up is dated the 2nd October 1882: it will thus be seen that no application for Letters of Administration was made, although we are informed that executors had been appointed by the will, till nearly ten years after the date of the alleged will.

The alleged testator left two sons as his heirs, and from the date of the father's death up to the time of the Letters of Administration being granted, they had, throughout, dealt with the property as

1901

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 LALIT  
 MOHAN  
 BHUTTA-  
 CHARJEE  
 v.  
 NAVADIP  
 CHANDRA  
 KAPARIA.

his heirs, and at no time was there any suggestion made that the father had left a will. They had mortgaged and sold the property and dealt with it entirely as their own; and the present applicant for revocation of the Letters of Administration is the purchaser of a large portion, if not the bulk, of the father's property, under decrees in mortgage suits in respect of mortgages made by the two sons. The mortgages and the decrees in the mortgage suits were anterior in point of date to 21st of June 1892, though the actual date of the purchase was subsequent to that time. Under these circumstances, the only question submitted for our decision is, whether the applicant had any *locus standi* to apply for revocation of these Letters of Administration. I think he had. He stood virtually in the shoes of the two sons, who claimed to be the heirs, and who had dealt with the property, as the sole owners of it. The applicant was the purchaser from the heirs, and, if the heirs could have applied for revocation of the Letters of Administration, I do not see why the purchaser could not do so, he being in the same position as they were. He was not in the position of an ordinary creditor, but was the purchaser from the heirs. I think, therefore, that, if the heirs were entitled to sue for revocation of the Letters of Administration, the purchaser from them had a *locus standi* to make a similar application. This view seems to me to be consistent with certain decisions of this Court, namely, the case of *Komol Lochun Dutt v. Nil Buttun Mundle* (1), and also the very recent case of *Muddun Mohun Sircar v. Kali Churn Dey* (2). On these grounds I think the appeal fails and must be dismissed with costs.

BANERJEE, J.—I am of the same opinion.

S. C. G.

*Appeal dismissed.*

(1) (1878) I. L. R. 4 Calc. 360.

(2) (1892) I. L. R. 20 Calc. 37.

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