

either point of view then, the landlord has received his full share of the compensation money. The appeal fails and must be dismissed with costs.

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

HARRINGTON, J.—I concur.

S. C. G.

Appeal dismissed.

1900
 SHAMA
 PROSUNNO
 BOSE
 MOZUMDAR
 v.
 BRAKODA
 SUNDARI
 DASI.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Banerjee and Mr. Justice Stevens.

UMA CHARAN DAS (OPPOSITE PARTY) v. MUKTAKESHI DAS
 (APPLICANT).^{*}

1900
 July 16.

Appeal—Probate and Administration (Act V of 1881) ss. 51, 86 and 90—Order granting permission to dispose of immoveable property.

An appeal lies to the High Court against an order passed by a District Judge or District Delegate granting permission to an executor or administrator to dispose of immoveable property under s. 90 of the Probate and Administration Act (V of 1881).

ONE Muktakeshi Dasi applied to the District Judge of 24-Pergunnahs to obtain letters of administration in regard to the property of her deceased husband. The District Judge on the 22nd September 1897 made the following order :—

“Kedar Nath examined. Letters of administration granted. Bond with one surety in Rs. 800. Notice will be given to Uma Charan Das, sister's son of the deceased husband of the petitioner, when any application is made for permission to sell or mortgage any part or whole of the property belonging to the estate as applied for to-day by the said Uma Charan Das.”

THEN an application for permission to sell certain immoveable property belonging to the estate of the deceased husband of the administratrix was made and permission was granted on the 21st January 1898, but without any notice to Uma Charan Das. Thereupon Uma Charan put in an application for the revocation of the order granting permission, but that application was rejected on the 28th February 1898. Uma Charan filed an appeal to the High Court against the orders passed on the 21st January 1898, and

^{*} Appeal from Order No. 201 of 1899, against the order of F. F. Handley, Esq., District Judge of 24-Pergunnahs, dated the 17th of April 1899.

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 UMA CHARAN
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28th February 1898. At the bearing of the said appeal a preliminary objection was taken on behalf of the respondent that no second appeal lay to the High Court. There was a difference of opinion between Mr. Justice BANERJEE and Mr. Justice RAMPINI, the former was of opinion that a second appeal lay to the High Court, whilst the latter expressed a contrary view. But inasmuch as the order, dated the 21st January 1898, was passed without any notice to Uma Charan, the Court interfered under s. 622 of the Civil Procedure Code, and remanded the case for re-hearing after giving notice to Uma Charan. The District Judge of 24-Pergunnahs, Mr. F. F. Handley, after notice had been given to Uma Charan, having re-heard the case, confirmed his previous judgment, and gave permission to the administratrix to dispose of certain immoveable property belonging to the estate of her deceased husband, on the ground that the widow was entitled to do so to pay off the debt which was incurred by her for her maintenance.

Against this order Uma Charan preferred an appeal to the High Court.

Babu *Sarat Chundra Dutt*, for the appellant.

Babu *Dasurathi Sanyal*, for the respondent, took a preliminary objection, that no appeal lay to the High Court. The order was one passed under s. 90 of the Probate and Administration Act, which is in ch. VI of the Act. S. 86, which provides for appeals is in ch. V, which says that every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court. The word "hereby" indicates that it speaks of the powers conferred in ch. V.

1900, JULY 16. The judgments of the High Court (MACLEAN, C. J., BANERJEE and STEVENS, JJ.) were (so far as material for the point reported) as follow :—

MACLEAN, C. J.—This appeal must succeed. A preliminary objection has been taken that an appeal does not lie to this Court from an order of the District Judge in a case such as the present. I am unable to accept that view. S. 86 of the Probate and Administration Act says that every order made by a District Judge or District Delegate by virtue of the powers thereby con-

ferred upon him shall be subject to appeal to the High Court. The order now appealed against is an order made by the District Judge, but it is said that an appeal does not lie because the expression "hereby" only applies to powers conferred under the chapter which contains the section, and this argument rests upon the position in which the section is placed in the Act itself. I am unable to accept that view : there is nothing in the Act to narrow the meaning of the expression "hereby" which to my mind means "by the whole Act" and not merely by the chapter in which the section appears. An appeal, therefore, lies. * * * * *

The appeal must be allowed with costs in both Courts.

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BANERJEE, J.—I am of the same opinion. I only wish to add a few words with reference to the preliminary objection taken that no appeal lies against the order in question. The provision in the Probate and Administration Act in regard to appeals is s. 86, which provides that "every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court," &c. It is true that the order appealed against is an order granting the respondent permission to dispose of immoveable property, and the section of the Act which speaks of such permission is s. 90, which is contained in ch. VI of the Act which follows chapter V in which s. 86 occurs. But s. 90 does not say anything about the power of the District Judge to grant permission to dispose of immoveable property, and the power which the District Judge has to grant such permission must be that conferred upon him by s. 51, which precedes s. 86 and which provides that the District Judge shall have jurisdiction in granting and revoking probate and letters of administration in all cases within his district. The power to grant permission to an administrator to dispose of immoveable property must be considered as ancillary to the power vested in the District Judge in granting letters of administration.

STEVENS, J.—I also think that an appeal lies in this case and that the appeal on the merits should be allowed.

S. C. G.

Appeal allowed.