

TESTAMENTARY JURISDICTION.

Before Mr. Justice Chitty.

IN THE GOODS OF MANICK LAL SEAL.*

1907
Nov 18.

Probate, application for—Official Trustee—Executor—Renunciation—Retraction—Probate and Administration Act (V of 1881) s. 17.

Where the Official Trustee expressed his intention of renouncing probate but subsequently retracted :—

Held, that no formal renunciation having been made, he was not precluded from applying for probate.

In the Goods of Robert Morant(1) and *Golap Sundari Dassi*(2) followed.

Held, also, that there was nothing under the Official Trustee's Act which precluded the Official Trustee from being appointed an executor and acting as such.

THIS was an application by the Official Trustee for Probate of the will of one Manick Lal Seal deceased upon the following facts :—

Manick Lal Seal died on the 12th September 1907 leaving him surviving his widow, Srimati Kumudini Dasi, and a minor son, Monohar Lal Seal. By his will the deceased desired that the Court of Wards should take charge of his property, but that should they fail to do so then the Official Trustee was to manage the properties. Shortly after the death of Manick Lal Seal, the Administrator General applied for probate before Mr. Justice Chitty, the Vacation Judge, as it was not clear whether the Court of Wards would take charge of the property, and it was doubtful whether the Official Trustee would take over charge.

The Official Trustee who had expressed his intention of renouncing probate, withdrew his renunciation on this application, and the matter was adjourned till after the vacation, when the Official Trustee brought the present application for probate.

* Testamentary and Intestate Jurisdiction.

(1) (1874) L. R. 3 P. & D. 151. (2) (1901) 5 C. W. N. (Notes) civ.

Mr. Graham, for the Official Trustee. My application is for probate of the will of the deceased Manick Lal Seal. I understand the Court of Wards will not oppose.

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Mr. Sowton, Attorney for the Court of Wards. I do not oppose the application.

Babu Manohar Lal Seal, Attorney for the Administrator General. My submission is that the Official Trustee having renounced probate cannot act as executor: see section 17 of the Probate and Administration Act, and *Ganjessar Koer v. The Collector of Patna*(1).

Mr. Chakravarti, for Srimati Kumudini Dasi. I have filed a caveat.

Mr. Graham. As regards renunciation, I submit, the following cases are in my favour: *In the Goods of G. Jay Sundari Dassi*(2), *In the Goods of Gills*(3), *In the Goods of Robert Morant*(4); see, also, Williams on Executors (10th edition) pp. 158, 159; and the Probate and Administration Act (V of 1881) s. 17.

Mr. Chakravarti. If the grant is to be made to the Official Trustee, I will withdraw my caveat; if not, I must stand on my rights. It will save an enormous amount of expense if the grant is made to the Official Trustee, and will certainly be for the benefit of the estate. Unless the renunciation is recorded it is open to the Official Trustee to withdraw it.

CHITTY J. Manick Lal Seal, who died on the 12th September last, by his will dated the 7th June 1907 desired that the Court of Wards should take charge of his estate and carry out the provisions of his will. If the Court of Wards did not (and only if it did not), do so then he desired that the official Trustee of Bengal should do so and he appointed such Official Trustee Executor of that, his will, or failing him the Administrator General of Bengal.

Immediately after the testator's death the matter came before me as Vacation Judge. It was not then clear whether the Court

(1) (1898) I. L. R. 25 Calc. 795.

(3) (1873) L. R. 3 P. & D. 113.

(2) (1901) 5. C. W. N. (Notes) clv.

(4) (1874) L. R. 3 P. & D. 151.

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of Wards would take charge of the estate or not. Doubts were also expressed as to whether the Official Trustee could or would act as executor, and consequently the first petition for probate which was put in, was that of the Administrator General which was filed on the 4th of October. It appears that on 1st October 1907 Mr. Grey, the Official Trustee, had expressed to Messrs. Morgan & Co., the Solicitors for the estate, his intention of renouncing probate, but that renunciation he desired to withdraw when the matter came before me on the 4th. He has now put in a petition asking that probate be granted to him. On the 4th October I adjourned the whole matter until the 28th of October, and on that day the matter was further adjourned until to-day. Mr. Sowton for the Court of Wards has now stated definitely that that body does not desire to take up the estate. I have therefore to deal with the petition of the Official Trustee who is the Executor next named in the will, and then if necessary with the petition of the Administrator General.

The testator's widow on behalf of the minor son and sole residuary legatee has filed a caveat, but appearing by Mr. Chakravarti she expresses her desire to withdraw that caveat if this Court can see its way to grant probate to the Official Trustee. In the event of that grant being refused she wishes to persist in her caveat so far as the Administrator General is concerned. All that I have now to decide is whether a grant can be properly made to the Official Trustee. The Administrator General in his letter of the 8th of October which he has desired to be laid before the Court, does not wish in any way to oppose the Official Trustee's application, and leaves the matter to be dealt with entirely by the Court. Two points arise with regard to the application of the Official Trustee. *Firstly*, whether he has renounced in such a manner as precludes his now applying for probate; and, *secondly*, whether in his official capacity he can be appointed and act as executor. With regard to the renunciation, it is true that the Official Trustee did write a letter to Messrs. Morgan & Co. intimating his intention of renouncing, but that intention or decision was withdrawn before the matter came before the Court, and no such renunciation has ever been directly made before me nor has any writing intimating such renunciation been filed.

I think that the case of "*In the goods of Robert Morant* (1), cited by Mr. Graham, is a clear authority for holding that in such a case an application for probate may be entertained and that case appears to have been followed in this Court by Mr. Justice Sale: *In the goods of Golap Sundari Dassi*, (2).

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There has been no formal renunciation in this matter which has precluded the Official Trustee from applying for probate.

The impression left on my mind on the 4th October was that the Court of Wards and these Officers were to make up their minds as to what they would or would not do, and that any one who desired to apply for probate should put in a petition which would be dealt with by the Court in due course. The balance of convenience on the ground of expense and otherwise is enormously in favour of the grant being made to the Official Trustee. He is appointed by the will as the trustee under the will and the effect therefore of granting probate to the Administrator General would be merely to make him, as it were, a conduit pipe for conveying the estate to the Official Trustee.

The estate amounts to close on twenty-five lakhs and the commission payable to the Administrator General for that formal act would be very large. If the Official Trustee takes up the executorship, he will receive no remuneration for that portion of the duties but only under the Official Trustee's Act for his management as trustee.

The other question is whether there is anything in the Act which precludes the Official Trustee from being appointed and acting as executor. There is certainly nothing in the Act directly prohibiting such a course and I can see nothing contrary to its provisions in his being allowed to apply. If he is to act as trustee (as it is clear that he must act), there seems to be no reason why he should not receive the estate at once and perform the duties of executor. Two instances have been cited to me in which grant of probate has been made to the Official Trustee: one in the goods of Joseph Paul dated the 25th May 1906, and the other in the goods of Hannah David Joseph Ezra dated the 2nd May 1907.

(1) (1874) L. R. 3 P. & D. 151.

(2) (1901) 5 C. W. N. (Notes) civ.

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Under these circumstances I propose to make a grant to the Official Trustee as prayed, and probate will accordingly issue to him.

Attorneys for the Official Trustee: *B. N. Basu & Co.*

Attorneys for the Administrator General: *Morgan & Co.*

Attorneys for Srimati Kumudini Dasi: *Ghose & Bose.*

Attorneys for the Court of Wards: *Sanderson & Co.*

R. G. M.