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—
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in any way himself concerned, it is not difficult to conceive cases in which there might be no one but such a Magistrate competent to act, and his incapacity to issue process might involve the escape scot-free of offenders. I should hesitate, therefore, to add to the Statute law on the subject.

Rule absolute.

E. H. M.

TESTAMENTARY JURISDICTION.

Before Mr. Justice Fletcher.

1909
Nov. 29

NAGENDRABALA DEBI

v.

KASHIPATI CHOWDHRY.*

Probate—Letters of Administration—High Court and District Court, Jurisdiction of—Concurrent jurisdiction—Probate and Administration Act (V of 1881), ss. 2, 51, 56, 87—“High Court,” meaning of, in s. 87—Practice—Rule 740 (of the High Court Rules and Orders).

The High Court has jurisdiction to grant probate and letters of administration, on the Original Side, in any case which could have been brought before any District Judge in either of the two Provinces of Bengal.

“High Court” mentioned in section 87 of the Probate and Administration Act (V of 1881) is not merely confined to the Appellate Jurisdiction of the Court, but it includes its Original Jurisdiction.

In the goods of Mohendra Narain Roy (1), referred to.

Section 87 of the Probate and Administration Act does not require that any portion of the property should be within the limits of the Original Jurisdiction of the High Court; and Rule 740 of the High Court cannot override the express provisions of this section giving the High Court concurrent jurisdiction with the District Court.

THIS was a Rule obtained on the 4th of May 1908 by Kashipati Chowdhry and Surath Chandra Chowdhry, the first cousins (*i.e.* father’s brother’s sons of the deceased), calling upon Nagendrabala Debi, the executrix of the last will of the

* Motion in Original Civil Suit No. 6 of 1908.

deceased, to show cause why the grant of the probate made to her should not be revoked, and why she should not pay the costs of, and incidental to, this application.

Tara Pada Chowdhry died on the 7th of May 1900 at Barijohaty in the District of Hooghly, leaving two widows, Benoda Debi since deceased and Nagendrabala Debi, and his first consins (that is to say father's brother's sons), Kashipati Chowdhry and Surath Chandra Chowdhry, as reversionary heirs in case of intestacy on the death of the widows. He left all his property situate within the jurisdictions of the Districts of Hooghly and 24-Pergannahs, but none within the jurisdiction of the High Court. Nagendrabala Debi obtained a probate of the will of Tara Pada Chowdhry, deceased, on the 20th November 1907 from the High Court; the applicants applied to set aside the grant of probate on the grounds, *first*, that this Court had no jurisdiction to entertain the application for probate; *secondly*, that the will was not genuine, and that no citation was issued to the applicants.

Mr. Pugh (with him *Mr. G. D. Seal*), in support of the Rule. The Court had no jurisdiction in its Original Side to grant probate in respect of wills whereby no property was left in Calcutta. By concurrent jurisdiction, it was meant that where there were properties both in Calcutta and outside it, that the Original Side of this Court would have jurisdiction for the purpose of granting probate. By "High Court" in section 87 of the Probate and Administration Act, it was meant the High Court in its Appellate Jurisdiction.

Mr. A. C. Banerjee shewed cause, and relied upon *In the goods of Mohendra Narain Roy* (1), and cited sections 2 and 87 of the Probate and Administration Act and the Notification in the *Calcutta Gazette* of 28th April 1881, Part 1, page 445, and submitted that the Original Side of this Court had ample jurisdiction to grant probate in respect of wills whereby properties, moveable or immoveable, were left within the Presidency of Bengal, concurrently with the District Judges, to whom the

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power to grant probate is delegated by the High Court, and whose jurisdiction to grant probate is confined to properties in the Districts only. *Monohur Mookerjee, In the matter of* (1), was also referred to.

FLETCHER J. In this case a preliminary point has been taken as to whether the High Court has jurisdiction under the provisions of the Probate and Administration Act to grant probate, unless a portion of the assets are situate within the limits of the Original Jurisdiction of this Court.

The sections of the Probate and Administration Act that are material are, first, section 2, which provides that "no Court in any local area beyond the limits of the town of Calcutta, Madras and Bombay, etc., and no High Court, in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor-General in Council, by a notification in the Official Gazette, authorized it so to do." The notification referred to has been published in the *Calcutta Gazette* in 1881, by which this Court (that is the High Court of Calcutta) has jurisdiction to receive applications for probate and letters of administration throughout the territories subject to the Lieutenant-Governor of Bengal.

The next section necessary to call attention to is section 51. Section 51 defines the jurisdiction of a District Judge for granting probate, and the terms of that section are extremely general: and it says that "the District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district." Apparently nothing is said here as to what the cases within his district are meant to be. Then section 56 defines the cases where probate and letters of administration may be granted by the District Judge, and the cases are where the testator had at the time of his death a fixed place of abode or any moveable or immovable property within the jurisdiction of the Judge.

Then comes section 87, which provides that "the High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge." Now the power conferred upon the District Judge is to have jurisdiction in all cases in his district, and under the general notification it is obvious that the High Court has jurisdiction in all cases in all districts of the District Judges. I think, from sections 2, 51 and 87, it is clear that the High Court has jurisdiction in all districts. That being so, so long as the petition could have been presented to any one District Court in one of the two Provinces of Bengal, this Court has, in my opinion, power to grant probate or letters of administration.

The next point taken by Mr. Pugh is that the High Court meant here is the High Court exercising its Appellate Jurisdiction. That point has been disposed of by Mr. Justice Sale in the case of *In the Goods of Mohendra Narain Roy* (1). It is sufficient for me to say that I agree with him that the "High Court" mentioned in section 87 is not merely confined to the Appellate Jurisdiction of this Court, but includes Original Jurisdiction. The word "concurrent" could mean nothing if it applied to the Appellate Jurisdiction. In my opinion the High Court has jurisdiction to grant probate or letters of administration on the Original Side in any case which could have been brought before any District Judge in either of the two Provinces of Bengal.

The next point is as to the meaning of Rule 740 of this Court. It appears that this Rule came from archaic times: originally it was one of the Rules framed under the Charter of George III. That Rule has apparently never been altered. In those days the Supreme Court had power to grant probate or letters of administration if the testator or the intestate, if a European British subject, died within the limits of Bengal, Behar or Orissa, and also jurisdiction in the case of a person not a European British subject, if there was property within the limits of the Original Jurisdiction of the Supreme Court. That

(1) (1900) 5 C. W. N. 377.

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Rule seems to have been continued ; but the question is whether, unless the petitioner proves there is property within jurisdiction, that Rule is binding and overrides the provisions of the Probate and Administration Act giving the High Court concurrent jurisdiction in all cases. Section 87 does not require that any portion of the property should be within the limits of the Original Jurisdiction. I think these Rules cannot override the express provisions of section 87 giving the High Court concurrent jurisdiction. It is apparent that that Rule refers to 'application for probate in common form of a written and perfect will, etc., to be made by petition,' etc. It means a petition in the common form of probate, where use is made of the common allegations in the petition which is adopted as a matter of practice.

That Rule, in my opinion, does not override the practice of the High Court ; I think, therefore, the contention of Mr. Banerjee is well-founded, and hold that this Court has power to grant probate.

Attorney for the plaintiff : *N. N. Sett.*

Attorney for the defendant : *N. N. Mitter.*