

5 Calcutta Weekly Notes, that the Police might be ordered to see that the obstruction was removed. Of course, there is the alternative that the parties who failed to carry out the injunction should be prosecuted under section 188 of the Penal Code. But we think that that would be a cumbrous course, and it would be much more prejudicial to the second party in a section 145 case than the usual method of obtaining Police assistance. The Rule is, therefore, discharged.

E. H. M.

Rule discharged.

1912

AMBICA
PRASAD
SINGH
c.
GUR
SAHAY
SINGH.

APPELLATE CIVIL.

Before Mr. Justice Core and Mr. Justice Imam.

KALIMUDDIN

v.

MEHARUI.*

1912.

Feb. 12.

Administration bond—Letters of administration—Probate and Administration Act, 1881, ss. 78, 79, 86—Administration bond in favour of District Judge—Assignment of the bond by the District Judge—Second assignment—Appeal—Memorandum of appeal treated as petition for revision.

Under s. 79 of the Probate and Administration Act, 1881, a District Judge has no authority to assign an administration bond again to a person so long as a previous assignment of the said bond to another person is in force.

No appeal lies against an order passed by the District Judge assigning a bond under s. 79 of the Act; but where the District Judge passes an order which he has no authority to do, the High Court may interfere, treating the memorandum of appeal as an application for revision.

Uma Charan Das v. Muktakeshi Dasi (1) discussed.

APPEAL by Sheikh Kalimuddin, the opposite party.

* Appeal from order No. 235 of 1911, from the order of S. S. Skinner District Judge of Purnea, dated Aug. 29, 1910.

(1) (1900) I. L. R. 28 Cal. 149.

1912

KALIMUDDIN
v.
MEHARUL.

One Sheikh Moulabux died intestate, leaving behind him a widow, a daughter, and three sons, in April 1902. Sheikh Kalimuddin, the opposite party, then took out letters of administration in respect of the estate of his deceased brother, the aforesaid Sheikh Moulabux, and executed an administration bond in favour of the District Judge of Purnea on the 30th July 1903, under s. 78 of the Probate and Administration Act. On the application of Sheikh Gyasuddin, one of the sons of the deceased Moulabux, the District Judge having held an enquiry, assigned the bond in favour of the said Gyasuddin for his benefit and that of the other co-sharers. Subsequently Mussamat Mobarani, the widow, for herself and as guardian of her two minor sons, as also the daughter, made an application to the District Judge, in which they charged the opposite party with gross mismanagement of the estate, and prayed that after making an enquiry, he would direct the administration bond to be assigned to the petitioners under s. 79 of the Act, and also direct the letters of administration to be revoked. The opposite party denied the charge of mismanagement of the estate, and pleaded that the Court had no jurisdiction to assign the administration bond to the petitioners. The District Judge, having overruled the objections of the opposite party, granted the prayer of the petitioners and directed the bond to be assigned to them.

Against this decision, the opposite party appealed to the High Court.

Babu Shib Chandra Palit (Babu Nanda Lal Banerjee with him), for the appellant. My client executed the administration bond for the due administration of the estate in favour of the District Judge under s. 78 of the Probate and Administration Act, and then the learned Judge assigned it to another person.

and he having done so, the question is whether he could assign it again to other persons. I submit, that he had no jurisdiction to do so. The bond was originally in his favour, and he could assign then, but having once assigned it in favour of one, he could not recall it and assign it again to another person. Section 79 of the Act does not contemplate any such jurisdiction.

Babu Mahendra Nath Roy (with him *Maulvi Nur-uddin Ahmed*), for the respondent. Under section 78 of the Probate and Administration Act, the bond enures for the benefit of the District Judge for the time being, that is to say, he would be entitled to sue upon it. Under s. 79 of the Act, the person in whose favour the bond is assigned is enabled to sue upon that bond. The result of the argument of the appellant would be that if the person, to whom assignment was made, in collusion with the administrator, neglected to sue upon the bond, then the Court would have no control over the administrator. This could not have been the intention of the Legislature. The effect of this assignment is to enable the assignee to sue on behalf of the Judge.

No appeal lies against an order under s. 79 of the Probate and Administration Act: see *Broja Nath Pal v. Dasmony Dasee* (1).

Babu Shib Chandra Palit, in reply: Under section 86 of the Probate and Administration Act, every order passed under the Act is appealable: see *Uma Charan Das v. Muktakeshi Dasi* (2). If there be no appeal then the order passed by the learned Judge being without jurisdiction, could be set aside on revision.

Cur. adv. vult.

(1) (1878) 2 C. I. R. 589.

(2) (1900) I. L. R. 28 Calc. 149.

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COXE AND IMAM JJ. The appellant in this case was granted letters of administration to the estate of one Moulabux, and executed a bond in favour of the District Judge under section 78 of the Probate and Administration Act, 1881, for the due administration of the estate. As apparently he did not administer it properly, the bond was assigned under section 79 of the Act to Gyasuddin, a son of Moulabux. Gyasuddin, however, came to terms with the appellant and did not sue on the bond. The widow and the other children of Moulabux then sought to have the bond assigned to them. This has been granted by the District Judge, and hence this appeal.

A preliminary objection is taken that no appeal lies. We think this contention must prevail. Section 86 of the Act enacts that every order of a District Judge under the Act shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure, applicable to appeals. One of those rules is to be found in section 105 of the Code, which lays down that save as otherwise expressly provided no appeal shall lie from any order. There is certainly no express provision in the Code for an appeal from an order assigning a bond. This seems to be in accordance with the view taken in *Broja Nath Pal v. Dasmony Dasee* (1) and *Abhiram Dass v. Gopal Dass* (2) That view was not taken in *Uma Charan Das v. Muktakeshi Dasi* (3), but in that case the effect of the words "Under the rules contained in the Code of Civil Procedure" seems not to have been considered.

We think, however, that the order of the learned District Judge is without jurisdiction, and that we can accordingly revise it. Under section 78 the bond enured for the benefit of the District Judge. Under

(1) (1878) 2 C. L. R. 589. (2) (1889) I. L. R. 17 Calc. 48.

(3) (1900) I. L. R. 28 Calc. 149.

section 79 he could assign it on conditions. But there is no provision in the law which authorised him to assign it again while the first assignment was still in force. If there had been a condition that the assignment should be void, if the assignee failed to comply with certain requirements, in that case a re-assignment might perhaps have been possible. But there is no such condition in the present assignment. All that is stipulated is that any money decreed should be deposited in Court, a condition that can hardly be said to have been broken. No doubt the respondents can apply to have the letters revoked, if they can make out a case under section 50 of the Act, and can sue the administrator. They can also hold Gyasuddin responsible as a trustee for them under section 79 for all that he has recovered. But they cannot obtain an assignment of the bond from the District Judge when it is no longer his to assign.

Accordingly the appeal is dismissed, but in the exercise of our revisional jurisdiction we set aside the order of the District Judge assigning the bond to the respondents. They will be at liberty, if so advised, to proceed with the application for revocation of the letters of administration which the District Judge has left undetermined. We make no order as to costs.

S. C. G.

*Appeal dismissed.
Order set aside on revision.*

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