
(1942) 08 CAL CK 0019
In the Calcutta High Court

Bamapada Ghosh

APPELLANT

Vs

Satish Chandra Sur

RESPONDENT

Date of Decision : 25-08-1942

Acts Referred:

Succession Act, 1925 — Section 228

Citation : AIR 1943 Cal 235

Judgement

1. This appeal is against three orders of the District Judge of the 24-Parganas dated 26th January 1942, 2nd and 6th February 1942 in a proceeding for letters of administration with a copy of the will annexed to the estate of late Debrani Ghose. The respondent is the sole legatee under the will which is alleged to have been executed in French Chandernagore. He made an application to the District Judge of the 24-Parganas u/s 228, Succession Act, for letters of administration. The appellant is the son of the step-son of the testatrix. He filed an objection to this application on 26th January 1942. On that day the learned Judge recorded the following order:

Applicant's pleader says that the will having been proved in French India according to the law in force there, no objection can be entertained by this Court. Objector's pleader is not now present. Put up on 2nd February 1942 in his presence.

2. On 2nd February 1942, the learned Judge recorded the following order:

The objector's pleader has not appeared or taken any step. It is clear Sukumar Banerji Vs. Rajeswari Debi, that the will need not be proved in this Court. As the applicant is the sole legatee and nothing is said to be owing by the estate, letters of administration will issue to the applicant without security.

3. The applicant filed an application on 6th February 1942 for setting aside this ex parte order. That application was refused by the learned Judge on the same date. Hence this appeal by the objector. The learned Judge apparently thought that the statement of the pleader for the respondent that the will was proved in

French India according to the law in force there, was sufficient to satisfy all the conditions laid down in Section 228, Succession Act. In the reported case on which the learned Judge has relied there was evidence to show that the will was proved in a Court of competent jurisdiction in French India. There is no evidence in this case that the will was proved in a Court of competent jurisdiction in French India. Even though the case was heard ex parte, the learned Judge before granting letters of administration u/s 228, Succession Act, should have satisfied himself that all the conditions laid down in that section have been complied with. We accordingly set aside the orders complained of and send the case back to the learned Judge. The learned Judge is directed to dispose of the case according to law. Costs in this appeal will abide the result, hearing fee being assessed at three gold mohurs. Let the record be sent down as early as possible.