

(1917) 07 CAL CK 0067
In the Calcutta High Court

Chairman, Bally Municipality

APPELLANT

Vs

Pramatha Nath Mookherjee and Others and Abinash Chandra
Ghose

RESPONDENT

Date of Decision : 06-07-1917

Acts Referred:

Probate and Administration Act, 1881 — Section 90

Citation : 41 Ind. Cas. 775

Hon'ble Judges : Walmsley, J;Greaves, J

Bench : Division Bench

Judgement

Walmsley, J.—This appeal is preferred by the Chairman of the Bally Municipality. The subject-matter of the suit is one cotta of land. A widow of the name of Kamini Debi executed a conveyance in respect of this land on the 27th October 1904. She died on the 5th August 1909 and her daughter instituted the present suit for setting aside the document, and on her death the suit has been carried on by her sons. The property originally belonged to Rai Bahadur Kedar Nath Chatterjee husband of Kamini Debya. He left a Will of which Probate was taken by his widow on the 23rd August 1901. The suit was brought by the daughter of Kamini Debi for setting aside the document on the ground that Kamini Debi had no power to alienate the property. The main defences were that the suit was barred by limitation, that the sale benefited the estate and that the present plaintiffs, the grandsons of Kamini Debi, acquiesced in the sale. The suit was dismissed by the first Court but decreed by the Court of Appeal. The defendant has, therefore, preferred this second appeal. Three points have been urged by the learned Vakil on behalf of the appellant. The first is that the suit is barred by limitation. It is suggested that the Municipality was in possession of the property from some date prior to 1901 and that limitation began from that prior date. It seems to me, however, that possession of the Municipality cannot have been adverse before 1904, when by the payment of Rs. 40 to the widow the Municipality recognized that she had some title to the land. The second point is that the grandsons of Kimini Debi were aware of the transaction and raised no

opposition. It is said that on that account they are now stopped from challenging the legality of the sale. But it must be remembered that at that time they had no right to the property because their mother was still alive. For that reason I think that they are not estopped. The third point taken is that the learned Subordinate Judge is wrong in holding that Section 90 of the Probate and Administration Act prevented the widow from exercising the powers of alienation. In support of this argument reference has been made to the decision In the goods of Narsing Chunder Bysack (1) 3 CWN 635 The present case appears to us to differ from the case cited. In that case Mr. Justice Sale remarked that all the debts and legacies had been paid. In the present case we have no information on that subject and we do not know whether the administration is at an end. It appears to me, therefore, that the section, which is very definite in its restrictions on the power of an executor was a bar to the alienation by the widow of the property in suit, and I think that the lower Court was right in the view it took as to the applicability of Section 90. The last point raised is in respect of the sum of Rs. 40 paid by the Municipality. It is said that an order should be made for a refund of this sum. It has not been proved, however, that this sum was used by Kamini Debi for the benefit of the estate. That being so, an order cannot now be made in favour of the appellant for a refund of this, sum of Rs. 40.

2. The appeal should, therefore, be dismissed with costs.

Greaves, J.

3. I agree.