

(1941) 02 BOM CK 0006
In the Bombay High Court
Case No : First Appeal No. 304 of 1939

Dinbai Behramji Gonda

APPELLANT

Vs

Motibai Burjorji Chhor

RESPONDENT

Date of Decision : 19-02-1941

Acts Referred:

Succession Act, 1925 — Section 219

Citation : (1941) 43 BOMLR 770

Hon'ble Judges : Macklin, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, C.J.—The question on this appeal is whether the appellant or respondent No. 1 should be granted letters of administration de bonis non to the estate of one I jiarji, a Parsi, who died in 1916. Letters of administration were granted after a suitable interval, that is in 1924, to the widow and one daughter. The parties seem to have been litigating ever since, and the estate has not been administered. We are told that in fact nothing has been done towards the administration of the estate. The widow and the daughter, who were the administrators, have died, and an application was made by the plaintiff, who is another daughter, for letters of administration de bonis non, and that was opposed by defendant No. 1, who is an elder daughter. The learned Assistant Judge refused to grant letters of administration to defendant No. 1, because she admitted that she had disposed of the whole of her interest in the estate. She alleges that the plaintiff has also disposed of her interest. But the plaintiff has succeeded in obtaining a decree from the Subordinate Judge of Dahanu declaring the assignment of her interest in the estate to be null and void. The learned Assistant Judge, from whose decision this appeal is brought, took the view that the plaintiff was entitled to receive grant.

2. The question as to the persons entitled to a grant in the case of a deceased, who is not a Hindu, Mahomedan, Buddhist, Sikh or Jain, is determined by Section

219 of the Indian Succession Act, 1925. Sub-clause (c) provides that if there is no widow, or if the Court sees cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate. I apprehend that that means who would be beneficially entitled to the estate, if nothing had intervened to prevent them being so entitled. That is to say, the Court has to look at the rules for the distribution of the intestate's estate and find out who according to those rules would be entitled to the estate, if there was any estate, because the whole estate may be going to creditors. I doubt whether the fact of one of the beneficiaries having assigned her share is relevant. Now, here the appellant and respondent as two daughters stand in equal degree of kindred to the deceased and under sub-clause (d) are equally entitled to administration. It is argued therefore for the appellant that she is entitled with the respondent to a joint grant.

3. The respondent has referred us to *Stoney v. Stoney* (1923) ILR 2 Pat. 508, in which case the learned Chief Justice in his judgment refers to Section 204 of the Indian Succession Act then in force, which corresponds to Section 219 of the present Act, and comes to the conclusion that the Court is not bound to grant joint letters of administration to the parties entitled in equal degree, and that *prima facie* the Court should lean against joint administration. That decision was given in 1923, that is to say, before the present Indian Succession Act was passed, and the wording of the relevant section was maintained. So that one may assume that the legislature was not minded to overrule that decision. Whether I should have arrived at the same conclusion myself, it is not necessary to consider, because the construction put upon the Act is an eminently sensible one, and I; think, we may follow it. If we have any discretion in the matter, it seems to me perfectly clear that it is not desirable to grant joint administration to the two daughters who are quarrelling and who belong to a family which, owing to family dispute has managed to evade winding up this estate for more than twenty years. I think, therefore, the appeal must be dismissed with costs.

Macklin, J.

4. I agree.