
(1906) 06 CAL CK 0017
In the Calcutta High Court

Durgagati Debi

APPELLANT

Vs

Saurabini Debi

RESPONDENT

Date of Decision : 07-06-1906

Acts Referred:

Probate and Administration Act, 1881 — Section 50

Citation : (1906) ILR (Cal) 1001

Hon'ble Judges : Gupta, J;Brett, J

Bench : Division Bench

Judgement

Brett and Gupta, JJ.—The present appeal arises out of an application, made u/s 50 of the Probate and Administration Act, for the revocation of letters of administration with the will attached granted to Umasundari Debi, the mother of the testator on the 21st of May 1875.

2. The testator Paramatma Lal Goswami executed a will on the 5th of April 1875 and died the- same day, leaving him surviving his mother Umasundari, and his wife Saurabini, who was at that time enceinte. On the 6th April the mother Umasundari applied to the Sub-Registrar, and had the will registered at her house on that day. Then on (he 24th of April, she applied for letters of administration with the will attached; and on the 21st May 1875 an order was passed granting the issue of letters of administration with the will attached, and on the 18th June 1875 letters of administration were in fact issued to her.

3. Saurabini Debi, the widow of the deceased, gave birth to a daughter Durgagati, the present applicant, on the 12th September 1875; and on the 3rd of July 1876, Saurabini applied for the grant to her of letters of administration to the estate of her husband and at the same time stated that Umasundari, to whom letters of administration had previously been granted, wished to be relieved of the administration. A petition was put in purporting to be a petition from Umasundari consenting to the application. But on the 19th July 1876 another petition was put in by Umasundari herself disclaiming the genuineness of the petition put in on uer behalf on the previous 3rd July and objecting to the

grant of the letters of administration to Saurabini Debi, Saurabini's application appears then to have been rejected, and on the 2nd August 1876 Saurabini put in two applications, one, applying for revocation of letters of administration with the will attached granted to her mother-in-law on the ground that the mother-in-law had concealed facts contained in the will; and the second petition applying for letters of administration for herself. The application for revocation was rejected; and on appeal to the High Court on the 19th June 1877 that decision was confirmed.

4. On the 22nd July 1878, Saurabini brought an administration suit against Umasundari claiming an account from her and praying that Umasundari should be directed to make over the property left by Saurabini's husband to her as his widow. On the 17th February 1879, judgment was passed in favour of Saurabini by the District Judge and on the 11th of May 1881 that judgment was confirmed by this Court. Since that time Saurabini appears to have been in possession of the property left by Paramatma Lal Groswami as his widow.

5. In February 1886 the daughter, the present applicant Durgagati, was married and on the 15th of August 1894 Umasundari, the mother of Paramatma, died. About that time, (the exact date is not stated,) Saurabini, under the power given in the will of her husband, adopted a son; and the case of the applicant Durgagati is that she knew nothing about this power of adoption or that her mother had adopted a son, until April. 1896.

6. On the 12th of April 1902, Durgagati presented the present application for revocation of the letters of administration with the will attached, which had been granted to Umasundari in order that the will might be proved in her presence in solemn form. Her object, or rather, the object possibly of the persons, who are behind her, in these proceedings, was to have the adoption of the son by Saurabini declared invalid and set aside.

7. This application first came up before Mr. Roe as District Judge and on the 27th of August 1903, and he delivered a judgment dealing with the grounds taken on behalf of Durgagati by her counsel. He held that in order to make out a case for revocation of the grant she must prove fraud, and refused to allow her to enter into evidence on any other point, until that allegation had been proved. Objections were put in afterwards on behalf of Durgagati, when Mr. Roe had left the district and had been succeeded by Mr. Platel, with the object of avoiding this decision of Mr. Roe, but in the end, Mr. Platel, the District Judge, followed that decision, and having confined Durgagati to proving that fraud had been committed, he held that she had failed to make out a case, and accordingly dismissed the application.

8. The present appeal is now preferred on behalf of Durgagati, the applicant, and, on her behalf it has been argued that the District Judge, Mr. Roe, was wrong in holding that she had in the first instance to prove fraud. It is contended that it was open to her under illustration c of section , 50 of the Probate and

Administration Act to prove that the will was a forgery or under Sub-section 3 of the same section to prove that the grant had been obtained by some misrepresentation, which was due to ignorance or inadvertence. It was further argued on the authority of the English practice as described in Tristram and Coote's Probate Practice, 13th Edition p. 353, that Durgagati being a party interested as reversioner in the estate of the deceased, whose interest had been adversely affected by the grant of letters of administration with the will attached made in common form, was entitled without limitation as to time to call in question the grant and put the party, who obtained it or her representative upon proof of the will in solemn form. It must, however, be observed that the practice in probate and administration suits, is in India, at least so far as mofussil Courts are concerned, governed by the Probate and Administration Act and is laid down in Sections 62 to 78 of that Act. Until late years it had been the usual practice in the mofussil Courts to proceed u/s 69 of the Act and to issue citations and to examine witnesses to prove due execution of the will before the grant of probate or of letters of administration with the will attached, and from the written statement filed in this case it would appear that this was the practice followed before the grant was made to Umasundari. This is not quite the same as a grant of probate in common form, for the grant is made after the execution of the will has been sworn to by the witnesses to the will and the only circumstance, which distinguishes it from the grant in solemn form, is that the grant is made ex-parte. After the grant of probate or letters of administration with the will attached has been made the only procedure provided by the law for the revocation of such a grant is that laid down in Section 50 of the Act and this, indeed, seems to have been realised by the present applicant and was the course, which was adopted on her behalf by her counsel. It seems that before Mr. Roe the grounds taken on behalf of Durgagati by her counsel were, first that no citation was served upon the petitioner Durgagati, and secondly that it was apparent that the proceedings of the former petitioner Saurabini Debi were fraudulent. Mr. Roe held that the first contention could not prevail, as Durgagati being at the time unborn could not be served with a citation, and he found, so far as the second point was concerned, that before she could succeed, the petitioner must make out the case of fraud, which was then alleged. So far as we can judge from the record, the fraud, which was then alleged, was collusion between Saurabini and Umasundari by which the rights of the present petitioner were prejudiced. After adjournment it was attempted apparently before Mr. Platel to prove what was a different case of fraud, namely, that the will was a forgery, and an attempt was made before that Judge to prove that the document produced was not in fact the will of the deceased. The District Judge, however, refused to go into the question whether the will was or was not the will of the deceased, holding that, until the case for revocation had been made out, the petitioner was not entitled to go into that matter, and in arriving at that conclusion he appears to have been guided by the opinion expressed by this Court in 1877 on the appeal by Saurabini Debi in the case which she then brought against Uma Sundari for revocation of the letters of administration. Mr.

Justice Markby in his judgment remarks. "I think the meaning of the law is this,-- that when probates or letters of administration have once been granted they can only be revoked or annulled on the grounds stated in that section" (referring to Section 234 of Act X of 1865, which are the same as those of Section 50 of the Probate and Administration Act). "I think therefore that the District Judge was wrong when upon this application he entered into a consideration of the true construction of the will. And although we have been asked to consider that matter upon this appeal, I think we ought to entirely abstain from doing so. And we ought also to abstain from considering whether or not, if the original application had been now before us or if the order upon that original application had been appealed from to us, we should have made the grant, which the Judge then made. I think we are not under the law at liberty to consider that now. "We see no reason to differ from the view of the law as laid down by this Court in that judgment and we think, as the petitioner failed to make out any case of fraud before the District Judge, that the District Judge was right in dismissing the application for revocation of probate.

9. We may also add that after Saurabini, who was then in possession of a life-interest in the properties of her husband after his death had failed in 1876 in her application against Umasundari for revocation of the letters of administration granted to her with the will attached, the petitioner, who claims to be the next heir to Saurabini and would be the next heir, if the will were set aside, would be bound by the decision in that case (see *Katama Natchiar v. Raja of Shivagunga* (1863) 9 Moo. I.A. 539 : 2 W.R.P.C. 31 and *Pertab Narain Singh v. Triloki Nath Singh* ILR (1884) Cal. 186, unless she were able to make out the case, which her counsel tried to support before Mr. Roe in 1903, viz., that there was collusion between Umasundari and Saurabini Debi in those proceedings. This certainly has not been substantiated.

10. The result is that the appeal fails and is dismissed with costs.