
(1908) 02 BOM CK 0008
In the Bombay High Court
Case No : Appeal No. 7 of 1907

Gangaram Keval

APPELLANT

Vs

Nagindas Khushaldas

RESPONDENT

Date of Decision : 24-02-1908

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1908) 10 BOMLR 519

Hon'ble Judges : Heaton, J;Chandavarkar, J

Bench : Division Bench

Judgement

Chandavarkar, J.—This was a suit brought by the respondent to administer the estate of his debtor Tribhuvan. Tribhuvan was made a party defendant with his other creditors, and the plaintiff prayed that as the estate of the first defendant was valued at only Rs. 3,500 whereas the debts amounted to Rs. 11,000, it was necessary that the estate should be administered by the Court and that the assets should be realized and rateably distributed amongst the creditors. The Subordinate Judge raising the issue whether such a suit was maintainable decided it in the negative. The District Judge on appeal, has, however, come to a different conclusion relying on certain observations in the decision of this Court in Bai Meherbdi v. Maganchand I L R (1904) 29 Bom. 96 : 6 Bom. L.R. 853. But those observations apply to the estate of a deceased person, and moreover, it must be remembered they applied to the estate of a deceased Parsi. Therefore, the decision cannot be treated as an authority on the question whether an administration suit in the case of the estate of a Hindu, living or dead, can be maintained or not. The District Judge has further relied upon Section 11 of the Civil Procedure Code. No doubt according to that section a Court has jurisdiction to try every suit of a civil nature, but treating this, as it no doubt is, as a suit of a civil nature, the question is whether the plaintiff has a right to a decree entitling him to have the property of a living person distributed against his wishes and those of his other creditors. If these are not willing, the plaintiff is not entitled to force his wishes upon them. These considerations do not apply to the estate of a

deceased person.

2. Under these circumstances we think that such a suit cannot lie. We reverse the decree of the District Judge and restore that of the Subordinate Judge with costs in this Court and the District Court upon the respondent.

Heaton, J.

3. I should like to add another reason to that given by my learned colleague. This suit is to obtain the administration by the Court of the property of defendant No. 1; that is to say, in effect, it is a suit to take the administration of his property out of the hands of the owner and to have that property administered, without regard to the owner's necessities or wishes. Stated in that form, it seems to me that very strong argument is needed to show that such a suit could lie, except under a special law such as that relating to insolvency; and nothing to my mind convincing has been put forward.