

(1935) 05 CAL CK 0001
In the Calcutta High Court

In the goods of Raj Krishna Mukherji, deceased

Date of Decision : 03-05-1935

Acts Referred:

Citation : (1935) 05 CAL CK 0001

Final Decision : Allowed

Judgement

McNair, J.—This is an application by Srimati Bidyutlata Debi for an order that the caveat entered in the goods of Raj Krishna Mukherji, deceased, by Amulya, Kumar Mukherji, be discharged. On the 28th September, 1934, probate of the Will of the deceased was granted to the Petitioner by this Court. On the 12th December, 1934, the present caveator applied for a revocation of the grant, and for the Will to be set aside, or proved in his presence. That application was decided by me on the 21st January, 1935, and was dismissed. In that application Amulya contended that the grant should be revoked on the ground that it was obtained surreptitiously, that he knew nothing of his rights, nor of the fact that probate had been applied for. He alleged that the Will was forged, and he denied the contention which had been set up by the other side that he was deaf and dumb from birth. On that application I held on the facts presented to me in the affidavits that Amulya had, at the time when probate was applied for, a clear knowledge of his rights and a definite opinion that it was useless trying to oppose the grant of probate, and I dismissed his application.

2. On the same day there was also an application by Deb Kumar Mukherji, an infant son of the widow of the deceased, to whom probate had been granted, for revocation of the grant on the ground that no citation had been issued or served on the infant. I held there that the person who was applying on behalf of the infant was unfitted to be his guardian ad litem, that the infant should have been served, and that owing to the failure to effect service on him the grant should be revoked, and that the Will should be proved in the presence of the infant after an independent next friend had been appointed by the Registrar.

3. The present caveator is now attempting to reagitate the matters that have already been decided, and in his affidavit in this matter has reiterated all the

charges that he made in the previous application. It is contended on his behalf that the grant of probate having been revoked it is revoked for all purposes and all parties have an equal right to come in again, and contest the issue of the grant. If this were the case the previous application and the findings therein would be set at naught ; for in that application I have held that Amulya had full opportunity at the time when the grant was applied for of coming in and, agitating the matters which he wished to raise in opposition to the grant. I have held that he was cognizant of his rights, and that he was bound by the earlier proceeding, and on the evidence which appeared in the previous application it appeared to me that there was no justification, at all for the time of the Court being spent in the discussion of the matters which Amulya was wishing to raise.

4. Various cases have been cited to which I do not intend to refer as they do not seem to me to be in point. The principle was enunciated in a case reported in 46 Mad. L. J. 383 [Rallabandy v. Yannamandra 46 Mad. L. J. 383 (1924)] that sec. 50 Present sec. 263, Succession Act (XXXIX of 1925).--Reporter of the Probate and Administration Act (V of 1881) does not justify a party who has already been defeated in pressing his attacks anew. The judgment in the previous application is, I am informed, under appeal, and should the Appellate Court decide that he has a right of having these matters agitated he will no doubt have that opportunity at a future date.

5. I am satisfied on the findings of fact to which I have come in the previous application that the matter which is now sought to be reagitated is res judicata. The application is allowed, and the caveat is discharged. There will be an order in terms of the summons with costs.