(1903) 01 BOM CK 0006

In the Bombay High Court

Jehangir Rustomji Divecha APPELLANT

Vs

Bai Kukibai and Others RESPONDENT

Date of Decision : 15-01-1903

Acts Referred:
Succession Act, 1865 — Section 3

Citation : (1904) ILR (Bom) 182

Hon'ble Judges : Russell, J

Bench : Single Bench

Judgement

Russell, J.—The applicant is one of the executors named in the will of the deceased. Leave has been reserved to him to apply for probate.

2. The point of law raised by Mr. Lowndes is a novel one as far as I have been able to discover, his argument being that the applicant has not an interest sufficient to support his citation. This involves the question as to what is the position of an executor in India.

3. By Section 3 of the Indian Succession Act (X of 1865) "executor" is defined as a person to whom the execution of the last will of a deceased person is, by the testator''s appointment, confided. Section 179 of that Act, which agrees with the fourth section of the Probate and Administration Act (V of 1881) provides that "the executor of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such." Section 179 applies to Parsis: see Parsi Succession Act (XXI of 1865), Section 8. The effect of Section 179 is to put the law in India on the same footing as that in England: see Williams on Executors (7th Edition), page 629, and of. Jaykali v. Shibnath (1866) 2 Ben. L.R. 1 (O.C.) and Kherodemoney v. Doorgmoney (1879) 4 Cal. 455 Probate is made operative as the authenticated evidence, and not at all as the foundation, of the executor''s title, for he derives all interest from the will itself and the property of the deceased vests in him from the moment of the testator''s death. In England any person having an interest or appearance of an interest may call on the executor to exhibit an inventory and account, and a

probable or contingent interest is enough: see Phillips v. Bignell (1811) I Phi. 239; Myddleton v. Rushout (1797) Ibid 244, Byrnes v. Clarkson (1809) Ibi 22, It seems to me that if the property vests in the executor he has an appearance of an interest at all events. And inasmuch as he may at any time apply for probate, he has a contingent interest sufficient to entitle him to call upon his co-executors to account. I therefore must decide this point in favour of the applicant.

