

(1927) 08 BOM CK 0019

In the Bombay High Court

Case No : O.C.J. Appeal No. 61 of 1926 and Suit No. 901 of 1924

Kaikhushru Kharsedji Tantra

APPELLANT

Vs

Navajbai

RESPONDENT

Date of Decision : 18-08-1927

Acts Referred:

Citation : AIR 1928 Bom 34 : (1927) 29 BOMLR 1520

Hon'ble Judges : Blackwell, J; Amberson Marten, J

Bench : Division Bench

Judgement

Amberson Marten, Kt., C.J.—A question of practice arises on this motion as to whether the present application should be made before the Chamber Judge or before the appellate Court. An application has already been made to the Chamber Judge, which he has refused. The applicant now comes direct to the Court of Appeal by way of motion. [His Lordship after stating the facts of the case proceeded:]

2. Now it is important to observe that the Appeal Court is not seized of the whole administration suit. It is only seized in appeal of certain exceptions to the Commissioner's report, and those only. Therefore for the time being it has nothing whatever to do with any order that may be made for the interim management or the distribution of the estate. With great respect to the learned Chamber Judge we think he must have overlooked this circumstance, and I regret that we have not got the advantage of knowing the reasons for his judgment.

3. In our opinion this present question does not arise in this appeal. We are not seized of it, and it is most inconvenient to have ordinary chamber matters brought not before the Chamber Judge in whose province they properly fall, but before a bench of two Judges in open Court. This Court has already in *Ladkavahoo Vs. Charandas Chaturbhuj*, drawn attention to the fact that in an ordinary administration suit, even if at some phase of the case the matter has been before the Appeal Court, all future applications with regard to the

administration of the estate should in general come before the Judge of first instance in the ordinary way. It is true that in the present case there is a pending appeal, but as I have already pointed out, the only appeal before us is as regards the exceptions. As regards what the Chamber Judge has to decide, he is in just as good a position as we are to consider whether on the figures before the Court the proposed advance will be a safe one to make. We cannot of course say what the result of the appeal itself" will eventually be any more than he can. It is really a question of figures as to whether the present order asked for can be appropriately made.

4. When the above was pointed out to counsel there was substantially no contention that what I have above indicated was other than the proper course. Indeed a technical objection was taken by the counsel for the respondents that the present application to us did not lie at all.

5. Under these circumstances we will direct the present notice of motion to be treated as a summons before the Chamber Judge and laid before him for disposal as Chamber Judge. He will accordingly deal with the costs of this motion, as well as of the costs of the original chamber summons which he reserved.