
(1910) 06 CAL CK 0040
In the Calcutta High Court

Kali Das Mukherjee

APPELLANT

Vs

Nritya Gopal Mukherjee and Others

RESPONDENT

Date of Decision : 28-06-1910

Acts Referred:

Probate and Administration Act, 1881 — Section 23

Citation : 7 Ind. Cas. 1a

Hon'ble Judges : Sharf-ud-din, J;Holmwood, J

Bench : Division Bench

Judgement

1. The order which has been passed by the District Judge in this case is not only contrary to law as laid down in Section 23 of the Probate and Administration Act but a precisely similar order was only the other day set aside by a Bench of this Court in Durga Das Misser v. Radha Raman Misser 7 Ind. Cas. 1. This was an appeal from the same Judge and the order was in almost identical terms; and it was held that the Court below was wrong in refusing the application on the ground that there was a dispute as to whether the petitioner was the heir or not, and it was not for the Probate Court to decide whether the property was left by the deceased or not.

2. Now in this case the objector denies that the applicant is the heir of the deceased and also asserts that he left no assets, and those are two questions of fact which the lower Court has got to decide. It is first to be decided whether the deceased has left any estate at all. Then it does not matter what estate is left, and if he decides that he left any assets, whether the applicant is the person who, according to the rules for the distribution of the estate of an intestate, such as the deceased, would be entitled to the whole or any part of such deceased's estate.

3. The appeal must be allowed and the case must be sent back to the lower Court; the judgment and decree being set aside and the case must be heard and decided on the evidence according to law.

4. The appellant is entitled to his costs in this Court. We assess the hearing fee at two gold mohurs.