

(1912) 06 CAL CK 0063
In the Calcutta High Court

Lakhi Narain Shaw

APPELLANT

Vs

Dhanada Kumar Ghose, Kasi Kanta Saha and Others,
Haradhan Kundu and Multan Chand Doga

RESPONDENT

Date of Decision : 21-06-1912

Acts Referred:

Probate and Administration Act, 1881 — Section 69

Citation : 15 Ind. Cas. 686

Hon'ble Judges : Teunon, J;Chitty, J

Bench : Division Bench

Judgement

Regular Civil Appeal No. 16.

1. This appeal arises out of an application by the respondents for " the revocation of the grant of Letters of Administration, with a copy of the Will annexed, to the estate of Behari Lal Shaha. Behari Lal Shaha died on 17th March 1901, leaving three sons, Sakhi Lal, Lakshmi Narain and Hari Narain, a widow and two daughters. Sakhi Lal had attained majority at the date of his father's death, while the other two sons were minors. Hari Narain died a minor and unmarried. Sakhi Lal carried on his father's business and became very heavily involved in debts. The respondents, whose firm name is Multan Chand Doga, obtained a decree against him on the original side of this Court for Rs. 5,270 and costs, and applied for execution. It does not appear that any property has been actually attached. On 27th March 1909, the appellant Lakshmi Narain alleging that he had recently come of age applied for Letters of Administration to the estate of his deceased father, and propounded a Will said to have been executed by Behari Lal Shaha on 15th March 1901, two days before he died. That Will, if genuine, would have the effect of depriving Sakhi Lal of a very large share of his inheritance. A grant of Letters of Administration with a copy of the Will annexed was made to the appellant on 26th June 1909, and on 20th September 1909, the respondents applied for a revocation of that grant on the ground that the appellant was still a minor when it was made, and that the Will was - a forgery, put forward solely to

defraud the creditors of Sakhi Lal On 14th December 1909 the District Judge held that the respondents had a locus standi to contest the Will, and against that order, this appeal is preferred. A preliminary objection was taken that no appeal lies against such an order, which is merely interlocutory. We are inclined to think that that objection is well founded. Section 86 of the Probate and Administration Act, V of 1881, provides that: ""Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred" upon him shall be subject to appeal to the High Court under the rules contained in the CPC applicable to appeals." Had the decision been the other way, it would have amounted to a dismissal of the respondents' petition and would have been equivalent to a decree, in which case an appeal would lie see *Sheikh Azim v. Chandra Nath Namdas* 8 C.W.N. 748. In *Abhiram Dass v. Gopal Dass* 17 C. 48, it was held that an appeal would lie u/s 58S (2) of the Civil Procedure Code, 1882, against an order admitting a person as cave for u/s 69 of the Probate and Administration Act. But Section 588 (2) has not been re-produced in the CPC of 1908, and we cannot find any provision for an appeal which would meet this case. It is, however, unnecessary to discuss the question further as we are of opinion that the appeal must fail on other grounds. In *Nilmoni Singh Deo v. Uma Nath Mukhejee* 10 C. 19 : 13 C.L.R. 314 : 10 I.A. 80, their Lordships of the Judicial Committee, after commenting on the earlier cases, remarked, at page 27: "Assuming that a purchaser (from the heir) can oppose the grant of Probate or apply to have it revoked (which their Lordships do not decide), they entertain grave doubts whether an attaching creditor can do so, at least in a case which is not founded on the ground that the Probate has been obtained in fraud of creditors." That is precisely the ground on which the respondents base their present application, as it was in the cases of *Sheikh Azim v. Chanrdra Nath Namdas* 8 C.W.N. 748 above cited, and *Kishen Dxi v. Satyendra Nath Dutt* 28 C. 441. This last case was very similar in its facts to the one before us, but here we have the additional circumstance that the alleged Will was not put forward until eight years after the death of the appellant's father. It is only right that the creditors of Sakhi Lal should be heard in the matter of this grant, as their interests are so largely affected by it. We accordingly dismiss this appeal. The respondents must have their costs. We assess the hearing fee at five gold mohurs. The record should be sent down at once, in order that the proceedings before the District Judge should be continued without further delay.

2. This judgment will govern Appeals Nos. 3,14 and 15 of 1910, which are also dismissed, but as the respondents in these appeals have not appeared, it is unnecessary to make any order as to costs.