

(1898) 07 CAL CK 0026
In the Calcutta High Court

Mohunt Jib Lal Gir

APPELLANT

Vs

Mohunt Jaga Mohan Gir

RESPONDENT

Date of Decision : 11-07-1898

Acts Referred:

Probate and Administration Act, 1881 — Section 37

Citation : 16 Ind. Cas. 453

Hon'ble Judges : Stevens, J; Prinsep, J

Bench : Division Bench

Judgement

1. The parties in this case are rival claimants to the succession to the mohuntship of a math. The petitioner, now respondent, sought to have his claim determined by applying in the Court of the District Judge under Act V of 1881 for Letters of Administration to enable him to administer the estate of the math in succession to the deceased mohunt, in whose place he alleged himself to have been elected after the mohunt's death.

2. A preliminary objection was taken in the Court of the District Judge that such an application did not lie under Act V of 1881; but the objection was disallowed and in the end Letters of Administration were granted to the petitioner, the present respondent.

3. The objector has preferred the present appeal against the order of the District Judge upon the whole case; but we have in the first instance heard arguments only upon the question of law raised in the preliminary objection disallowed by the Court below, which is embodied in the first paragraph of the grounds of appeal, as, if that be decided in favour of the appellant, it becomes unnecessary to consider the case upon its merits.

4. The learned District Judge considered that the objection was unsustainable as being "based on the incorrect assumption that the trust-estate held by the late mohunt is determined by his death." "The trust-estate," he goes on to say, "in the case of this endowment appears to be perpetual and the death of a trustee

does not bring it to an end. It is to administer this estate that the application is made, though the application itself has perhaps not been correctly worded." The learned Judge referred to several cases; but we are of opinion that the only one which has a material bearing upon the present case is that of *Ranjit Singh v. Jagannath Prosad Gupta* 12 C. 375.

5. We are inclined to think that the learned Judge has unconsciously used the word "estate" in different senses. When he says that the trust estate in the case of the endowment appears to be perpetual, he seems to be intending to decide against the contention noticed by him early in the judgment, "that the late mohunt had a life-estate only, which determined on his death," but the word "estate" seems here to be used in two different senses, neither of which is that in which it is used in Act V of 1881, where it invariably denotes the property and credits left by a deceased person. To avoid confusion, we shall use the term in the latter sense only.

6. Some questions have been argued before us, as to whether the relation of a shebait to an idol can be correctly described as that of a trustee and whether ownership on the part of a trustee is not necessary to constitute a trust, which we do not think necessary to discuss here, because we are of opinion that assuming them to be decided in favour of the petitioner-respondent, his application must be held to be outside the scope of Act V of 1881.

7. The preamble of the Act sets forth that "it is expedient to provide for the grant of Probate of Wills and Letters of Administration to the estates of deceased persons in oases to which the Indian Succession Act, 1865, does not apply." The form of Letters of Administration prescribed by Section 77 of the Act sets forth that that of which Letters of Administration are granted is "the pro perty and credits of late of--deceased."

8. That the deceased mohunt in the present case had no ownership in the property of the math which was in his charge is not disputed; the only contention which has been raised in this connection is that such ownership was not necessary to constitute him a trustee. Be that as it may, if he had no ownership in the property of the math, we are unable to understand how it could form any portion of his estate, or how Letters of Administration purporting to affect the math property could be given as Letters of Administration of his "property and credits" in accordance with the prescribed form.

9. The provision relied upon as bringing the case within the scope of the Act is Section 37 of the Act and the case in *Ranjit Singh v. Jagannath Prosad Gupta* 12 C. 375 is relied upon in support of the applicability of that section to cases of this kind. Section 37 occurs in Chapter III, which is headed "Of Limited Grants" and in division (c) of that Chapter, headed "For Special Purposes." It runs as follows: Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his account, and leaves no general representative, or one who is unable or unwilling to act as such, Letters

of Administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf."

10. This provision may not be taken apart from the other provisions of the Act, the object of which, as we have seen, is (o provide for "the grant of Probate of Wills and Letters of Administration to the estates of deceased persons" and not for the administration of trust property generally.

11. Again, the definition of an "administrator" in Section 3 of the Act is "a person appointed by competent authority to administer the estate of a deceased person when there is no executor" and if we examine Chapter VI of the Act, "Of the Powers of an Executor or Administrator" and Chap. VII "Of the Duties of an Executor or Adminiatriator," we see that their provisions have no relation to the ordinary functions of the shebait of an idol. No doubt the shebait "administers" the affairs of the idol in the sense that he carries on the general management of them; but that is not "administration" in the restricted technical sense in which, the word is used with reference to the estate of a deceased person.

12. Looking to the object of the Act, we think that Section 37 can apply only to property in which a deceased person had ownership so as to constitute it a portion of his estate although he held it in trust.

13. We think that the case in *Ranjit Singh v. Jagannath Prosad Gupta* 12 C. 375 is distinguishable from the present case. In that case, a testatrix had by her Will dedicated certain Immovable property to the sheba of an idol and appointed an executrix whom she also constituted shebait and to whom she gave power to appoint the next shebait. The executrix died without having made any such appointment and the sister's son of the testatrix thereupon applied for Letters of Administration with a copy of the Will annexed to be granted to him in respect of the debutter property. It was held that Letters of Administration could be granted u/s 45 of the Act, because there still remained some portion of the estate of the testatrix to be administered. The learned Judges in considering whether that case came within the scope of Act V of 1881 referred, in the first place, to Section 45 and after stating the provisions of that section, they say at page 379:

In the present case, what has happened is, that the executor appointed by the Will has died; and the estate of the testator, for reasons already explained, has yet to be administered. In this view, it would seem that administration might well be applied for and granted under the Act. We may also refer to Section 37 of the Act as bearing upon this matter.

14. After noticing the terms of Section 37 they say: "It may be doubtful whether in using the word "beneficiary" in the above section, the Legislature ever contemplated the case, of an idol. But regard being had to what has for a number of years been understood in our Courts to be the true position of an idol in regard to dedicated properties, we do not see why, as a cestui que trust, an idol may not be a "beneficiary" within the meaning of that section."

15. With regard to this general proposition, we do not consider it necessary to express any opinion in the present case. In our view, it would not, if we accepted it, suffice for the decision of the case with which we are dealing. In the present case, in order to bring the property of the idol within the purview of Section 37 of the Act, it is necessary in our opinion not only that the idol should be a "beneficiary" within the meaning of that section, but that the property should be property left by the deceased, that is a portion of his estate. It would appear that the main ground on which the provisions of Act V of 1881 were held to be applicable in the reported case was that the executrix, who had obtained Probate of the Will of the testatrix, had died leaving a part of her estate unadministered. No such circumstance exists in the present case and we accordingly do not feel pressed by the ruling in the reported case.

16. The appeal is decreed with costs in both Courts. Pleaders' fee 5 gold mohurs.