

(1908) 02 CAL CK 0007

In the Calcutta High Court

Case No : Appeal from Original Decree No. 236 of 1906

Narendra Kumar Pramanik And Dharendra Kumar Pramanik, APPELLANT
minors by their mother and guardian Indumoti Dasi

Vs

Charu Chandra Pramanik and Another RESPONDENT

Date of Decision : 27-02-1908

Acts Referred:

Citation : (1908) 02 CAL CK 0007

Final Decision : Dismissed

Judgement

Macleay, C.J.—This is an application for probate, and it is of a somewhat novel nature. One Kally Prosonna Pramanik made his Will so far back as the 12th of March 1889. He devoted, in substance, the whole of his property to an idol and appointed his elder wife, his younger wife and his adopted son Hironmoy shebait, executrices and executor of the Will. The Will provided for the continuance of shebait in the sons, grandsons and other heirs in succession. The executrices and executor never applied for probate, and no probate has been taken out. It has been found that the adopted son Hironmoy, suppressing the Will has dealt with the property as if there had been no Will. He appears to have mortgaged it, a suit was instituted to realize that mortgage, the property was sold, and the purchaser appears on the present occasion to resist this application. Neither the executrices nor the executor have appeared though they had been cited. In these circumstances the present application is made. It is made by the two minor children of the executor Hironmoy, and is made by their mother as their next friend, on the ground that neither the executrices nor the executor have taken out probate, and that the estate has been mal-administered. It is quite clear that probate cannot be granted to them, because they are not the executors of the Will. Then it is urged that the Court may act under sec 41 of the Indian Probate and Administration Act, and, had the circumstances been different, we might have taken that course. But we do not think this is a bona fide application; it strikes as one instigated and set on foot by the executor, the adopted son, who is now putting up his minor sons through

their mother to obtain letters of administration with the Will annexed and to set up the Will and say that the property was debutter, and consequently the subsequent dealings with it by way of mortgage and sale were bad. The Court below has found, and so far as one can see, properly, that there is no question as to the Will. It is easy to see, if this application be granted, who would pull the strings. The mother, the next friend, is a purdanashin woman, and the husband the alleged defaulting executor would manage the whole business. In these circumstances, we decline to exercise the discretionary power vested in us under sec. 41. At the same time it is a case, in which if an application were made for the appointment of a thoroughly independent person to protect the estate, as the executrices and executor have declined to act, it would probably be successful, and our order is not to prejudice any such application being made.

2. The appeal must be dismissed with costs, hearing fee, seven gold mohurs payable to the Respondent, Charu Chandra Pramanik.

Doss, J.

I agree.