
(2011) 08 CAL CK 0147

In the Calcutta High Court

Case No : G.A. No. 596 of 2011, A.P.O.T. No. 90 of 2003 and P.L.A. No. 103 of 1999

Pandraj Kunjilal Sadh (Deceased) and Rai Kumar Sadh

APPELLANT

Vs

Santosh Kumari Mahendra Kumar Sadh and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

City Civil Court Act, 1953 — Section 2, 5
Civil Procedure Code, 1908 (CPC) — Section 104, 110A, 4
Succession Act, 1925 — Section 20, 212, 27, 300, 331

Citation : AIR 2012 Cal 7 : (2012) 1 CHN 443

Hon'ble Judges : Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Ranjan Deb, Asish Chakrabarty, K.A. Bhaduri, Sudip Deb, Nikhilesh Ramachandan, for the Appellant; B.K. Bachawat, for Respondent Nos. 1 to 4, Anil Kumar Gupta and S.N. Dutta for the Respondent Nos. 5 to 11, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—In course of hearing of an application filed in connection with an appeal of 2003 arising out of probate jurisdiction, we decided to hear out the appeal itself instead of disposing of the interlocutory application keeping the appeal pending.

2. Consequently, the learned Counsel for the parties made their submission only on the merit of the appeal.

3. This appeal is at the instance of an Executor and is directed against an order dated 8th October, 2002 passed by a learned Single Judge of this Court by which His Lordship revoked the grant of probate earlier made by holding that this High Court had No. jurisdiction to entertain an application for grant of probate in respect of the Will left by the deceased in this case.

4. Being dissatisfied, the Executor has come up with the present appeal.

5. There is No. dispute that the deceased was a Hindu governed by the Mitakshara School of Hindu law and died on January 18, 1999 at Mumbai leaving his alleged last Will and Testament dated 9th November, 1998 which was registered with the Sub-Registrar, Vikash Sadan, New Delhi. The probate proceeding was initiated in this High Court on the allegation that the deceased had left an immoveable property situate at 1A, Indian Mirror Street, Calcutta, within the jurisdiction of this Court. In the application for revocation, various points were taken including the genuineness of the said Will. However, the learned Single Judge held that after the amendment of the City Civil Court (Amendment) Act, 1980 (West Bengal Act LX of 1980), this Court has lost its jurisdiction to entertain a testamentary application relating to a Will executed by a Hindu.

6. Mr. Deb, the learned Senior Advocate appearing on behalf of the Appellant, has strenuously contended before us that by virtue of the provisions contained in the City Civil Court (Amendment) Act, 1980 (hereinafter referred to as the "1980 Amendment") all that has been taken away is the jurisdiction of this Court to try and entertain the proceeding under the Indian Succession Act, 1925 and such jurisdiction has been conferred upon the City Civil Court at Calcutta. According to Mr. Deb, apart from the provisions contained in Indian Succession Act, 1925, this High Court by virtue of its power conferred by the Letters Patent possesses testamentary jurisdiction irrespective of the provisions contained in Indian Succession Act and thus, even if the power conferred under the Indian Succession Act to grant Probate is taken away by the 1980 Amendment, the original jurisdiction to grant Probate by dint of the provisions of Letters Patent and the Original Side Rules of this Court still exists and this Court can entertain and dispose of a Probate application in respect of a Will executed by a Hindu without taking aid of the Indian Succession Act.

7. In other words, according to Mr. Deb, the jurisdiction conferred by the Letters Patent cannot be taken away except by specific legislation and in view of amendment of the City Civil Court Act, the testamentary jurisdiction under the Letters Patent has not been affected in any manner. Mr. Deb, therefore, submits that we should not treat the present application for grant of probate as one field under the Indian Succession Act but should consider it as an application in terms of the Original Side Rules read with the Letters Patent. Mr. Deb, therefore, prays for setting aside of the order passed by the learned Single Judge and for hearing of the application for revocation of the probate on merit.

In support of his contention, Mr. Deb relies upon the following decisions:

1. Sharda Devi Vs. State of Bihar,
2. P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others,
3. Commissioner of Customs and Central Excise v. Hongo India Private Limited and Anr. reported in (2009) 5 SCC 791;

4. Swedish Match AB and Another Vs. Securities and Exchange Board, India and Another,

8. Mr. Bachawat, the learned Senior Advocate appearing on behalf of the Respondents, on the other hand, has opposed the aforesaid contention of Mr. Deb and has contended that a plain reading of the provisions of 1980 Amendment will make it abundantly clear that the City Civil Court at Calcutta alone shall have jurisdiction and the High Court shall not have the jurisdiction to try any proceeding for grant of Probate of a Hindu if the cause of action of filing such an application arises within the original jurisdiction of this Court.

9. By referring to the Schedule to the City Civil Court Act as it now stands after 1980 Amendment, Mr. Bachawat contends that the jurisdiction of the Original Side of this Court to entertain an application for grant of probate in respect of a Will executed by a Hindu has been totally excluded as apart from the provisions contained in the Indian Succession Act, there is No. other provision of law enabling a Court to entertain an application for grant of Probate in respect of a Will dated November 9, 1998 executed by a Hindu.

10. Mr. Bachawat submits that for the purpose of grant of probate of a Will executed by a Hindu, there is No. scope of approaching a Court except in accordance with the provisions as provided in the Indian Succession Act and once the provisions contained in the Indian Succession Act are resorted to, the jurisdiction of this Court which earlier existed by virtue of Section 300 of the Act is now excluded by operation of the 1980 Amendment and such jurisdiction is now exclusively conferred upon the City Civil Court. Mr. Bachawat points out various provisions of the Original Side Rules where references to the Indian Succession Act are made. By referring to those provisions, Mr. Bachawat contends that this Court now cannot exercise any jurisdiction for grant of probate of a Hindu.

11. Therefore, the questions that arise for determination in this appeal is, first, whether after the amendment of 1980 of the City Civil Court Act, 1953, this Court in exercise of its original testamentary jurisdiction can entertain and dispose of an application for grant of Probate of a Will executed by a Hindu in the year 1998 and whether an application for grant of Probate of such a Will executed by a Hindu is now governed only by the provisions of the Indian Succession Act.

12. In order to appreciate the aforesaid question, it will be profitable to refer to the provisions contained in Sections 57, 58 and 300 of the Indian Succession Act, 1925 and some of the provisions of the City Civil Court Act, 1953 as they stand after the 1980 Amendment, some of the Rules of the Chapter XXXV of the Original Side Rules and Clause 34 of the Letters Patent which are quoted below:

Indian Succession Act

57. Application of certain provisions of Part to a class of Wills made by Hindus,

etc.-The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply-

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina or after the first day of January, 1927, to which those provisions are not applied by Clauses (a) and (b):

Provided that marriage shall not revoke any such Will or codicil.

58. General application of Part.-(1) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by Section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina; nor shall they apply to any Will made before the first day of January, 1866.

(2) Save as provided in Sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of India applicable to all cases of testamentary succession.

300. Concurrent jurisdiction of High Court.-(1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

(2) Except in cases to which Section 57 applies, No. High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay *** shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do."

The City Civil Court Act, 1953 Section 5. Jurisdiction. - (1) The local limits of the jurisdiction of the City Civil Court shall be the City of Calcutta.

(2) Subject to the provisions of Sub-sections (3) and (4), the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature, not exceeding rupees ten lakhs in value.

(3) The City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try any proceeding under-

the Guardian and Wards Act, 1980,

(iii) the Indian Lunacy Act, 1912,

(iv) the Indian Succession Act, 1925.

(4) The City Civil Court shall not have jurisdiction to try suits and proceedings of the description specified in the First Schedule.

(5) All suits and proceedings which are not triable by the City Civil Court shall continue to be triable by the High Court or the Small Cause Court or any other Court, tribunal or authority, as the case may be, as hereto before. "S. 21. Act to override other law including Letters Patent. - The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law, including in particular the Letters Patent of the High Court.

THE SECOND SCHEDULE

Year

Number

Short Title

Amendments

1

2

3

4

Acts of the Central Legislature

1890

8

The Guardian and Wards Act, 1890

In Clause (4) of Section 4, for the words "a High Court in the exercise of its ordinary original civil jurisdiction", the words "as respects the city of Calcutta as defined in the City Civil Court Act, 1953, the City Civil Court established under that Act" shall be substituted

1912

4

Indian Lunacy Act,

1912

1) In clause (1) of section 25, for the words "High Court", the words "City Civil

Court" shall be substituted.

(2) In section 26, in sub-section(1), for the words "High Court", the words "City Civil Court" shall be substituted.

(3) In Chapter IV under Part III, for section 37, the following section shall be substituted:

"37. Jurisdiction in lunacy in Presidency town.-Except as otherwise provided hereinafter in this Chapter, the Court having jurisdiction under this Chapter shall be the City Civil Court established under the City Civil Court Act,1953.

(4) In section 39, after the words "Advocate-General" the words "or the Government pleader" shall be inserted.

(5) Sections 43 and 44 shall be omitted.

(6) In section 45, the words "or the finding of the District Court to which the inquisition may have been

referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case maybe," shall be omitted.

(7) In the proviso to section 55, for the words "High Court" in the two places where they occur, the words "City Civil Court" shall be substituted.

(8) After section 60, the following section shall be inserted :-

"60A. Appeals.- An appeal shall lie to the High Court

from any order made by the City Civil Court, under this Chapter."

(9) In section 61, for the words "The Court" the words "The High Court" shall be substituted.

(10) In the proviso to subsection (1) of section 71, for

the words "High Court", the words "City Civil Court" shall be substituted.

(11) To Chapter VII under Part IV, in section 88, for the words "High Court", the words "City Civil Court" shall be substituted.

1925

39

Indian Succession Act, 1925.

(1) To clause (bb) of section 2,the following proviso shall be added:- "Provided that as respect the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court at Calcutta references to a District Judge in this Act shall be construed as references to the City Civil Court established under the City Civil Court Act, 1953."

(2) In section 273, clause (a) of the proviso shall be omitted.

(3) In section 274, for subsection(1), the following sub-section shall be substituted:-

(1) Whether probate or letters of administration has or have been granted by a District Judge with the effect referred to in the proviso to section 273, the District Judge shall send High Court to which such

District Judge is subordinate and to each of the other High Courts."

(4) Section 300 shall be omitted.

(5) For Schedule IV, the following Schedule shall be substituted-

"SCHEDULE IV

[See section 274(2).]

FORM OF CERTIFICATE

I., A. B.,hereby certify that on the day of granted probate of the will (or letters of administration of the estate) of C.D., late of ???deceased, to E.F. of ? and G.H. of ???.. and that such probate (or letters) has(or have) effect over all the property of the deceased throughout India. "Legislature In the First Schedule, in clause (1),for sub-clauses (i) and (ii), the following sub-clauses shall be substituted-

1958

XII

Acts of the West Bengal

The West Bengal Premises Tenancy Act, 1956.

"(i) where the value of the suit does not exceed rupees ten lakhs - to the City Civil Court> as defined in the City Civil Court Act, 1953;

(ii) where the value of the suit exceeds - rupees ten lakhs - to the High Court at Calcutta."

Chapter XXXV

R.4 Application for probate or letters of administration, or a certificate. (2). Every application for a certificate u/s (376) of the Indian Succession Act shall be accompanied by a certificate of the Registrar that the fee payable u/s 379 of the said Act has been paid. and also by a certificate of the Registrar that No. intimation has been received by this Court from any other High Court or any District Court of any grant of probate or Letters of Administration of the property and credits or a succession certificate of the deceased with effect throughout the whole of the Union of India.

"R. 14. Grants throughout Union of India. In all cases under the Indian Succession Act, in which it is sought to obtain a grant of probate or letters of administration (which or without the will annexed) to have effect throughout Union of India, or under the Administrator-General's Act with effect throughout any or all of the Presidencies or Provinces, as defined in or constituted by or under that Act as defined in that Act such grant must be expressly asked for, and it must be shown where the assets are situated.

"R. 15. One or more sureties to the bond required. Every person to whom a grant of letters of administration, other than a grant u/s 212 of the Indian Succession Act, is committed, shall give a bond to and in the name of the Chief Justice with one or more sufficient sureties to be approved by the Registrar. Such bond shall in all cases be prepared in the office of the Registrar (Forms Nos. 6 and 7) and shall, unless otherwise ordered by the Court or a Judge, be given in the amount of the full value of the property for which the grant is to be made.

"R. 20. Certificate u/s 274 of the Indian Succession Act. With every certificate to be sent to a High Court, under the provisions of Section 274 of the Indian Succession Act, or Section 20 of the Administrator-General's Act, the Registrar shall send a copy of so much of the schedule of the property and credits of the deceased as relates to the estate within the jurisdiction of such Court.

"Letters Patent, 1865

Clause 34. Testamentary and intestate jurisdiction. and We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority as that which may now be lawfully exercised by the said High Court, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate whether within or without the Bengal Division of the Presidency of Fort William provided always, that nothing in these Letters Patent contained shall interfere with provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probates and letters of administration.

13. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the testator was a Hindu who died in Mumbai leaving among his properties one immoveable property situated within the territorial limits of the Original Side of this Court and the Executor filed an application for grant of probate in the Original Side of this Court.

14. The history of the right of a Hindu to bequeath his property by testamentary disposition as recognized by the law in India, particularly in this part of the country, has been traced by the Supreme Court in a recent decision in the case of Siddamurthy Jayarami Reddy (D) by L.Rs. Vs. Godi Jaya Rami Reddy and Another, as would appear from the following observations:

21. The Succession Act, 1865 (for short "the 1865 Act") was enacted to provide

for intestate and testamentary succession in British India. Section 331 of the 1865 Act, however, excluded its applicability to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist and it further provided that its provisions shall not apply to any will made, or any intestacy occurring, before 1-1-1866.

22. By the Hindu Wills Act, 1870 (for short "the 1870 Act"), statutory provisions were made to regulate the wills of Hindus, Jainas, Sikhs and Buddhists in the lower provinces of Bengal and in the towns of Madras and Bombay. Inter alia, Section 2 thereof provided as follows:

2. The following portions of the Indian Succession Act, 1865, namely-

sections forty-six, forty-eight, forty-nine, fifty, fifty-one, fifty-five and fifty-seven to seventy-seven (both inclusive),

sections eighty-two, eighty-three, eighty-five, eighty-eight to one hundred and three (both inclusive),

sections one hundred and six to one hundred and seventy-seven (both inclusive),

sections one hundred and seventy-nine to one hundred and eighty-nine (both inclusive),

sections one hundred and ninety-one to one hundred and ninety-nine (both inclusive),

so much of Parts XXX and XXXI as relates to grants of probate and letters of administration with the will annexed and

Parts XXXIII to XL (both inclusive), so far as they relate to an executor and an administrator with the will annexed,

shall, notwithstanding anything contained in section three hundred and thirty-one of the said Act, apply-

(a) to all wills and codicils made by any Hindu, Jaina, Sikh or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits, so far as relates to immovable property situate within those territories or limits:

23. The 1925 Act which came into force on 30-9-1925 has eleven parts. Part VI has twenty-three chapters. Section 57 to 191 are covered by Part VI. Section 57 provides thus:

57. Application of certain provisions of Part to a class of wills made by Hindus, etc.-The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply-

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits; and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by Clauses (a) and (b):

Provided that marriage shall not revoke any such will or codicil.

Clauses (a) and (b) of Section 57 of the 1925 Act are in pari materia with Clauses (a) and (b) of Section 2 of the 1870 Act. Clause (c) is a new provision.

15. Thus, the right of a Hindu to bequeath his property by a Will was first statutorily recognised in the 1870 Act by adopting the relevant provisions of the Indian Succession Act, 1865 and after the enactment of the Indian Succession Act, 1925 replacing the old Act, by the said Act of 1925. Apart from the law laid down in the 1925 Act, there is No. law governing the procedure for grant of Probate of a Will executed by a Hindu.

16. There is No. dispute that prior to the coming into operation of the amendment of the City Civil Court Act in the year 1980, in the matter of grant of probate of a Will executed by a Hindu which is governed by the Indian Succession Act, the High Court had concurrent jurisdiction with the District Courts as provided in Section 300 of the Indian Succession Act. So far the District of Calcutta is concerned, the City Civil Court Act had, however, No. jurisdiction to entertain probate application being specifically excluded and those probate applications could be entertained by this Court by following the Rules in this behalf prescribed in the Original Side Rules.

17. After the amendment of the City Civil Court Act in the year 1980, the provision for grant of probate under the Indian Succession Act has been totally taken away from this Court and has been conferred upon the City Civil Court notwithstanding the provision contained in the Letters Patent and the consequent Rules mentioned in the Original Side Rules.

18. Therefore, after the aforesaid 1980 Amendment, any application under the Indian Succession Act for grant of probate can No. longer be entertained by this Court in its Original Jurisdiction but should be entertained by the City Civil Court at Calcutta if the cause of action for filing such application has arisen within the limits of the Original side.

After hearing the learned Counsel for the parties, we find substance in the contention of Mr. Bachawat that so far probate of a Will executed by a Hindu is

concerned, the same can be applied for only under the provisions of the Indian Succession Act and there is No. other provision of law now prevailing in this country for dealing with such an application.

19. In respect of probate of a Will over which the Indian Succession Act has No. application, in our opinion, this Court can entertain such application provided the cause of action for filing such application arises within the territorial limits of this Court. For instance, by Section 58 of the Indian Succession Act, grant of probate of a Will executed by a Mohammedan is totally excluded from the operation of that Act and thus, in respect of a Will executed by a Mohammedan testator, this Court in exercise of power of Letters Patent read with Original Side Rules can still entertain such application and dispose of the same provided the cause of action for filing such application arises within the territorial limit of this Court because for governing such an application one is not required to resort to the provisions contained in the Indian Succession Act which specifically excludes its operation in respect of a Will executed by a Mohammedan testator.

20. We, therefore, find that in the case before us where the testator was a Hindu who died outside the State of West Bengal but had a property within the territorial limit of the Original Side of this Court, the application for probate can after the 1980 amendment be filed not in this Court but in the City Civil Court at Calcutta alone and the learned Single Judge was quite justified in dismissing the application.

21. We now propose to deal with the decisions cited by Mr. Deb.

22. In the case of *Sharada Debi v. State of Bihar*, a Three-Judges-Bench of the Supreme Court while construing the scope of the Letters Patent held that a Letters Patent is the charter under which the High Court is established and the powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus, the Bench proceeded, when a Letters Patent grants to the High Court a power of Appeal, against a judgment of a Single Judge, the right to entertain the appeal would not get excluded unless the concerned statutory enactment excludes an appeal under the Letters Patent. By relying upon the said decision, Mr. Deb tried to impress upon us that the power to grant Probate conferred upon this High Court by the Letters Patent has not been taken away by the amendment of 1980. We, do not for a moment dispute the aforesaid well-settled proposition that a power conferred upon High Court by the Letters Patent cannot be taken away except by appropriate amendment of the Statute. In this case, by way of specific statutory provisions mentioned above by a competent legislature, the power conferred upon High Court to grant Probate u/s 300 of the Indian Succession Act has been taken away and apart from the said provision, there is No. other provision of law for grant of a Probate of a Will left by a Hindu executed in the year 1998. Thus, the said decision does not help the Appellant in any way.

23. In the case of *P.S. Sathappan (Dead) by L.Rs. v. Andhra Bank Ltd. and Ors.*

(supra), a Five-Judge-Bench of the Supreme Court was considering a situation where there was conflict between the CPC and the Letters Patent. In that context, the said Bench made the following observations:

It was next submitted that Clause 44 of the Letters Patent showed that Letters Patent were subject to amendment and alteration. It was submitted that this showed that a Letters Patent was a subordinate or subservient piece of law. Undoubtedly, Clause 44 permits amendment or alteration of Letters Patent but then which legislation is not subject to amendment or alteration. CPC is also subject to amendments and alterations. In fact it has been amended on a number of occasions. The only unalterable provisions are the basic structure of our Constitution. Merely because there is a provision for amendment does not mean that, in the absence of an amendment or a contrary provision, the Letters Patent is to be ignored. To submit that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters Patent. As has been held in *Vinita Khanolkar's* case (supra) and *Sharda Devi's* case a Letters Patent is the Charter of the High Court. As held in *Shah Babulal Khimji's* case (supra) a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in aforementioned two cases a Letters Patent cannot be excluded by implication. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the concerned High Court. CPC is a general law applicable to all Courts. It is well settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see No. conflict between Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the CPC then the provisions of Letters Patent would always prevail unless there was a specific exclusion. This is also clear from AIR 1998 SC 424: 1997 AIR SCW 4415: AIR 2002 SC 1357: 2002 AIR SCW 1186: AIR 1981 SC 1786: Section 4 CPC which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 CPC only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100A.

(Emphasis supplied by us).

24. If we apply the aforesaid proposition of law, it will appear that a competent legislature having competence over the subject-matter of legislation has specifically excluded the entire jurisdiction under the Indian Succession Act mentioned in Section 300 from the High Court and thus, the High Court now cannot exercise any power of Indian Succession Act in the matter of grant of a Probate under the said provision. The said decision rather goes against the Appellant.

25. In the case of *Swedish Match AB and Anr. v. Securities and Exchange Board, India and Anr.* (supra), the Supreme Court while discussing with the law relating to interpretation of statute made the following observations at paragraph 52 relied upon by Mr. Deb:

It is a well-settled principle of law that where wordings of a statute are absolutely clear and unambiguous recourse to different principles of interpretations may not be resorted to but where the words of a statute are not so clear and unambiguous, the other principles of interpretation should be resorted to.

26. We fail to appreciate the reason for relying upon such observations when we propose to rely upon the clear language of the 1980 amendment taking away the jurisdiction of the High Court to deal with an application under the Indian Succession if the cause of action arisen within the limits of the Original Side.

27. In the case of Commissioner of Customs and Central Excise v. Hongo India Private Ltd. (supra), the Supreme Court in paragraph 25 relied upon by Mr. Deb, simply followed the case of Sharada Devi (supra) which we have already dealt with.

28. Thus, the decisions cited by Mr. Deb are of No. assistance to his client.

29. On consideration of the entire materials on record, we, therefore, find No. merit in this appeal and the same is dismissed.

30. In the facts and circumstances of the case, there will be, however, No. order as to costs.

Sambuddha Chakrabarti, J.

Later:

Urgent xerox certified copy of this judgment be supplied to the parties, if applied for, within a week upon compliance of all other requisite formalities.