
(1918) 04 CAL CK 0038
In the Calcutta High Court

Peari Lal Das and Others

APPELLANT

Vs

Bepin Behari Das and Others

RESPONDENT

Date of Decision : 03-04-1918

Acts Referred:

Probate and Administration Act, 1881 — Section 8, 9, 98

Citation : 45 Ind. Cas. 336

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

Bench : Division Bench

Judgement

1. In these two Rules it appears that one Kamini Sundari Dasi made a Will by which she dedicated the bulk of her property to a certain deity.
2. By the Will she appointed six executors, of whom three Pyari Lal, Nadiar Chand and Bepin Behari Saha proved the Will and obtained a grant of probate on the 12th of August 1912. The remaining three Koylash Chandra, Bepin Behari Das and Sarat Lal have now applied that they should be joined in the grant, but of these the first named has since formally renounced his executorship.
3. The applications of Bepin Behari Das and Sarat Lal are opposed by the three executors to whom probate was granted in the first instance. They alleged on the part of the applicants adverse interest, lack of business capacity and waiver and their contention before us is that issues on these questions should have been framed.
4. We are unable to accede to this contention. It is not suggested that either of these present applicants renounced his executorship in the manner contemplated in Section 16 of the Probate and Administration Act, and in fact no citation calling upon them to accept or renounce their executorship was ever issued. This is, therefore, a case to which Section 9 is strictly applicable, and the only question that can arise is whether the applicants are debarred by incapacity within the meaning of Section 8.
5. The Rules are further directed against an order by which the District Judge has

required the executors who obtained probate to furnish accounts. They take exception to this order, on the ground that the Will provides that the executors shall not be liable to render accounts. But this does not exempt them from the obligation of exhibiting to the Court of Probate the account of the estate required by Section 98, though we may point out that with their management as Shebaites and with the accounts of such management that Probate Court has no concern.

6. With these observations, we discharge both these Rules with costs to the opposite parties. We assess the hearing fee in each Rule at two gold mohurs.