

(1918) 04 PAT CK 0017

In the Patna High Court

Srimati Hemanigini Debi

APPELLANT

Vs

Haridas Banerjee

RESPONDENT

Date of Decision : 18-04-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107, 151

Citation : AIR 1918 Patna 525 : 46 Ind. Cas. 398

Hon'ble Judges : Thornhill, J; Mullick, J

Bench : Division Bench

Judgement

1. The facts in this case appear to be as follows: One Haridas Banerji obtained Probate in common form of the Will of one Kedar Nath Banerji. Upon the objection of Hemanigini Debi, the widow of Kedar Nath Banerji, the executor Haridas Banerji was required to prove the Will in solemn form and in spite of a spirited contest by Hemanigini Debi he succeeded in doing so. Hemanigini has now appealed to this Court against the order granting the Probate. The present petitioner before us, Thakur Thakurdas, is the head of an endowment which under the Will is entitled to a certain legacy.

2. It appears that he was cited as a witness in the Probate proceedings but did not appear. He now applies to us to be added as a respondent in the appeal, on the ground that he has reason to suspect that there is collusion between the appellant Hemanigini and the executor Haridas and that the appeal will not be adequately contested by the executor. The application is opposed on behalf of the sole respondent, the executor. The appellant Hemanigini is represented here by Mr. Hasan Imam and states that while she has no objection to the addition of the petitioner as a party she desires to repudiate the allegations which have been made with regard to her collusion with the respondent Hari Das.

3. I think the applicant had a right to intervene in the Probate proceedings. Even the possibility of an interest is sufficient to entitle a person to become a party to the proceedings [Crispin v. Doglioni (1860) 2 S.W. & Tr. 17 : 29 L.J.P. 130 : 3 L.T. 179 : 9 W.R. 19]. The applicant would have been entitled under the Probate Act

to apply for administration and if he would have been entitled to so apply, I see no reason why he cannot resist an application to revoke Probate. In *Kashi Chundra Deb v. Gopi Krishna Deb* 19 0. 48 : 9 Ind. Dec. 478 it was held that a mortgagee had a sufficient interest to entitle him to intervene and to be heard in opposition to an application made to withdraw the Probate. I see no reason why, if the applicant is entitled to intervene as a party to prove the Will in the lower Court, he is not so entitled to support the Will as a respondent in the Appellate Court. In *Gyanananda Asram v. Kristo Chandra Mukherji* 8 C.W.N. 404 the Court held that u/s 32, read with Section 582 of the CPC of 1882, an Appellate Court was entitled to add as respondents in appeal persons who were not parties to the original suit. In that case the grounds upon which the intervenors sought to be added were very similar to those in the case now before us, and it is alleged that the plaintiff and defendant were colluding together and that unless the intervenors were made parties, the appeal would not be properly contested and that it was necessary that the intervenors should have an opportunity of laying the case before the Court of Appeal and supporting the decree

4. It has been pointed out by Mr. Hasan Imam that Section 582 of the CPC of 1882, which corresponds to Section 107 of the present Code, does not permit the addition of respondents" although such power is allowed to an appellate Court in exercise of inherent powers u/s 151 of the present Code, and he relies upon *Dwarka Nath Biswas v. Debendra Nath Tagore* 4 C.W.N. 58. I have not been able to follow the reasoning given in the judgment of the last case, and it appears to me in conflict with the opinion expressed in the later decision of the Calcutta High Court to which I have just referred. In any event the provisions of the present CPC seem to me to be wider and to intend that all the provisions applicable to suits, including provisions for the addition of parties, shall be applicable to appeals, unless there is any express provision in the Code to the contrary or unless it is impossible otherwise. In my opinion both u/s 107 of the present Code and under its inherent powers the Appellate Court has power to add the intervenor although he was not a party to the original suit.

5. Mr. Sushil Madhab Mullick, on behalf of the executor, objects on the ground that the conduct of the appeal will be hampered but I see no force in this contention. On the contrary it is admitted that the executor is not in funds and has already had to apply to the petitioner for pecuniary assistance. His intervention, therefore, will certainly be beneficial, and as for the appellant, she will have extra security for her costs if this application is allowed.

6. We direct that the petitioner be permitted to intervene as a respondent in the appeal from this day and that necessary amendments be made upon the record.