

(1918) 01 CAL CK 0065
In the Calcutta High Court

Srimati Sushilabala Dasi

APPELLANT

Vs

Anukul Chandra Chowdhury and Others

RESPONDENT

Date of Decision : 16-01-1918

Acts Referred:

Probate and Administration Act, 1881 — Section 5

Citation : AIR 1919 Cal 506 : 44 Ind. Cas. 166

Hon'ble Judges : Shamsul-Huda, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the objector from the decision of the learned Additional District Judge of Hooghly dated the 7th October 1915. The proceedings out of which the present appeal arises related to an application by the respondents for the grant of Letters of Administration with; a copy of the Will annexed to the estate of one Kali Churn Bhur, who died at Chandernagar--the territory of the French Republic--on the 2nd January 1914. The application was for a grant having regard to the provisions of Section 5 of the Probate and Administration Act. Kali Churn Bhur died, as I have stated, on the 2nd January 1914. On the 1st January 1914, it appears from the proceedings of the Tribunal of first instance at Chandernagar that Kali Churn Bhur had sent for a notary and in his presence and in the presence of six witnesses had made what is called in the French Code a mystic Will. On the 15th January 1914, Indubhushan De, a general legatee under the Will, applied to the Court of first instance at Chandernagar to have the Will deposited. The Will was brought in the Court at Chandernagar by the notary and certain proceedings were taken before the President of the Tribunal and the President judicially recognized the Will and committed it to the care of a French notary Sadhu Churn Mukherjee, with power to give copies to the parties. That appears to have been the procedure before the French Court. The Judge in the lower Court had expert evidence before him. He had before him the notary Sadhu Churn Mukherjee who was a qualified practitioner in these matters and, according to the evidence of Sadhu Churn Mukherjee, this was a proper judicial recognition of the Will of the deceased Kali

Churn Bhur. The fact that the Will has been committed to the custody of a notary seems, so far as I can gather from the text books, to be a practice that does obtain in certain foreign Courts. It is mentioned in Mortimer on Probate and a similar case is mentioned, I understand, in Mr. Justice Henderson's book on the Indian Succession Act. The question, therefore, is does this case come within Section 5 of the Probate and Administration Act? Section 5 of the Probate and Administration Act says, "when a Will has been prayed and deposited in a Court of competent jurisdiction." It has been argued that this Will was not deposited because the words "has been deposited" mentioned in Section 5 mean continues to remain in deposit. On the other hand, it is said that the fact that the Will was deposited in Court and the Court had before it the original Will at the time it made a judicial pronouncement as to the validity of the Will under the French Law was a sufficient deposit within the meaning of Section 5. I think the latter view is correct. The section does not require that the Will should have been deposited once and remain in Court for all time. It is quite sufficient if the Will had, in fact, been deposited in a foreign Court of competent jurisdiction.

2. The next argument raised on Section 5 of the Probate and Administration Act is that the copy of the Will, which has got to be produced in the Court in British India before Letters of Administration with a copy of the Will annexed can be issued, means a copy authenticated under the seal of the foreign Court. Of course, it may be so in many cases but it is not necessarily so in all cases. The books show that copies authenticated by notaries have been accepted not only by this Court but also by the Courts of England, and the judicial process that took place when the French Court at Chandernagar reeognized the Will of Kali Churn Bhur expressly provided that Sidhu Churn Mukherjee, the notary who was a witness in this case, was the person who should give notarial copies. I think we must take it that, the Court at Chandernagar having so provided, a copy authenticated by the notarial seal of Sadhu Churn Mukherjee as provided for by the judicial process is a properly authenticated copy within the meaning of Section 5, obviously authenticated in the manner directed by the Court at Chandernagar. I think the copy in this case that was produced before the Court was one on which the Court was entitled to act u/s 5 of the Probate and Administration Act. That being so, the Court was entitled, if it thought fit, to make the grant of Letters of Administration with the Will annexed without any further evidence at all. It was a Will recognized by the French Court and the lower Court was entitled to act upon it.

3. Then it is said that this mystic Will executed, no doubt, according to the French Law is not under the terms of the law in Birtish India capable of passing certain Immovable properties that belonged to the deceased in British India. That is not a matter which we need enquire into in the present case. It is quite clear that, in any view, there are considerable assets of moveable property within the limits of British India to which a grant of Letters of Administration with a copy of the Will annexed must be made. Before the executors can get hold of these proper ties in British India, in any event, a grant of Letters of Administration

must be made to them.

4. In the result, I see no reason to differ from the conclusion arrived at by the learned Judge of the Court below. The present appeal, therefore, fails and must be dismissed with costs, Rs. 250.

Shamshul Huda, J.

5. I agree.