

Bajjnath Das vs Mahant Ramdeo Das Chela Mahant Kashi Das ... on 24 March, 1953

Equivalent citations: AIR1953ALL663, AIR 1953 ALLAHABAD 663

JUDGMENT

Malik, C.J.

1. One Kashi Das died. Ramdeo Das, claiming to be the Chela of Kashi Das, made an application under Section 192 of the Succession Act in the Court of the District Judge of Banaras and alleged that the opposite-party Bajjnath Das was threatening to take wrongful possession of the property which consisted of two houses. The applicant further alleged that the deceased had left a will in his favour. The applicant also alleged that the deceased Mahant Kashi Das had executed a will on 13-2-1908, in favour of his Chela Ram Saran Das who, in his turn, had executed another will dated 9-2-1926, in favour of Kashi Das. It was further alleged that Kashi Das also had executed a will in favour of the applicant, Ramdeo Das, before his death.

Before taking proceedings under Section 192 the learned District Judge issued notice to Bajjnath Das. Bajjnath Das filed various objections and claimed that the application under Section 192 of the Succession Act did not lie. The learned District Judge after having disposed of the preliminary points fixed 19-4-1950, for final orders. The operative portion of the order passed by him is as follows:

"The preliminary requisites having been satisfied by the production of evidence entitled the applicant to claim a preliminary order in his favour. With that end in view, I fix 19-4-1950 for the opposite party to appear and show cause."

The appellant has filed this appeal against that order and on behalf of the respondent a preliminary objection has been raised that no appeal lies.

2. Learned counsel for the appellant has, however, relied on Section 299 of Indian Succession Act and has urged that every order passed by a District Judge is appealable. Section 299 is as follows:

"Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals."

The question, therefore, is whether the order passed by the District Judge is an order passed by him by virtue of the powers conferred upon him by the Succession Act. The question has arisen in several

cases and it has been held that it is not every order passed by a District Judge that is appealable. It is only an order passed by a Judge in the exercise of the powers conferred upon him by the Act that is appealable under this section.

In -- 'Bhupendra Narain Singh v. Ashtabhuja Ratan Kuer', AIR 1932 All 379 (A) it was held that an order passed under Section 271 by a District Judge that he would entertain an application on behalf of a person, who had no fixed abode at the time of his death within his jurisdiction, was not an appealable order. Section 271 of the Succession Act gives the District Judge a discretion to refuse to entertain an application for Probate or Letters of Administration when the deceased had no fixed abode at the time of his death within his territorial jurisdiction. The learned Judge having decided to entertain the application, an appeal was filed in this Court. The learned Judges in the above case accepted the preliminary objection raised on behalf of the respondent that no appeal lay and observed that-

"In order to have a right of appeal there must be an order made by the District Judge by virtue of any of the powers conferred upon him by part 9 of the Act. 'Order' generally implies an adjudication of the rights of the parties and a direction to be carried out by them."

The same view was taken by the Bombay High Court in -- 'Fakirji Navroji v. Meherban Faredoon', AIR 1942 Bom 276 (B). The learned Judges followed the decision of this Court in -- 'Bhupendra Narain Singh v. Ashtabhuja Ratan Kuer' (A) but on the ground that the exercise of a discretion by a District Judge under Section 271 of the Succession Act to entertain and to proceed with an application for Probate or Letters of Administration was not an 'Order'. It is not necessary for us to examine in this case the authorities at any length, as we are in full agreement with the view expressed by a Bench of this Court in -- 'Bhupendra Narain Singh's case' (A).

3. Section 299 does not say that every order made by a District Judge is appealable. It limits it to orders made by a District Judge by virtue of the powers conferred upon him by the Succession Act and as has already been said in -- 'Bhupendra Narain Singh's case' (A), the order must be an adjudication of the rights of the parties and a direction to be carried out by them by virtue of any of the powers conferred upon him by the Succession Act. In the case before us all that the learned District Judge did was to fix a final date for hearing. It cannot be said that he exercised his jurisdiction under Section 192 and passed any order thereunder. Even if he did pass an order under Section 192, the appellant would have had to satisfy us that Section 209 does not apply to it. Section 209 provides that:

"The decision of a District Judge in a summary proceeding under this part (Part VII) shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review."

Learned counsel has urged that Section 209 prevents an appeal against an order settling the question, who shall remain in actual possession of the property. If, however, the order is under Part VII, in which Part Section 192 also occurs, then the decision of a District Judge in a summary

proceeding under that Part has no other legal effect than that of settling the actual possession. An order in a summary proceeding under that part is, therefore, not appealable.

4. In any view of the matter we think that the preliminary objection must prevail.

5. The appeal, therefore, fails and is dismissed with costs.