

Sm. Daljit Kaur, B.A., B.T. vs S. Tarlok Singh And Ors. on 24 March, 1953

Equivalent citations: AIR1953ALL707, AIR 1953 ALLAHABAD 707

JUDGMENT

Malik, C.J.

1. A preliminary objection has been raised by learned counsel for the respondents that this appeal does not lie. Sardar Mehar Singh, Air Commodore, died in an air-crash in the year 1952. It is said that he left considerable property and the applicant, Baljit Kuar, claiming to be his widow made an application under Section 192, Succession Act in the Court of the District Judge, Rampur. This application was filed against the father and brothers of Sardar Mehar Singh and it was said that they were wrongfully trying to take possession of the property left by the deceased. The applicant, therefore, prayed for the appointment of a curator. The learned District Judge dismissed the application on 21-4-1952 on the ground that no sufficient cause had been made out for taking proceedings under Section 192, Succession Act and the applicant was directed, if she was so minded, to file a regular suit. Against that order, this First Appeal was filed. Learned counsel for the appellant claimed that the appeal lay under Section 299, Succession Act (39 of 1925). Section 299 is to the following effect :

"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 (5 of 1908), applicable to appeals."

Section 299 is in Part IX of the Act which deals with Probate, Letters of Administration and Administration of Assets of Deceased. Section 192, however, is in Part VII which is for Protection of Property of Deceased pending final adjudication of the rights of rival claimants to the same. Sections 192 to 210 are all included in Part VII and S, 209 of the Act provides that :

"The decision of a District Judge in a summary proceeding under this Part 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 tried to distinguish Section 209 and has urged that the Court of appeal cannot interfere with an order of a District Judge settling the question of actual possession of the property, but an appeal lies from every order of a District Judge as provided for in Section 299.

2. In considering these sections one must bear in mind that the Indian Succession Act is an Act to

consolidate the law applicable to intestate and testamentary succession which was formerly dealt with by a number of Acts and which have all been now consolidated and form part of the Indian Succession Act. A list of these Acts is given in Sch. IX of the Act. Part VII has been taken in the main from an Act known as the Succession (Protection of Property) Act (19 of 1841). The object of the Act was to meet cases of unlawful possession or disturbance of possession under pretended claims of right, "nd to discountenance the employment of force and fraud. The decision by the Judge was not to be of such a nature as to supersede the necessity of a regular suit as it did not determine the title to the property. The proceedings under Part VII are summary proceedings and Section 209 makes it clear that the only effect of those proceedings would be to settle the question as to who shall remain in actual possession of the property pending decision by a competent Court. All such orders, therefore, which can come under Part VII are governed by Section 209 and are not subject to appeal or review. In -- 'Gajadhar v. Megha', AIR 1922 All 337 (3) (A), it was held that an order appointing a curator was not appealable by reason of the provisions of Section 18, Succession (Property Protection) Act (19 of 1841). Though that judgment was delivered under the old Act, the provisions of that Act have more or less been incorporated in Part VII, Succession Act (39 of 1925).

3. In our view Section 209 applies and the order passed by the District Judge is final. The preliminary objection must, therefore, prevail.

4. The appeal is dismissed with costs.