Prativa Bose vs Kumar Rupendra Deb Raikat & Ors on 10 May, 1963

Equivalent citations: 1965 AIR 540, 1964 SCR (4) 69, AIR 1965 SUPREME COURT 540

Author: A.K. Sarkar

Bench: A.K. Sarkar, S.K. Das, M. Hidayatullah, Raghubar Dayal, N. Rajagopala Ayyangar

PETITIONER:
PRATIVA BOSE

Vs.

RESPONDENT:
KUMAR RUPENDRA DEB RAIKAT & ORS.

DATE OF JUDGMENT:
10/05/1963

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
DAS, S.K.
HIDAYATULLAH, M.
DAYAL, RAGHUBAR
AYYANGAR, N. RAJAGOPALA

CITATION:
1965 AIR 540 1964 SCR (4) 69

ACT:
Succession to Estate-Proprietor dying intestate leaving a single heir-Dispute between several claimants-Suit by person out of possession-Application for taking of security from person in possession-Power of District Judge-Bengal Wills and Intestacy Regulation V of 1799 ss. 3, 4.

HEADNOTE:
The respondent had brought a suit in the court of the Sub-ordinate judge, Jalpaiguri for declaration of his title as the sole heir and successor to his father's impartible estate, which was taken possession of by his step-mother.

That suit was on transfer pending in the High Court. Two other title suits were also pending in the High Court in which certain agnates were claiming as successors. The respondent moved an application before the District Judge, Jalpaiguri for the taking of security from the appellant under s. IV of the Bengal Wills and Intestacy Regulation V of 1799. The District Judge held that the application was barred under Art. 181 of the Indian Limitation Act and that s. IV of the Regulation had no application since it applied only where the deceased had left several heirs and not one. The High Court found in favour of the respondent on both the points and directed the District Judge to take security under s. IV. Section IV of the Regulation is as follows,

> "If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the Courts of justice are restricted from interference, without a regular complaint, as in the case of a single heir; but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security, declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties; but to be considered merely as an administration to the estate for the benefit of the heirs who may on investigation be found entitled to succeed thereto."

Held (Per Hidayatullah, Dayal and Ayyangar JJ.) that the
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Regulation was a piece of restrictive legislation and its provisions should be strictly construed.
Each of the ss. II, III and IV of the Regulation, properly read and construed, was a complete code by itself and dealt with the different situations. Section II applied when the deceased died Deb leaving a will and naming an executor to manage the property, S.111 applied when the deceased died intestate leaving a single heir and s. IV applied when the deceased died intestate leaving more than one heir. The provisions of ss. III and IV were in no way inconsistent and it was not necessary to construe them together.

Cohen v. S. E. Railway, (1877) 2 E. & D. 253, held inapplicable.

The second part of s. IV which provided for taking of security did not apply to a case such as the present where the deceased died intestate leaving only one heir entitled to the entire estate. It fell within the ambit of s. III of the Regulation.

Since the courts have now ample powers under the Indian Succession Act, 1925, and the Code of Civil Procedure, these provisions of the Regulation are out of date and should be repealed.

Per S. K. Das and Sarkar JJ -Section IV of the Regulation does not require an application for taking security and the court can act suo motu. Art. 181 is confined to applications under the Code of Civil Procedure and it can have no application to the present application as it is under s. IV of the Regulation and not under the Code. An application is not under the Code because the procedure there laid down has to be followed.

Sha Mulchand & Co. Ltd. v. Jawahar Mills, Ltd. [1953] S.C.R. 351, applied.

The Court of the District judge is the proper forum where the application under s. IV can be made. In the absence of an order under s. 23 of the Bengal, Agra and Assam Civil Courts Act, 1887, the order contemplated by s. IV can be made only by a District Judge and it is not necessary that the suit mentioned in the section must be pending before him.

Kumar Punyendra Dev v. Kumar Bhairabend -a Deb. (1946) 50 C. W. N. 776, approved.

There is no reason why the Resolution should provide differently for cases of a single heir and cases of more than one heir and it does not do so. The words "if the right of succession to the estate is disputed between several claimants" in s. IV includes a case where a person dies leaving a single heir and several persons dispute each claiming to be that heir.

separated by a semi-colon they cannot deal with two different states of affairs and that the latter part' must be controlled by the former.

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Neither does the word "but" between the two parts lead to that conclusion.

The word 'heirs' in the second part of s. IV must include one heir.

Section IV of the Regulation, therefore, applied to the case and the appellant could be called upon to furnish security.

It was not correct to say that s. IV of the Regulation was impliedly repealed by ss. 192 to 195 of the Succession Act, 1925.

The High Court had Jurisdiction in revision to set aside the order of the District Judge since he had failed to exercise his jurisdiction on a misinterpretation of the statute and

erroneous view of limitation.
Joy Chand Lal Babu v. Kamalaksha Choudhury. (1949) 76 I. A. 131, applied.
But the power to take the security under s. IV of the Regulation is a discretionary power vested in the District Judge and the High Court was in error in directing him to do so.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 539 of 1960. Appeal by special leave from the judgment and order dated June 6, 1956, of the Calcutta High Court in Civil Rule No. 499 of 1955.

C. K. Daphtary, Solicitor-General of India, B. Sen, S. N. Mukherji and P. K. Bose, for the appellant. K. B. Bagchji and Sukumar Ghose, for the respondents. May 10, 1963. The Judgment of M. Hidayatullah, Raghubar Dayal and N. Rajagopala Ayyangar JJ., was delivered by Raghubar Dayal J. The separate opinion of S. K. Das and A. K. Sarkar JJ., was delivered by A. K. Sarkar J.

SARKAR J. Raja Prosanna Deb Raikat, the proprietor of the Baikundiapur Raj Estate, in the district of jalpaiguri in West Bengal, died intestate on December 4, 1946. The Raja left behind him a widow, Rani Asrumati Debi, now deceased and the appellant Prativa Bose, the daughter by her. Rani Asrumati took possession of the estate on the Raja's death. On August 7, 1947, the respondent Rupendra instituted a suit in the Court of the Subordinate Judge of jalpaiguri, against Rani Asrumati and certain other agnatic relations of the, Raj for a declaration that as the Raja is eldest son by another wife Rani Renchi, he was the sole lawful heir and entitled to the exclusive possession of the estate which was an impartible estate and governed by the rule of pri- mogeniture, and for possession and other consequential reliefs. Rani Renchi was a lady belonging to the Lepcha tribe and the respondent Rupendra alleged that the Raja had married her according to the Gandharba form. The suit was contested by Rani Asrumati and the agnatic relations who denied that there had been any marriage between the Raja and the mother of the respondent Rupendra. The suit was transferred to the High Court at Calcutta by an order made on April 12, 1949 under cl. 13 of its Letters Patent. The respondent Rupendra made an application to the High Court in that suit for appointment of a receiver but it was dismissed on July 29, 1952. There was an appeal from this order but the records do not show that it succeeded. It appears that two agnatic relations, namely, Kumar Guru Charan and Kumar Jitendra filed suits in the High Court at Calcutta each claiming title to the estate as the sole heir of the deceased Raja. All these suits are still pending. On January 5, 1954, Rani Asrumati died and thereupon the appellant Prativa Bose took possession of the estate claiming title to it. Since then she has been and still is in possession.

On March 31, 1954, the respondent Rupendra filed an application under s. 4 of the Bengal Regulation V of. 1799 in the Court of the District Judge of jalpaiguri for an order calling upon the appellant Prativa Bose to furnish security for compliance with the judgment that may be passed in the suit filed by him. The learned District judge dismissed the application on two grounds. He first held that s. 4 of the Regulation did not apply to a case where a person died intestate leaving a single

heir and the dispute was between several persons claiming to be that heir. Then he held that the application by the respondent Rupendra was barred under Art. 181 of the First Schedule to the Limitation Act.

The Respondent Rupendra moved the High Court at Calcutta in revision against the order of the learned District judge. The High Court disagreed with the learned District Judge on both the points and set aside his order and directed him to "exercise his special Jurisdiction under s. 4 of the Regulation and take sufficient security from the opposite party Prativa Bose." The present appeal is by Prativa Bose against the order of the High Court. The object of the Bengal Regulation V of 1799 appears to have been "to limit the interference of the Zila..... Courts of Diwani Adalat in the execution of wills and administration to the estate of persons dying intestate." The first section is in the nature or a preamble, and so far as relevant,sets out the object of the Regulation as earlier stated. Section 2 deals with the case of the death of a person leaving a will and appointing an executor where the heir of the deceased is not a disqualified landholder subject to the superintendence of the Court of Wards. It states that the executor is to take charge of the estate without any application to the Judge of the Diwani Adalat or any other officer of the Government and it prohibits the courts of Justice from interfering in such cases except on a regular complaint against the executor. Sections 3, 4 and 5 (the last so far as material only) are in these terms :

S. 3 In case of a Hindu, Mussalman or other person subject to the jurisdiction of the Zila Courts dying intestate, but leaving a son or other heir, who, by the laws of the country, may be entitled to succeed to the whole estate of the deceased, such heir, if of age and competent tO take the possession and management of the estate, or, if under age or incompetent and not under the superintendence or the Court of Wards, his guardian or nearest of -kin who, by special appointment or by the law and usage of the country, may be authorised to act for him, is not required to apply to the Courts of justice for permission to take possession of the estate of the deceased as far as the same can be done without violence; and the Courts of justice are restricted from interference in such cases, except a regular complaint be preferred.

S. 4 If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the Courts of justice are restricted from interference, without a 6-2 S. C. India/64 regular complaint, as, in the case of a, single heir; but If the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the judge, on a regular suit being preferred by the party out of possession'. shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit; or, in default of such-

security being given within a reasonable period, may give possession, until, the suit may be, determined, to the other claimant or claim ants Who may be able to give such security,, declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties ; but to be considered merely as an administration to the estate for the benefit of the heirs who may on investigation be found entitled to succeed thereto.

S. 5 In the event of none. of the claimants of the estate of a person dying intestate being able to give the security required by the preceding section, and in all cases wherein there may be no person authorised and willing to take charge of the landed estate of a person deceased, the Judge within whose Jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdiction is authorised to appoint an administrator for the due care and management of such estate....."

Section 6 provides for taking of security from the administrator appointed under s. 5 and for granting of allowance to him. Section 7 states that the judges of the Zila Court on receiving information that any person within their respective Jurisdiction has died intestate leaving personal property of which there is no claimant are to adopt measures for the temporary care of the property as mentioned in the section. Section 8, which is the last section of the Regulation, provides that nothing in the Regulation is to limit or alter the Jurisdiction of the Court of Wards in certain matters.

Mr. Sen appearing for the appellant canvassed a number of points including the two which were decided in favour of his client by the trial Court. We shall first take up the question of limitation. It does not seem to us that the question really arises. Article 181 of the Limitation Act, 19.08, prescribes the time within which certain applications can be made. Section 4, however, does not require any application before an order calling upon a person to furnish security can be made under it. The section does not mention any application and it seems to us that it was intended that the Court should act suo motu. Indeed the Regulation no where requires an application for making any of the orders for which it provides. Article 181 would have no :operation where no application is required to enable a court to make an order: see The Oriental Bank Corporation v. J. A. Charriol(1) and Sohan v. Khalak Singh (2 The present case cannot, therefore, be decided on the ground that the application by the respondent Rupendra had been made beyond the time prescribed by Art. 181.

It also seems to us that Art. 181 of the Limitation Act is inapplicable to the present case for another reason. We will now assume that s. 4 of the Regulation requires an application to the Judge before the order mentioned in it can be made. Now Art. 181 deals with "applications for which no period of limitation is provided" either in the Limitation Act or s. 48 of the Code of Civil Procedure. The preponderating view adopted by the High Courts in regard to this article and its corresponding provision in the earlier Limitation Act of 1877 is that applications mentioned in them are applications under the Code of Civil Procedure only. The reason for this view is that as the article is in general terms, it must be construed ejusdem generis and so construed it must be applicable only to applications under the Code for all the other articles in the Act providing periods of limitation for applications deal with application under the Code. It is however said that the Act was amended in 1948 and now there are two articles, namely, Arts. 158 and 178 which deal with applications under the Arbitration Act and licence, since the amendment, it cannot be said that all other articles in the Act deal with applications under the Code. It is, therefore, contended that Art.

(1) (1886) I.L.R. 12 Cal. 642, 650. (2) (1891) I.L.R. 13 All. 78.

181 can no more be construed ejusdem -generis and confined to applications under the Code.

We are unable to accept this contention and think that the view expressed by Das J., in She Mulchand & C, o. Ltd. V. Jawahar Mills Ltd (1) puts the matter correctly. The learned judge said, "It does not appear to us quite convincing without further argument, that the mere amendment of articles 158 and 178 can ipso facto alter the meaning which, as a result of a Ion, series of Judicial decisions of the different High Courts in India, came to be attached to the language used in article 181. This long catenation of decisions may well be said to have, ,is it were. added the words 'under the Code' in the first column of that article. If those words had actually been used articles 158 and 178 certainly would not have affected the meaning of that article. If, however, as a result of 'Judicial con- struction, those words have come to be read into the first column as if those words actually occurred therein, we are not of opinion, as at present advised, that the subsequent amendment of -articles 158 and 178 must necessarily and automatically have the effect of altering the long acquired meaning of article 181 on the sole and simple ground that after the amendment the reason on which the old construction was founded is no longer available." We respectfully agree with these observations and feel no doubt that even now Art. 181 has to be read is confined to applications under the Code.

It was then said that the application which the respondent Rupendra made was under the Code because in view of s. 141 of the Code the procedure prescribed by the Code has to be followed in dealing with an application made under s. 4 of the Regulation. This is obviously fallacious. The question is not whether the procedure for an application is that prescribed by the Code but whether the application was under

> Code. The application by the respondent Rupendra was not under the Code in any sense. The Regulation had been in existence before the Civil Procedure Codes had been enacted. We, therefore, think that even if s. 4 of the Regulation required an application, Art. 181 of the Limitation Act would not apply to such application.
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> (1) [1953] S.C.R. 351, 371.

The next question is whether the order could only be made by the court where the suit mentioned in s. 4 of the Regulation was pending. The High Court at Calcutta held in Kumar Punyendra Narain Deb v. Kumar Bharabendra Narayan Deb(1) that the order could be made by a District Judge even though the suit mentioned was not pending before him. We think that this is the correct view. All that s. 4 says is that "the Judge on a regular suit being preferred shall take good and sufficient security" There nothing to show that the "Judge" referred to is the judge before whom the suit is pending though no doubt there will be no power to make an order requiring security under the section before the suit mentioned in it has been filed. From the summary of the Regulation that we have earlier given we are inclined to think that the judge referred to is the Judge of the Zila Court whose powers of interference in the administration of the estate of a deceased person are intended to be res- tricted by the Regulation. The Zila Courts have no doubt been long abolished. Their place was taken up by Courts of District Judges constituted by the Bengal Civil Courts Act, 1871, section 12 of which provided that "the present judges of the Zillah Courts, Additional Judges, Subordinate

Judges and Munsifs shall be deemed to have been duly appointed to the office the duties of which they have respectively discharged and shall be the first District Judges, Additional Judges, Subordinate Judges and Munsifs named under this Act." The Act of 1871 was replaced in its turn by the Bengal, Agra and Assam Civil Courts Act, 1887 which provided that "All Courts constituted, appointments made under the Bengal Civil Courts Act, 1871 or any enactment thereby repealed.... shall be deemed to have been respectively constituted, made under this Act." It would appear, therefore, that the words "Judge" and "Zila Courts"

> in the Regulation have now to be understood as referring respectively to District Judges and District Courts appointed and constituted under the Act of 1887. Section 23 of the Act of 1887 provides that the High Court may by order authorise any Subordinate judge to take cognizance of a proceeding under the Bengal (1946) 50 C.W.N. 776.

Regulation v of 1799. It would thus appear 'that a Sub- ordinate judge would have jurisdiction to take cognizance of proceedings under Regulation V of 1799 only if the High Court conferred such jurisdiction on him by an order made for the purpose and no Subordinate judge world have such jurisdiction without such order even though the suit might be pending before him. It is, therefore, clear that in the absence of an order under s. 23 of the Act of 1887, the order contemplated by s. 4 of the Regulation can be made only by a District Judge. It cannot hence be said that the District Judge of Jalpaiguri had no Jurisdiction to act under s. 4 of the Regulation in the present case at all. We turn now to the question concerning the correct interpretation of s. 4 of the Regulation. It is said on behalf of the appellant that s. 4 applies to a case where "there be more heirs than one". In such a case only the Court has the power to demand security. A case like the present, where a person dies leaving a single heir is governed by s. 3 only and as that section does not provide for any security being demanded, the appellant cannot be called upon to furnish security.

We are unable to accept this contention. We find no reason why the Regulation should have provided differently for cases of a single heir and cases of more than one heir and we do not think it did so. It is no doubt true that s. 4 commences with the words "if there be more heirs than one"

> and provides that in such a case the heirs, if they agree, can take possession and Courts are not to interfere except upon a complaint being preferred. It is not clear what the complaint contemplated is. It may be said that complaint is not one arising out of a dispute between the heirs, for this part of the section directs the Courts not to interfere except upon a complaint, when the heirs are agreed among themselves ; if the heirs are agreed, then the complaint is not likely to be out of a dispute between them. However this may be, the section go on to say after a semi-colon, "but if the right of succession to the estate be disputed between several claimants" and one or more take possession and the party out of possession files a suit, then the Court shall call upon the party in possession to furnish security. It seems to us that the words "if the right of succession to the estate be disputed between serval claimants", taken 'by themselves, clearly include a case where a person dies leaving a single heir and several

-persons dispute each claiming to be that heir. This s to us to be beyond all dispute. That being so, it would 'follow that in such a case also, the Court may demand security from the party in possession. The learned District Judge thought that as the opening words of the section dealt with a case of more heirs than one, the words "the right of succession to the estate be disputed between several claimants" which are separated from the opening words by a semi-colon must be read as governed by the opening words, and therefore, as confined to a dispute between several claimants in a case where there arc more than one heir. We are not aware of any rule which says that two parts of a sentence separated by semicolon cannot deal wit) two different states of affairs. We find no justification in such a case for refusing to give to the words used their plain meaning and to read them as controlled by the preceding words because they are separated by a semicolon. Neither do we think that the word "but" after the semi-colon shows that what follows it must contemplate the case dealt by the words preceding it. We think that word "but" was used to distinguish between two cases, in one of which the Court was directed not to interfere and in the other to interfere in one way, namely, by demanding a security. The use of the word "but" does not lead to the conclusion that the cases so distinguished must otherwise be the same. The word may be appropriately used to indicate that in one set of acts the Court is not to interfere without a complaint and The another it may do so. The learned District judge also though that the use of. the word "heirs" in plural in the. expression "for the benefit of the heirs who may on investigation be found entitled to succeed" occurring at the end of the section showed that security could be demanded only where a person had died leaving two or more heirs. We think, the learned District judge was clearly wrong in this. As the High Court pointed out, the plural must include a singular.

It was also said that s. 3 deals with a case where a person dies leaving a single heir and covers the dispute between several persons each claiming to be the sole heir. It was contended that as this section does not provide for demanding of security when one of the disputing claimants has peacefully got possession and the other or others have filed a suit, s. 4 cannot be applied to this case for the purpose of demanding security. Assuming that the interpretation put upon s. 3 is right., is to which we do not think it necessary to express any view, we are unable to see why if s. 4 also deals with a case of a dispute between several persons each claiming to be the sole heir Which if what we have said before is right, it does -- its operation should be excluded in a case covered by s. 3. of course, if on its own words it can be said that s.4 does not apply to the case of a person leaving a single heir, no further question arises. On the other hand, if it applies to such a case then there is no reason to say that it does not so apply simply because s.3 also applies to such a case. We find no difficulty in applying both the sections to the case of a single heir. If there is no dispute, s. 4 has no operation in so far as demand of security ill, concerned. If there is dispute, the Courts can Interfere under s. 3 on a complaint being filed and they can also demand security when one is in possession and the other or others ire out of Possession and have filled a suit or suits, We agree with the High Court that s. 4 applied to this case and the

appellant could be called upon to furnish security. We have some doubt if s. 3, is intended to apply to the case of several persons each claiming, to be the single heir of an intestate but we have issued it to apply to such a case. Then it was said that ss. 192-195 of the Succession Act, 1925 impliedly repeated s. 4 of the Regulation. These sections of the Succession Act no doubt Act no doubt deal with a summary decision of a disputed right to possession on Succession. But they are not identical with s. 4 of Regulation. Section 4 doesn't apply unless there is a suit. The provisions of the Succession Act apply when there is no suit. Under the later Act a party in possession may be dispossessed if the judge thinks he has no right while under the Regulation he cannot be dispossessed if he furnishes the security required of him. There are other differences between the two. They are further in no sense in conflict with each other. We do not think, therefore, that the later Act can be said to have repeated the earlier impliedly. Lastly it is said that the High Court should not have interfered in revision as the trial Court had neither exceeded nor refused to exercise its Jurisdiction. It seems to us that this contention is ill founded. It is beyond dispute that "if the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law or failing to exercise a jurisdiction so vested, a case for revision arises": Joy Chand Cal Babel v. Kamalaksha Chaudhury(1). This principle fully applies to the present case. 'the trial Court erroneously held-that is erroneously in the view of the High Court a view with which we agree- that properly interpreted s. 4 did not apply to the present case, and also that the application by respondent Rupendra was barred by limitation and on these grounds refused to exercise jurisdiction under s. 4 of the Regulation. The High Court was, therefore, fully justified in setting aside the order of the learned District Judge in exercise of its revisional jurisdiction.

We have now dealt with all the objections to the appli- cability of s. 4 of the Regulation to the present case raised by learned counsel for the appellant. We have not been able to accept any of them. The question however whether it is obligatory upon the District Judge in a case to which s. 4 applies to take security from the party in possession, has caused us some anxiety. The High Court thought that it was and so did the trial Court. Having given the matter our best thought we are inclined to take the opposite view. We think the section leaves it to the District Judge to ask for security if in all the circumstances of the case he thinks that is the proper order to make. He has a discretion in the matter and is not obliged as soon as a case comes under the section, to demand the security.

No doubt the section says "the judge..... shall take.... security." Prima facie the words, appear to impose an obligatory duty on the Judge. But the context may indicate a different intention: see State of U.P. v. Manbodhan Lal Srivastava('). We think the context in the present case does so. It certainly does seem to us very strange that a person in possession of property claiming to be an heir should be required by a statute to give security imply because some other person claims to be entitled to (1) (1949) 76 I.A. 131.

(2) [1958] S.C.R. 533.

it as the heir, no matter whether or not the latters claim has the slightest foundation. An intention leading to such a situation should not be easily ascribed to a legislature. It does not seem to us that such could have been the inten- tion of the present statute. There -are several considera- tions, apart from the absurdity of the situation, which lead us to that view.

The first consideration which we wish to notice is the fact which we have earlier noticed, that under the section, the judge is to call for security suo Motu.. Of course, the Judge cannot call for security unless the facts entitling him to do so exist. It is obvious that in most cases the Judge would have no knowledge of these facts. He would thus be unable to act suo motu in a very large number of cases. It seems to us that it could not have been intended to cast an obligatory duty on the Judge when in a large number of cases it would be impossible for him to discharge that duty for want of knowledge of the necessary facts. Next, we wish to point out that the whole object of the Regulation is to restrict the interference of Courts in the matter of succession. Section 4 in so far as it enables a Court to demand security is an instance where die restriction is relaxed and a Court is permitted to interfere in the manner provided, that is, by demanding security from the party in possession as an heir. There can be no doubt that the interference by the Court which the Regulation was intended to restrict was discretionary with the Court. It would seem to follow that the interference which s. 4 per- mitted should also be discretionary.

Then we wish to observe that ss. 4 and 5 read together lay down three successive stages in connection with the demand of security. In the first stage s. 4 provides that the judge shall take security from the party in possession of property. That section also provides that if that party fails to give the security, the judge may give possession of the property to the other claimant or claimants who may be able to give such security. This is the second stage. The third stage is provided for in s. 5. That stage is where none of the claimants to the property, that is, neither the one in possession nor those out of possession, is able to give the security. In such a case the Judge is authorised to appoint an administrator of the property for its care and management until the suit mentioned in s. 4 is determined. Quite clearly the power which is given to the judge in the second and third stages is a discretionary power. The words used are in one case "may" and in the other "is authorised"

> both of which confer a discretionary power. It cannot be said that these words notwithstanding their form impose an obligatory duty for they confer power to protect the right of a party. We say this because the section does not proceed on the basis that the party out of possession has any right but only on the basis of the existence of a dispute no matter however unmeritorious. It 'Seems that if the power that the Judge has in the second and third stages, is only discretionary it can hardly be that the power given to him in the first stage is obligatory. It could not be that the section obliged the judge to take security from the claimant in possession, while if lie did not furnish the security it was optional for the Judge to put the rival claimant in possession or to appoint an administrator to take possession. It seems to us that since the power exercisable in the second and third stages is a discretionary power, the power exercisable in the first stage must also be of the same nature.

In our view, therefore, the High Court was in error in directing the District Judge to "take sufficient security from the opposite party Prativa Bose", the appellant before us. We think the proper course would be to send the case back to the District Judge to decide in his discretion whether he considers it a fit case for calling upon the appellant to furnish security and if he thinks it is, to take the security. It was contended on behalf of the appellant that in view of the order of the High Court refusing the application of the respondent Rupendra for the appointment of a receiver, the District Judge cannot in the exercise of his discretion call upon the appellant to furnish security. We do not think that the decision in the application for the receiver concludes the matter finally, for that decision proceeds on findings which were in their nature only prima faci. The learned District Judge in deciding he there to demand security or not will no doubt give due consideration to everything properly placed before him including the findings in the application for appointment of receiver and make his own order after such conside- ration.

We, therefore, direct that the case be sent back to the District judge of jalpaiguri to decide whether he would in the circumstances of this case call upon the appellant to furnish security and make an order accordingly. The costs in this matter in all the Courts so far incurred and to be incurred before the District Judge under this order, will be costs in the suit.

RAGHUBAR DAYAL J.-This Appeal, by. special leave, is directed against the judgment of the High Court of Calcutta, and rises in the following circumstances. Raja Prasanna Deb Rajkot, the Raja of the impartible estate known as 'the Baikunthapur Raj Estate', died intestate on December 4, 1946, leaving considerable properties, immovable and movable. Ashrumati, the widow, claiming as the sole heir, took possession of the property, except the southern block of the palace at jalpaiguri and a small quantity of land attached to the palace. On October 31, 1947, she got mutation of her name over the property despite applications for mutation- by three other persons. Kumar Rupendra Narayan instituted a title suit, Suit No. 40 of 1947, in the Court of the Subordinate Judge; Jalpaiguri, on August 7,; 1947, against Ashrumati and other claimants for the declaration of his title as the sole heir of and successor to his father Raja Prasanna Deb Rajkat and for the recovery of possession of the estate left by the Raja. According to him, the Raja left three sons Kumar Rupendra Deb Rajkot and his younger brothers Kumar Shiba Prasad Deb and Kumar Deba Prasad Deb, a daughter Prativa Bose and two widows Ashrumati, mother of Prativa Bose and Renchi Devi, mother of the three sons. The suit was transferred to the High Court under cl. 13 of the Letters Patent, 1865, and was numbered as Extraordinary Suit No. 2 of 1948. Two other title suits No. 2347 of 1950 and 3619 of 1951 were also filed in the High Court in its Original Civil jurisdiction by Guru Charan Deb and jitendra Deb. In July 1952, applications for the .appointment of a receiver and injunction order were re- jected by the High Court. On Ashrumati's death on January 5, 1954, Prativa Bose was substituted in her place in these suits.

On March 31, 1954, Kumar Rupendra Deb applied 'to the District Judge of jalpaiguri, praying that good and sufficient security be taken from Prativa Bose under the provisions of s. IV of the Bengal Wills & Intestacy Regu- lation V of 1799, hereinafter called the Regulation. This application was opposed on grounds that it was presented after the expiry of the period of limitation, that the provisions of s. IV of the Regulation did not apply to a case where a single heir had been left by the deceased, that the application was barred by the principle of waiver and that the District judge had no jurisdiction to entertain it as the suit was at the time pending in the High Court. The District judge held that the application was barred by time in view of the provisions of Art. 181 of the Schedule to. the Indian Limitation Act and that the provisions of s. IV of the Regulation applied only to cases where the deceased had left several heirs and therefore dismissed the application.

Kumar Rupendra Deb went in revision to the High Court. The High Court found in his favour on both the -questions regarding limitation and regarding the applicability of the provisions of s. IV of the Regulation to the facts of the case, and accordingly, allowed the revision application and ordered that the District Judge should exercise his special jurisdiction under s. IV of the Regulation and take sufficient security from the opposite party viz.Prativa Bose. It is against this order that this appeal has been presented by Prativa Bose after obtaining special leave from this Court..

Learned counsel for the appellant has urged the following points:

1. Section III and not s. IV of the Regulation applies to the facts of the case.

2. The application for the taking of security from the party in possession is made in the suit and, consequently it is the Court where the suit is pending which has the jurisdiction to entertain that application.

3. The application is barred by the principles analogous to res judicata on the ground that the High Court has already gone into the question of the interim protection of the estate.'

4. If such an application be considered to be an inde-

pendent application and not an application in the suit, it is barred by limitation under the provisions of Art. 181 of the First Schedule to the Limitation Act.

5.The Regulation is impliedly repealed by the provisions of the Code of Civil Procedure and the Indian Succession Act, 1925.

6.The High Court had no jurisdiction to entertain a revision against the order of the District Judge rejecting the application praying for the demand of security from Ashrumati Devi and therefore could not interfere with that order.

Before dealing with these points, we would like to refer to the relevant provisions of the Regulation. Its sections III and IV, as they stood originally, are set out below "Ill. In case of a Hindoo, Mussulman, or other person subject to the Jurisdiction of the Zillah or City Courts, dying intestate, but leaving a son or other heir, who by the laws of the country may be entitled to succeed to the whole estate of the deceased such heir, if of age and competent to take tile possession and management of the estate, or if under age or incompetent, and not under the superintendence of the Court of Wards, its guardian, or nearest of kin, who by special appointment or by the law and usage of the country may be authorised to act for him, is not required to apply to the Courts of justice for permission to take possession of the estate of the deceased as far as the same can be done without violence ; and the courts of 'Justice are restricted from interference in such cases, except a regular complaint be preferred, when they are to proceed thereupon according to the general Regulations.

IV.If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the courts of justice are restricted from interference, without a regular complaint, as in the case of a single heir ; but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit or in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security, declaring at the same time, that such possession is not in any degree to affect the right of property at issue between the parties, but to be considered merely as an administration to the estate for the benefit of the heirs, who may, on investigation, be found entitled to succeed thereto."

Certain portions of s. III were repealed by Act XL ,of 1858 and Act XVI of 1874 in matters which do not affect the question before us. In 1903, the expression ' when they are to proceed thereupon according to the general Regulations' was repealed. This does not make much difference as thereafter the complaint was to be proceeded with according to the procedure laid down in the Code of Civil Procedure for the trial of suits.

Aslirumati claims title to the estate as the sole heir of the deceased Raja. Kumar Rupendra Narayan, the plaintiff in the title suit, also claims title to the property as the sole heir of the Raja. Each other claimant to the title, claims as sole heir. In the circumstances, the contention for the appellant is that it is s. III which is applicable to the facts of this case and not s. IV.There is no dispute that the former deals with a case where a single heir is entitled to succeed to the whole estate of the deceased and the latter deals with a case when there be more heirs than one to the estate of the person dying intestate. It is the later part of s. IV which provides for the judge, on a regular suit being preferred by the party out of possession, to take security from the party or parties in possession of the estate.The real contention therefore is that the judge can exercise this power only when there be more heirs than one to the estate and there be a dispute about the right of succession and that this provision cannot apply to the case falling under s. III where the dispute, if any, is between the rival claimants to the entire property on the ground that each of them is entitled to the entire estate as the sole heir. The High Court considered the contention and did not accept it, as it did not see any good reason

why the legislating authority should have made any distinction between cases of disputes arising where a person had died intestate leaving a single heir and where the person died intestate leaving several heirs, as the words used in the two sections did not indicate any such intention, as ss. III and IV (first part) do not contemplate cases of dispute about succession and as the fact that the provision about taking of security 'appears in the later part of s. IV, was no reason to limit the ap- plicability of that provision to what had gone before in that very section. In support of the last view, reliance was placed on the observations of Mellish L. J., in Cohen v. S.E. Railway.(').

To appreciate the contention for the appellant, it is necessary to consider the entire object of making the Re- gulation. The title of the Regulation states :

> "A Regulation to limit the interference of the Zillah and City Courts of Dewanny Adawlut in the execution of wills and administration to the estates of persons dying intestate."

The reason for limiting such interference is given in s. 1 which indicates that the Regulation was passed to remove doubts which were entertained,with respect to the extent up to which and the manner in which the judges of the Zillah and City Courts of Dewanny Adawlut in the provinces of Bengal, Behar, Orissa and Benares, were authorised to interfere in cases where the inhabitants of those provinces had left wills at their decease and appointed executors. to carry the same into effect or who died intestate leaving an estate, real or personal, and also to -apply to those cases as far as possible the principle prescribed in section XV of Regulation IV of 1793 to the effect that in suits regarding succession and inheritance the Mahomedan laws with respect to Mahomendans and the Hindoo laws with regard to Hindoos be the general rules for the guidance of the judges. It appears therefore that prior to the passing of this regulation, these Courts (1877) 2 E & D. 253, 260.

did interfere with such cases and it was to limit and define those powers of interference that the Regulation was passed. The Regulation, therefore, should be construed strictly as a piece of restrictive legislation.

It also appears necessary to have an idea of what sort of interference was being made by these Courts. We have not been referred to anything in particular in this connection. Section 11 provides that executors appointed under the will of the deceased can take charge of the estate and proceed in the execution of their trust without any application to the judge of the Dewanny Adalat or any other officer of Government for his sanction. This gives some idea about the part used to be played by executive officers in this regard. Some reference to the procedure adopted in the time of the Indian rulers for investing the successor of a landholder is found in Mr. Shore's Minute on the rights of zamindars and talookdars, recorded in the proceedings of Government in the Revenue Department dated April 2, 1788, printed at p. 228 of Elemetitary Analysis of the Laws and Regulations (enacted by the Governor-General in Council)' by Harington, Volume 111. The actual procedure on investing the landholder is given in appendix No. 9 to this note, printed at p. 275 of the same volume. An extract from the first paragraph quoted below, indicates that the heir of the deceased zamindar had to get the permission of the State authorities before assuming the management of the affairs of the zamindary :

Upon the demise of a zamindar, his heir or heiress transmitted an account of the event, in a petition to the dewan of the soobah, and the roy-royan ; or if landholders of the first rank, to the soobahdar himself ; with letters to all the principal men of the court, soliciting their protection. To an heir, or heiress who paid a large revenue to the state, the soobahdar returned answers of condolence accompanied with an honorary dress to the former and with a present of shawls to the latter. Letters to a similar purport were transmitted by the dewan and the roy-royan. After performing the funeral rites of the deceased, the heir, if of age, was presented to the soobahdar by the dewan and the roy-

royan; and after receiving the beetel 7-2 S C India/64 leaf, and an honorary dress, was permitted to assume the management of the affairs of his zamindary."

Harington described the zamindar to be a landholder. of a peculiar. description, not definable by any single term and said that he was allowed to succeed to the zamindary by inheritance and yet, in general, required to take out a renewal of his title from the sovereign or his repre- sentative on payment of a peshkush, or fine of investiture to the emperor, and a nuzranah or present to his provincial delegates the Nazim. This is said in the remarks submitted by him to Lord Comwallis in 1799 on Mr. Law's plan of settlement, and has been quoted at p. 400. At p. 287 is given the form of the munchalka which the heir accepted by the State had to execute. Appendix 10 at p. 289 gives a sand which used to be issued to the zamindar. These various steps appear to be taken in the Mughal period in view of the theory that the sovereign ruler was the sole virtual proprietor of the soil.

It might have been that when the East India Company got sovereignty over these provinces or parts thereof, heirs of zamindars and possibly of other men of property, might have approached courts as well either for obtaining such permission or for interference with the person who had taken possession on the basis of such permission from some officer of the company. Regulation V of 1799 was passed to provide that the Courts were not to interfere in these matters on considerations of general administrative convenience, but could interfere only judicially when they were moved for adjudicating the title of the disputants to succession to the estate.

Section 11, as already stated, provided for the executors to take charge of the estate of the deceased who had left a wilt and thereby appointed executors to carry it into effect and further provided :

"and the courts of justice are prohibited to interfere in such cases except on a regular complaint against the executors for a breach of trust or otherwise, when they are to take cognizance of such complaint in common with all others of a civil nature, under the gene- ral rule contained in Section VIII, of Regulation 111, 1793 and proceed thereupon according to the Regulations, taking the opinion of their law officers upon any legal exception to the executors, as well as upon the provision to be made for the

> administration of the estate in the event of the appointed executor being set aside, and generally upon all points of law that may occur; with respect to which the judge is to be guided by the law of the parties as expounded by Ms law officers, subject to any modifications enacted by the Governor-General in Council, in the form prescribed by Regulation XLI, 1793."

Similarly, s. III provided that when the deceased died intestate, leaving a son or other heir, who by the laws of the country be entitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, was not required to apply to the courts of justice for permission, and could take possession without obtaining the permission from the Courts of justice, if it could be done without violence. It enjoined upon the courts of justice not to interfere in such cases except when a regular complaint be preferred and then too they were to proceed according to the general Regulations till 1903. 'Thereafter the proceedings were governed by the Civil Procedure Code. This meant that the person who claimed to be so entitled, could take possession without obtaining a any permission, if he could do so without violence and that his rival claimant, if any, had to move the courts by means of a regular complaint and that it was then that the courts of justice would consider the dispute between the person who had taken possession and the other claimants. It laid down the entire procedure which the courts of Justice were to follow in dealing with the disputes between claimants, each claiming succession to the entire estate. It is a complete code of procedure in that regard.

Similarly, s. IV is a complete code with respect to the case in which the deceased died intestate and left more heirs than one. If those heirs agreed amongst themselves in the appointment of a common manager, that is to say, agreed to the common management of the estate which remained undivided and to one person managing the entire estate, they were at liberty, in view of the first part of the section, to take possession of the estate and the courts of justice were prohibited from any interference without a regular complaint as in the case of a single heir. The provisions of Regulation XI of 1793 also throw some light with respect to the provisions of the first part of s. IV of Regulation V of 1799. This Regulation was made for removing certain restrictions on the operation of Hindu and Mahomadan Law with reference to inheritance of landed property subject to the payment of revenue to Government. Section 11 provides that if any zamindar, independent talukdar or other actual proprietor of land shall die without a will or without having declared by a writing or verbally to whom and in what manner his or her landed property is to devolve after his or her demise, and shall leave two or more heirs, who, by the Mahomadan or Hindu law may be respectively entitled to succeed to a portion of the landed property of the deceased, such persons shall succeed to the shares to which they may be so entitled. The Regulation does not deal with the case of a deceased dying intestate leaving a single heir as there was nothing to provide with respect to the extent of the estate he is to succeed. He succeeded to the entire estate. Section III provides that in the cases referred to in s. 11, the several persons succeeding to the estate would be at liberty, if they so preferred, to hold the property as a joint undivided estate and that if some or all of them desired to have separate possession of their respective shares, a division of the estate was to be made in the maner laid down in Regulation XXV of 1793, and that if there be more than two sharers and any two or more of them be desirous of holding their shares as a joint undivided estate, they would be permitted to get their shares united. Thus, it would be seen that this section covers the case of persons who would like to

have their shares continue as a joint undivided estate and also of those who would like to have their shares separate. Section IV then provides that in the case of those who would like to hold the property as a joint undivided estate, a manager for their joint estate was to be appointed under the rules contained in ss. XXIII to XXVI of Regulation VIII of 1793. Thus the provisions for a common manager of persons holding their estate as a joint undivi-

ded estate is made in this Regulation XI of 1793. The first part of s. IV of Regulation V of 1799 is in consonance with this provision as it provides that if the heirs who are more than one, in principle agree to have a common manager, they require no permission for taking possession of the property. When a complaint is made by any one of the heirs or persons claiming to be heirs on account of the disagreement among them to act unitedly through a common manager, the Court has to deal with the dispute according to the general Regulations prescribing the procedure to be followed by Courts, just as the Courts had to do in the case coming under s. 111, when the deceased had left a single heir. In addition to the procedure so provided under the general Regulations, one special provision was further made for the Courts to follow when the Court was moved for settling the disputes between several claimants to the estate and that special procedure is that on a regular suit being preferred, the Court is to take good and sufficient security from the party in possession for his complying with the judgment that be passed in the suit.

It may appear rather extraordinary that on the mere institution of a regular suit, the court should invariably call upon the defendant in possession of the property to furnish sufficient security for his complying with the eventual judgment in the suit. It might have been necessary in those days, as we find that it was considered necessary then for the defendant to furnish security for his appearance in court if he did not accompany the officer serving the summons for his appearing in person before the court. Section V of Regulation IV of 1793 provided that the Court was to issue a summons to the defendent requiring him either to accompany the officer deputed to serve the summons to appear in person before the Court or to deliver to such officer good and sufficient security to appear and answer upon complaint on the day appointed either in person or by vakil. Order XXXVIII of the present Code of Civil Procedure provides for demanding security for appearance in court and for the purpose of securing compliance with the judgment in certain specified circumstances only.

Sections III and IV, thus cover the entire possibilities about the heirs of the deceased. The former deals when there be only one heir and the latter when there be more heirs than one. The reason for the special provision in the second part of s. IV and for a distinction being made in the procedure to be followed in the two cases, lies in the fact that when there be more heirs than one and they are not in agreement about common management of the entire estate, they are not permitted by the provisions of s. IV to take possession of the estate singly or by some of them jointly. An agreement about it all the claimants being heirs and about their respective shares, in the absence of an agreement about common management, does not entitle them to take possession of the estate. In case of disagreement about common management, the original procedure, whatever it might have been under the law prevalent prior to the passing of this Regulation, applied. They had to take permission, be it of some executive officer or of the court of justice. For such cases, this Regulation V of 1799 made no provision. It is only when such a dispute between the various claimants is brought before the court that it gets seized of the mat- ter and, on a regular suit being preferred, the first step

it had to take suo motu was to take good and sufficient security from the party in possession who had obviously taken possession in defiance of the provisions of the first part of s. IV. On the other hand, in the case of the de- ceased leaving a single heir, s. III permits the heir to take possession of the estate peacefully and he takes possession lawfully. Any rival claimant, challenging his title to the property has therefore to establish his case in the court of law according to the procedure laid down. The reason for the special provision in the latter part of s. IV is therefore that one or more claimants to the estate take possession not in accordance with law but against the provision of law. It would have been unreasonable for the legislature to provide in s. III that the person claiming to be the single heir of the deceased, dying intestate, and taking possession of the estate in accordance with the provisions of that section, be called upon to furnish security and in case of default to run the risk of making over possession to another claimant disput-

ing his title to the entire estate. It would be equally un- reasonable if the second part of s. IV be so construed as to make the peaceful possession of a person claiming title to the entire estate as a single heir in jeopardy merely because another person disputes his right. We make it clear here that the word 'complaint' used in this Regulation really refers to what we at present call a plaint in a civil suit. Regulation III of 1793 defined the jurisdiction of courts of Dewanny Adawlut established in the zillahs and the cities specified in s. II of that Regulation for the trial of civil suits in the first instance. This is clear from s. 1. Section III provides that each zillah and city court was to be superintended by one judge alone. These courts were empowered by s. VIII to take cognizance of all suits and complaint respecting, Inter alia, the succession or right to real or personal property. Section XVIII- prohibits these courts from taking cognizance of any matter of a criminal nature except proceedings for contempt and perjuries committed in court. Section XIV uses the word 'complaint' with reference to one whom we now call a 'plaintiff'. These provisions indicate that 'complaint' in the Regulations refers to a plaint and not to what we now call a complaint in a criminal case. This is further made clear by the provisions of s. 2 of Regulation IV of 1793 which deals with the procedure to be followed in regard to the receipt, trial and decision of suits or complaints cognizable in the courts of Dewanny Adawlut established in the various zillahs. Section II provides that no complaint is to be received but from the plaintiff nor any answer to a complaint but from a defendant or their respective vakils duly empowered.

We arc therefore of opinion that each of the sections 11, III and IV of Regulation V of 1799 is a complete code for dealing with different situations. Section 11 deals with the case when the deceased dies leaving a will under which an executor is appointed to manage the property. Section III deals with the case when the deceased dies intestate leaving a single heir and s. IV to cases when the deceased dies intestate leaving more than one heir. This view finds support from the fact that when extending the provisions of this Regulation to other Provinces all the three sections viz., II, 111 and IV have not been invariably extended. Only ss. IV, V, VI and VII and not ss. 11 and III were extended to the Central Pro- vinces by the Central Provinces Laws Act XX of 1876. It is not correct as observed by the High Court, that s. III and first part of s. IV of the Regulation do not cover the cases where each of several persons claims to be the single heir and where out of several persons some claim to be the heirs while some others also claim to be the heirs. These sections contemplate those cases when they provide for the interference of courts on complaints by other persons against the person in possession. Such complaints can be only when they are by such claimants to the estate or part of

it whose claims are not accepted by the others claiming title to the estate. The effect of the expression 'as in the case of a single heir' at the end of the first part of s. IV is -that the restriction on the interference of a court of justice in the case where the deceased leaves more heirs than one extends upto the same stage as has been described in s. III which deals with the case of a single heir, that is to say, the interference is restricted up to the stage a complaint is filed and that the interference subsequent to it would be that in accordance with the procedure laid down in the General Regulations. This expression cannot be interpreted to make the second part of s. IV operative in the case coming under s. 111. The observations of Mellish L.J., in Cohen v. S.E. Railway(1) are not of much help in order to construe the scope of the second part of s. IV in regard to its applicability to cases coming under s. 111. Those ob- servations were made in a different context about the provisions of the Acts there under consideration. These observations are :

> "Then the next question is whether 31 and 32 Vict. C. 119, s. 16, includes that provision of the Railway and Canal Traffic Act, so as to apply it not only to the carriage by railway, but to carriage by steamer. It seems to me that this is a still plainer question, except for the doubt thrown upon it by the Irish case. But the words are so clear that there can be no doubt -.about it : 'The provisions of the Railway and Canal (1877) 2 E & D 253.
>
> Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby'. Those words in their plain natural meaning incorporate s. 7 as well as every other section of the Act. Then why should it be excepted? The only reason is that this clause is not contained in a separate section by itself, but is contained at the end of section 16 ; and therefore it is said that it is to be confined to the subject matter to which the previous parts of section 16 relate. I am not aware that there is any such rule of construction of an Act of Parliament. If some absurdity or inconvenience followed from holding it to apply to the whole Act, it might be reasonable to confine the incorporation to clauses relating to some particular subject- matter, but if there is no inconvenience from holding that the incorporation includes section 7 as well as the other sections, we ought to hold that it does."

The expressions to be construed in that case were not as a proviso or exception to what had gone before but formed an independent enactment. They were not separately numbered as a section. In s. IV of the Regulation, the second part commences with the word 'but' and thereby indicating that it is by way of an exception to what is enacted in the first part-and that it is open to the courts to interfere in the manner prescribed in the second part where the deceased had left more heirs than one to the estate.

Section XIX of Regulation XL of 1793 enacted for forming into a regular code all regulations, provided that one part of a regulation has to be construed by another so that the whole might stand. This provision simply means that the provisions of a Regulation should be so construed that they be harmonized in case there be some apparent inconsistency between the different provisions of the Regulation. This implies that in the absence of such necessity for harmonizing the provisions of

different provisions of the Regulation, each provision has to be taken as complete by itself and to mean what it states. This directly goes against the applicability of the observations of Mellish L. J. in Cohen's Case(1) to the con-

(1) (1877) 2 E. & D. 253, 260.

struction of the second part of s. IV with respect to its applicability to s. 111. We do not find the provisions of s. III and s. IV to be inconsistent in any manner and to necessitate their being construed together. In fact, we have already indicated that there had been good reason for providing a special procedure in addition to the procedure to be followed in the trial of suits on regular complaints in cases in which the deceased died intestate and left more than one heir.

We are therefore of opinion that the second part of s. IV does not apply to the case where the deceased dies intestate leaving only one heir entitled to succeed to the entire estate, a case which is covered by s. III of this Regulation.

In this view of the matter, it is not necessary to decide the other contentions raised in this case. We, therefore allow the appeal, set aside the order of the Court below and dismiss the application of the respondents presented to the District judge under s. IV of Regulation V of 1799. We order that the respondents will pay the costs of the appellant throughout.

Before parting with the case we would like to draw attention of Government to these provisions which appear to be somewhat out of date and which need to be repealed. Ample power is to be found in the Indian Succession Act and the Code of Civil Procedure to safeguard such rights and there is hardly any need for a provision which was passed to remove certain doubts created by the Regulation of 1793.

ORDER OF COURT In view of the opinion of the majority the appeal is allowed with costs throughout.

Appeal allowed.