Allahabad High Court
Bhupendra Narain Singh vs Ashtabhuja Ratan Kuer on 1 February, 1932
Equivalent citations: AIR 1932 All 379
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JUDGMENT Sulaiman, J.

1. This appeal arises out of proceedings relating to the grant of letters of administration. The respondent filed an application in the Court of the District Judge of Benares, who has jurisdiction over Jaunpur District, on the basis of a will alleged to have been executed by her father at Jaunpur. In the objection which was originally filed by the objectors, no point was taken that the convenience and justice of the case required that the proceedings should not be carried on in the Court at Benares. Later on it was argued on behalf of the objectors that the point arose by implication, and the discretion of the District Judge under Section 271, Succession Act, was invoked. The report of the Collector undoubtedly indicated that a very insignificant part of the property was situated within the District of Jaunpur, and almost the whole of the estate was in Oudh. It was however urged on behalf of the respondent that as the will was executed at Jaunpur, the witnesses would come from that city and it would be more convenient to them to come to Benares than to go to Fyzabad. The learned Judge did not think that there was any difficulty in investigating the matter at Benares, because in his opinion both Jaunpur and Fyzabad were in one and the same province as defined in the General Clauses Act. He therefore apprehended no difficulty, if letters of administration were granted by him. His opinion is open to question, as the definition of "province" given in the Succession Act would seem to make any division of British India having a Court of the last resort as a province within the meaning of that Act. The initial difficulty in the way of the appellant is that, in our opinion, no appeal lies. It is contended on behalf of the appellant that under Section 299, Succession Act any order by the District Judge is appealable as of right, and it is only the procedure relating to the filing or the hearing of the appeal that is governed by the Code of Civil Procedure. Stress is laid on the fact that in the Probate and Administration Act the corresponding words were "under the rules contained in the Code of Civil Procedure" whereas in Section 299 the legislature has substituted therefor the words "in accordance with the provisions of the Code of Civil Procedure, 1908."

2. We doubt very much whether it has been intended to make every order passed by the District Judge necessarily appealable. If orders postponing a case or refusing to adjourn a case were appealable, the position might well become intolerable. It may be pointed out, as the preamble to the Indian Succession Act (39 of 1925) indicates, that the object of the Act was to consolidate the law. One would therefore not feel inclined to hold that drastic changes have been introduced by the new Act, unless the language of the section clearly leads to that conclusion. It cannot be disputed that under the old section the Courts in India generally used to hold that the right of appeal was limited to the cases provided for in the Code of Civil Procedure. No doubt there are one or two cases in which appeals were entertained from orders which would not have been appealable under the Code, but they stand by themselves. It may be a matter for consideration whether the slight change in the phraseology of Section 299 necessarily implies that the old policy has been altered and a drastic change in the law introduced by the new Act. But it is not necessary for us in this case to answer the wider question whether appeals under the Indian Succession Act are limited exclusively

to the appeals which axe provided for in the Code of Civil Procedure.

3. It is clear to us 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 appellant had moved the District Judge under Section 271, which does not in terms require any application by the objector. That section confers power on the District Judge to refuse an application for letters of administration, if in his judgment it could be disposed of more justly or conveniently in another district provided that the deceased had no fixed abode at the time of his death, in the district under the jurisdiction of the Judge concerned. The learned Judge obviously has not refused the application for letters of administration, and has therefore, literally speaking, not made any order by virtue of the power conferred upon him by Section 271. He has decided merely to go on with the proceeding, and not to refuse the application for letters of administration. The question whether it was more just or convenient to hear the application at Benares was a matter of discretion for the Judge. He was not bouned to refuse the application merely because the deceased had no fixed abode at the time of his death at Benares nor does the fact that only an insignificant part of the property is situated within his jurisdiction make it any the more obligatory to refuse the application, The operative portion of the so-called order which is appealed against is in the following words:

I accordingly find that the petition should not be refused by this Court under Section 271, Succession Act. Lot 7th March 1931 be fixed for the framing of the remaining issues.

4. Section 295 requires that proceedings in his Court should, as nearly as may be, take the form of a regular suit, according to the provisions of the Civil Procedure Code, and under Section 268 the proceedings have to be regulated, so far as the circumstances of the case permit, by that Court. The order passed by the District Judge is more or less in the nature of a finding on the question whether he should hoar the application or exercise his discretion to return it for presentation to another Court. It cannot be treated as a final order adjudicating upon the rights of the parties or disposing of any matter absolutely. We therefore do not think that this is a case which comes within the scope of Section 299 so as to give the appellant a right of appeal.

5. The learned advocate for the appellant has argued before us that we should interfere with the so-called order on our revisional side. It may be that another District Judge when considering the proportion of the values of the properties situated in the two provinces, the inconvenience of a second set of proceedings being taken later on in Oudh and the fact that the witnesses did not live at Benares where the case would be tried, might have exercised his discretion in a different {way. Even in appeal an appellate Court I seldom interferes with an exercise of discretion. In revision we cannot interfere with mere errors of law. It is impossible to say that in this case there has either been a failure to exercise a jurisdiction vested by law or any illegality or material irregularity in the exercise of such jurisdiction. We are therefore unable to interfere under Section 115, Civil P.C. We dismiss the appeal, but direct that the parties should bear their own costs.