

CALCUTTA HIGH COURT

Sarat Chandra Banerjee

Vs

Nani Mohan Banerjee

(Harington , J.)

17.05.1909

JUDGMENT

Harington, J.

1. This is an application by the widow of one Sarat Chandra Banerjee that her husband's death may be recorded, and her name may be substituted for his, and that the petition for probate may be amended by substituting a prayer for letters of administration to the Will annexed instead of a prayer for probate.
2. The facts are that Annapurna Debi died in 1908 leaving a Will. Sarat Chandra Banerjee applied for probate, but was met by Nani Mohan Banerjee who entered a caveat.
3. The matter was ordered to be set down as a contentious cause. Pending the hearing Sarat Chandra Banerjee, who was residuary legatee as well as executor under the Will, died. The present application is made by his sole widow and heiress.
4. In my opinion the application must be refused because the right to sue does not survive. The right, which Sarat Chandra Banerjee had, was to propound the Will. On the Court's granting probate, he would be entitled not by virtue of the order of the Court but by the appointment contained in the Will to possession of the deceased's property, and he would become, by virtue of the act of the deceased, his legal, personal representative.
5. But the right, which the present applicant has, is entirely distinct one. She asks to be appointed to represent the deceased by the Court, and claims no right derived from any appointment by the testator.
6. She must satisfy the Court of two things-(i) that she is the person to whom letters ' of administration ought to be granted; and (ii) that the Will was duly executed.
7. In my opinion, the right to sue in Order XXII means the right to bring a suit asserting a right to the same relief which the deceased plaintiff asserted at the time of his death, and that a right to obtain probate of a Will is a right different in its nature from a right to be appointed by the Court to administer the deceased's estate.

8. I think, therefore, that the suit abates under Order XXII, Rule 1, and the application must, therefore, be refused.