

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.887 of 2019**

Ashutosh Kumar Mishra @ Ashutosh Mishra, Son of Sri Udho Mishra,
Resident of Village and P.O.- Bharauli, P.S.- Shahpur, District- Bhojpur, at
present Basistha Nagar Ara, P.O.- Ara, P.S.- Ara Nawada, District- Bhojpur.

... .. Petitioner/s

Versus

1. Bimla Devi, Wife of Prahlad Tiwary, Resident of Village and P.O.- Amarai Nawada, Police Station- Bihiya, District- Bhojpur.
2. Shanti Devi, Wife of Bishwamitra Ojha, Resident of Village Chhotaki Singhanpura, Police Station- Simari, District- Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs.Anju Kumari @ Anju Narain, Advocate
For the Respondent/s	:	Mr. Ganpati Trivedi, Sr. Advocate
		Mr. Madan Mohan, Advocate
		Mr. Ritik Shah, Advocate
		Mr.Sanjeev Kumar Mishra, Advocate
		Ms. Pallavi Pandey, Advocate
		Mr. Sawan Suman, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 10-04-2025

The petitioner has challenged the order dated 18.03.2019 passed by the learned 4th Additional District Judge, Bhojpur at Ara in Misc. Appeal No. 01/2017 whereby and whereunder the petition dated 31.01.2018 filed by the petitioner challenging the maintainability of the appeal in the court of learned Additional District Judge has been dismissed.

2. Brief facts of the case, as it appears from the record, are that the petitioner filed Probate/Letters of Administration Case No. 76/2006 in the court of learned Sub Judge-1, Ara. In the said case, the petitioner submitted that the father of the



petitioner, namely Udho Mishra had two sons, namely Adityadeo Mishra and Ashutosh Kumar Mishra (the petitioner herein) and one daughter, namely Madhuri Mishra. The daughter of Udho Mishra was married with one Satish Kumar Tripathi, who was the only son of his father, namely Tirth Raj Tripathi. Satish Kumar Tripathi died issue-less in 1979 and from the side of her husband, Madhuri Mishra had no legal heir. The said sister of the petitioner executed a registered Will on 10.10.2006 in respect of all her properties in favour of the petitioner. The testatrix died on 10.11.2006 and Shradh etc. was performed by the petitioner. The only near relatives of the testatrix were the brother Adityadeo Mishra and the father Udho Mishra. After the death of the testatrix, the petitioner came into possession of all her properties. Thereafter, a prayer was made for grant of Probate/Letters of Administration to the estate of the deceased Madhuri Mishra. Subsequently, certain amendments were made with regard to the details of the properties which could not be mentioned earlier, which were allowed. The near relatives of the testatrix, namely Udho Mishra and Adityadeo Mishra filed their written statement stating that the registered Will in favour of the petitioner was genuine and valid and they had no objection to the grant of Probate/Letters of



Administration in favour of the petitioner. After consideration of all aspects of the matter, the learned Sub Judge-1, Bhojpur at Ara granted Probate Certificate in respect of the said Will in favour of the petitioner under Section 289 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act').

3. Further case of the petitioner is that after grant of Probate, its preparation and sealing and signing on 23.07.2010/13.08.2010, the respondents herein filed Revocation Case No.10 of 2013 in the court of learned Sub Judge-1, Bhojpur at Ara for revocation of the Probate/Letters of Administration in respect of the Will dated 10.10.2006 in favour of the petitioner. The revocation petition was filed with allegation that the father-in-law of testatrix Madhuri Mishra had two daughters as well and this fact was suppressed when the Letters of Administration Case No. 76/2006 was filed. The respondents further stated that they learnt about grant of Probate only in May, 2013, got the certified copy of the order dated 29.05.2013 and filed Revocation Case No. 10/2013 on 01.06.2013. The petitioner contested the claim of the respondents. The learned Sub Judge-1, Bhojpur at Ara, after detailed hearing, dismissed the revocation case vide order dated 09.12.2016. Thereafter, a Misc. Appeal No. 01/2017 was filed



by the respondents against the petitioner in which a notice from the court of learned 4th Additional District Judge, Bhojpur at Ara was received by the petitioner. The petitioner made his appearance in the said Misc. Appeal No. 01/2017 and filed a petition on 31.01.2018 challenging the maintainability of the appeal before the learned 4th Additional District Judge. The learned Additional District Judge, after hearing the parties, vide order dated 18.03.2019, dismissed the petition of the petitioner holding that the appeal was maintainable. The said order is under challenge before this Court.

4. Mrs. Anju Narain, the learned counsel appearing on behalf of the petitioner submitted that the impugned order is illegal and, therefore, not sustainable in the eyes of law. The learned Sub Judge while granting the Probate Certificate had been using the delegated power of the learned District Judge under the provisions of Part IX of the Act and, thereafter, revocation case was filed under Section 263 of the Act. Since the learned Sub Judge has been exercising the power of the learned District Judge as his delegate, an appeal against the order dismissing the revocation case would lie before the High Court and filing of appeal before the learned District Judge/Additional District Judge is travesty of justice as it would



amount to appeal to the same court. The learned counsel further submitted that Section 299 of the Act provides every order made by a District Judge by virtue of the powers conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908. The learned counsel further submitted that even otherwise the value of the property, which was subject matter of Probate/Letters of Administration Case No. 76/2006, was assessed to be Rs.16,60,307/- and necessary stamp duty was deposited on this amount and even on this account, the appeal was not maintainable before the court of learned District Judge. The learned counsel reiterated that the learned 4th Additional District Judge failed to appreciate that the learned Sub Judge, Ara was exercising the power as Delegatee Judge of the District Judge in the matter concerning grant of Probate/Letters of Administration and/or revocation thereof and, therefore, in no case an appeal would lie to the court of the District Judge because that would amount to an appeal from the District Judge (power exercised by the Sub Judge for that purpose as a Delegatee) to the District Judge, which is against the specific provision contained in Section 299 of the Act. The learned counsel further submitted that the respondents took a plea that revocation case filed under



Section 263 of the Act was not governed by the Section 299 of the Act for the purpose of filing of the appeal and reliance was placed on Section 388 of the Act and also on the decision of this Court in the case of *Mosamatt Parmeshwari Devi and Anr. vs. Geeta Devi and Ors.* reported in *AIR 2001 Patna 107*. But the said reliance was totally misconceived as Section 388 is in Part X of the Act, which deals with Succession Certificate and not grant of Probate/Letter of Administration, which is dealt with under provisions of Part IX of the Act, which provides for Probate/Letters of Administration. It is clear that two parts, Part IX and Part X are quite different. Even the decision reported in *AIR 2001 Patna 107* is on the point of succession certificate and it has referred to Section 388 which is Part X of the Act and reliance placed before the learned Additional District Judge on the said case was erroneous. Thus, learned counsel submitted that the impugned order is not sustainable and the same be set aside.

5. On the other hand, Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the respondents vehemently contended that there is no infirmity in the impugned order and the same needs to be sustained. The learned senior counsel referred to various provisions of the Act in order to



fortify his submission. The learned senior counsel next submitted that Section 265 of the Act provides power to appoint delegate of District Judge to deal with non-contentious cases. The learned senior counsel submitted that the High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe. Section 278 of the Act deals with petition for letters of administration. Section 272 of the Act provides that Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, subject to condition that at the time of death, the testator or intestate had a fixed place of abode within the jurisdiction of such Delegate. He referred to Section 284 of the Act which provides for filing of the caveats against the grant of probate or administration with the District Judge or a District Delegate. Section 286 of the Act provides that a District Delegate would not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court. At the same time, Section 295 of the Act provides for



procedure in contentious cases and it says in any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, in the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

6. Mr. Trivedi further submitted that the District Delegate, who is Sub Judge exercises original jurisdiction under the provisions of Bengal, Agra and Assam Civil Courts Act, 1887 (hereinafter referred to as the 'Act of 1887') and against the orders passed by the learned Sub Judge, an appeal has been provided under Section 20 of the 'Act of 1887'. Thereafter, Section 23 of the 'Act of 1887' deals with exercise by Civil Judge (Senior Division) or Civil Judge (Junior Division) of jurisdiction of District Court in certain proceedings. Further, Section 23 (2) (d) of the 'Act of 1887' provides for pecuniary jurisdiction for appeal. Therefore, the 'Act of 1887' would prevail in such matters where the learned Sub Judge has passed an order. The learned senior counsel further submitted that there is no provision under the Act for appeal from the orders of



District Delegate and, hence, Section 21 of the 'Act of 1887' would come into play which provides for appeals from the order of a Civil Judge to the District Judge.

7. Mr. Trivedi referred to a decision of this Court in the case of ***Baroda Debya vs. Sreemati Phutumani*** reported in ***1933 SCC OnLine Pat 27 : AIR 1933 Pat 276 (2)*** submitting that only if the District Judge had transferred the matter to the Sub Judge, the Sub Judge would have exercised the powers of the District Judge and in that case the appeal would lie to the High Court and not to the District Judge. Apparently the same is not the case here.

8. Mr. Trivedi further referred to the decision of Full Bench of Madras High Court in the case of ***R. Rama Subbarayalu Reddiar vs. Rengammal*** reported in ***AIR 1962 Madras 450*** regarding original jurisdiction of District Judge. The Full Bench clarified the point that the District Judge delegate has been exercising power under the Act and not of District Judge and since he is exercising the original jurisdiction, hence, subject to pecuniary jurisdiction, the appeal would lie to the court of District Judge under the provisions of Madras Civil Courts Act.

9. Mr. Trivedi further referred to a decision of Bombay



High Court in the case of *Manohar Bapurao Sapre vs. Bhaurao Tukaramji Shirbhate* reported in *1995 SCC OnLine Bom 81* wherein in similar circumstances the learned Single Judge of the said High Court held that the appeal filed before the learned District Judge was maintainable.

10. Mr. Trivedi next referred to a decision of Hon'ble Supreme Court in the case of *Vishwanath Dadu Gurav since deceased through legal representatives and ors. vs. Dattatray Ganapati Gurav* reported in *(2016) 15 SCC 671* wherein the Hon'ble Supreme Court did not interfere with the orders of the High Court whereby maintainability of appeal before the District Judge for probate granted by the delegatee Additional District Judge was upheld with observation that there was no infirmity in the jurisdiction of the appellate court.

11. Thus, Mr. Trivedi submitted that there is no infirmity in the impugned order and the same needs no interference by this Court.

12. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

13. The matter in issue before this Court is in a narrow compass as to whether against an order passed by the District Judge delegate in a proceeding under the Act appeal would lie



before the court of learned District Judge?

14. The relevant provisions of the Act also referred by the learned senior counsel appearing on behalf of the respondents are extracted here-in-after for ready reference :

“265. Power to appoint delegate of District Judge to deal with non-contentious case.—

(1) The High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointments shall not be without the previous sanction of the State Government.

(2) Persons so appointed shall be called “District Delegates”.

272. Probate and letters of administration may be granted by Delegate.—*Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition, verified as hereinafter provided, that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.*

278. Petition for letters of administration.
—(1) Application for letters of administration shall be made by petition distinctly written as aforesaid



and stating—

(a) the time and place of the deceased's death;

(b) the family or other relatives of the deceased

and their respective residences;

(c) the right in which the petitioner claims;

(d) the amount of assets which are likely to come to the petitioner's hands;

(e) when the application is to the District Judge, and that deceased at the time of his death had fixed a place of abode, or had some property, situate within the jurisdiction of the Judge; and

(f) when the application is to the District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

284. Caveats against grant of probate or administration.—*(1) Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate.*

(2) Immediately on any caveat being lodged with any District Delegate, he shall send



copy thereof to the District Judge.

(3) Immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had a fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

*(4) **Form of caveat.**—The caveat shall be made as nearly as circumstances admit in the Form set forth in Schedule V.*

286. District Delegate when not to grant probate or letters of administration.—*A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.*

Explanation.—“Contention” means the appearance of anyone in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

295. Procedure in contentious cases.—*In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to*



oppose the grant shall be the defendant”.

15. The aforesaid provisions of the Act starting from appointment of District Delegate to grant of probate or letters of administration by the District Delegate also provides when District Delegate will not grant probate or letters of administration and what would be the procedure in contentious cases. It is apparent from bare reading of the provisions that District Delegate can grant probate or letters of administration only in non-contentious cases.

16. The thrust of argument of the learned senior counsel appearing on behalf of the respondents is mainly on the point that the learned Sub Judge has been exercising original jurisdiction under the ‘Act of 1887’, even though working as District Delegate under the Act and hence, subject to pecuniary jurisdiction the appeal would lie to the court of District Judge.

17. The relevant provisions of the ‘Act of 1887’ are extracted here-in-after for ready reference :

“3. Classes of Courts.—*There shall be the following classes of Civil Courts under this Act, namely:—*

- (1) the Court of the District Judge;*
- (2) the Court of the Additional Judge;*
- (3) the Court of the Subordinate Judge; and*
- (4) the Court of the Munsif.*

18. Extent of original jurisdiction of



District or Subordinate Judge.—Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of Section 15 of the Code of Civil Procedure (14 of 1882), to all original suits for the time being cognizable by Civil Courts.

21. Appeals from Subordinate Judges and Munsifs.—(1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the State Government, direct, by notification in the Official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

23. Exercise by Subordinate Judge or



Munsif of jurisdiction of District Court in certain proceedings.—(1) *The High Court may, by general or special order, authorize any Subordinate Judge or Munsif to take cognizance of, or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.*

(2) *The proceedings referred to in subsection (1) are the following, namely:—*

(a) *proceedings under Bengal Regulation 5, 1799 (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);*

[* * *]

[* * *]

(d) *proceedings under the Indian Succession Act, 1865 (10 of 1865), and the Probate and Administration Act, 1881 (5 of 1881) which cannot be disposed of by District Delegates; and*

(e) *reference by Collectors under Section 322-C of the Code of Civil Procedure (14 of 1882).*

(3) *The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them.*

24. *Disposal of proceedings referred to in*



last foregoing section.-

(1) Proceedings taken cognizance of by, or transferred to, a Civil Judge (Senior Division) or Civil Judge (Junior Division), as the case may be, under the last foregoing sections shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge:

Provided that an appeal from an order of a Civil Judge (Junior Division) in any such proceedings shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of a Civil Judge (Junior Division) under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force”.

18. The above quoted provisions of the ‘Act of 1887’ have been cited by the learned senior counsel in support of his contention about the District Delegate exercising his independent power under the ‘Act of 1887’ even when considering the non-contentious cases for grant or revocation of probate. The relevant provisions of ‘Act of 1887’ referred herein-above provides for classification of courts and the extent of power and jurisdiction of the courts as well as the provisions for appeal against the orders passed by such courts.

19. The learned senior counsel appearing on behalf of



the respondents has tried to fortify his argument by citing the decisions of the Hon'ble Supreme Court as well as Bombay High Court in the cases of *Vishwanath Dadu Gurav* (supra) and *Manohar Bapurao Sapre* (supra), respectively.

20. Before proceeding further, I would like to discuss the above cited two decisions.

In the case of *Manohar Bapurao Sapre* (supra), the issue was whether the Civil Judge, Senior Division, Amravati while deciding the petition for probate under Section 276 of the Indian Succession Act was discharging the duties of the District Judge and therefore no appeal would lie before the District Judge. While deciding the issue before it, the learned Single Judge considered the Section 28-A (1) of the Bombay Civil Courts Act, 1869 wherein specific provision has been made that the High Court may by general or special order invest any Civil Judge within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be under the Indian Succession Act, 1865, the Probate and Administration Act, 1881 or paragraph 5 of Schedule III to the Code of Civil Procedure, 1908 and Section 28-A (2) further provides that every order made by a Civil Judge by virtue of the



powers conferred upon him under sub-section (1) shall be subject to appeal to the High Court or the District Court according to the amount or value of the subject matter exceeds or does not exceed fifty thousand rupees. Taking note of this provision and further considering that the application filed under Section 276 of the Indian Succession Act was having valuation of Rs. 10,000/-only, i.e., less than Rs. 50,000/-, it was held that the appeal against the said order would lie before the District Judge. The learned Single Judge also took note of Section 388 of the Act which reads as under :

“388. (1). The State Government may by notification in the Official Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge:

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge, may, if he thinks fit, by this order on the appeal, make any such declaration and direction as that sub-section authorises the High. Court to make by its order on an appeal from



an order of a District Judge”.

Thus, the learned Single Judge came to a finding that an appeal from the order passed by the learned Civil Judge shall lie only to the District Judge and not to the High Court in the particular facts and circumstances of the case.

In the case of ***Vishwanath Dadu Gurav*** (supra), the High Court dismissed the revision on the ground that in view of law laid down in ***Manohar Bapurao Sapre*** (supra), as the valuation of the property was only Rs. 25,000/-, as such, the District Court had appellate jurisdiction and the Hon’ble Supreme Court did not interfere with the order of the High Court dismissing the challenge to the maintainability.

21. The decisions in the cases of ***Manohar Bapurao Sapre*** (supra) and ***Vishwanath Dadu Gurav*** (supra) could have no application in the facts of the present case for the simple reason that there is no provision *pari materia* Section 28-A of Bombay Civil Courts Act, 1869. Even Sections 18 to 23 of Bengal, Agra and Assam Civil Courts Act, 1887 provides only to the extent of authority and jurisdiction of court of learned Subordinate Judge and it nowhere talks about what would happen when the Sub Judge passes the order as a District Delegate under Section 265 of the Act. Further provisions of



Bombay Civil Courts Act stand modified with the passage of Indian Succession Act and this fact is also to be taken into consideration. Even the Division Bench of the Bombay High Court in the case of *Nola Jonathan Ranbhise vs. Union of India* reported in **2014 SCC OnLine Bom 240** came to a finding that the provisions of Section 28-A (2) of the Bombay Civil Courts Act, 1869 are inconsistent and repugnant to the Section 299 of the Indian Succession Act, 1925 and consequently the same stand impliedly repealed and the Hon'ble Division Bench further held that accordingly, every order made by the District Judge under the Indian Succession Act, 1925 or every order made by a Civil Judge invested with the powers of a District Judge or a District Court, as the case may be, under the Indian Succession Act, 1925 in terms of sub-section (1) of Section 29A of the Bombay Civil Courts Act, 1869 shall be subject to appeal to the High Court in accordance with the provisions of Code of Civil Procedure, 1908, applicable to appeals. From perusal of the judgment and order of the Hon'ble Supreme Court in the case of *Vishwanath Dabu Gurav* (supra), it transpires that the decision of the Division Bench of the Bombay High Court in the case of *Nola Jonathan Ranbhise* (supra) was not brought to the notice of the Hon'ble Supreme Court. Moreover, facts of the



present case are also different from the facts of ***Vishwanath Dabu Gurav*** (supra).

22. Coming back to the facts of the present case, the probate certificate was granted by the learned Sub Judge-1, Ara in a non-contentious matter, who has been appointed as a District Delegate by the District Judge to deal with non-contentious cases. The respondents were made party and did not appear in the said Probate Case No.76/2006 and there was no contention. So it was non-contentious case in which probate certificate was granted as Explanation to Section 286 of the Act speaks contention means the appearance of anyone in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

23. Now, Section 264 of the Act provides as under :

“264. Jurisdiction of District Judge in granting and revoking probates, etc.—(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

(2) Except in cases to which Section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a



notification in the Official Gazette, authorised it so to do.

This provision shows the District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

24. Subsequently, Section 265 of the Act (already quoted hereinabove) provides that the High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe.

25. Conjoint reading of two provisions makes it clear that though the power to grant or refuse the probate or letters of administration has been vested with the District Judge, the High Court has been vested with the power to delegate this function of the District Judge to a judicial officer other than the District Judge and such person would be exercising power of District Judge and not his independent powers under the 'Act of 1887'. A bare reading of Section 265 of the Act makes this fact clear that such judicial officer would act for the District Judge as the delegate and he has not been vested with any independent power of his own. Thereafter, Section 299 provides for appeal from the orders of District Judge and it reads as under :



“299. Appeals from orders of District Judge.

—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”.

26. When there is specific provision for appeal against the orders of District Judge, there could be no derogation from the said provision unless specifically mentioned or indicated by the legislature. The legislature in its wisdom has not thought it proper to provide for separate appeal against an order passed by the District Delegate and so inference could be made that the order of a District Delegate would be deemed to be an order passed by the District Judge and appealable under Section 299 of the Act before the High Court in accordance with the code of Civil Procedure, 1908 applicable to the appeals. Therefore, the contention of the learned senior counsel for the respondents that the learned Sub Judge-1 exercised his independent and original jurisdiction is against the specific provisions of the Act and hence negatived.

27. So far as the applicability of Section 388 (2) of the Act is concerned, it ought to be made clear that the powers under Section 388 of the Act have been conferred to deal with



the matter of this part, i.e., Part X, which deals with Succession Certificate and could have no applicability in the matter wherein a case filed for revocation of probate case has been dismissed by the District Delegate, who is not the same authority as envisaged under Section 388 of the Act.

28. Even Section 23 (2) (d) of the 'Act of 1887' is explicit that the District Judge is authorized to transfer to a Civil Judge (Senior Division) or a Civil Judge (Junior Division) under his administrative control, any of the proceedings under the Indian Succession Act, 1925, which cannot be disposed of by District Delegates. Further, Section 24 of the 'Act of 1887' provides that proceedings taken cognizance of by, or transferred to, a Civil Judge (Senior Division) or Civil Judge (Junior Division), as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge and it further provides that an appeal from an order of the Civil Judge (Junior Division) in any such proceedings shall lie to the District Judge. Apparently, the order passed by the Civil Judge (Senior Division) was not made appealable before the court of District Judge.

29. Therefore, in the light of the discussion made here-



in-before, I am of the considered opinion that the learned Additional District Judge has been proceeding in the matter without jurisdiction and the impugned order dated 18.03.2019 passed by the learned 4th Additional District Judge, Bhojpur at Ara in Misc. Case No. 01/2017 is a completely illegal order and hence, the same is set aside.

30. The learned District Judge, Bhojpur at Ara is directed to return the memo of appeal of said Revocation Case No. 10/2013 for presentation to the High Court within a period of thirty days from today and upon return of the memo of appeal, the respondents are at liberty to present the same before the High Court within thirty days, failing which the order dated 09.12.2016 passed by the learned Sub Judge-1, Bhojpur at Ara in Revocation Case No. 10/2013 shall stand confirmed.

31. With the aforesaid observations/directions, the present petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	07.02.2025
Uploading Date	11.04.2025
Transmission Date	NA

