

Ms. M. A. I. Kovoov @ Anna Kovoov Vs. Mr Thomas Ipe Kovoov (Jr.)

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Court : Karnataka

Decided On : Jul-22-2016

Judge : Dr. Vineet Kothari

Appeal No. : PROB.CP 7/2011

Appellant : Ms. M. A. I. Kovoov @ Anna Kovoov

Respondent : Mr Thomas Ipe Kovoov (Jr.)

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU Dated this the 22nd day of July, 2016 Before THE HONBLE DR JUSTICE VINEET KOTHARI Probate C P7/ 2011 Between Petitioner Mr Thomas Ipe Kovoov (Jr.) 66 yrs, S/o late Thomas Ipe Kovoov (Sr.) Presently r/a # 114, Almat Place Philadelphia PA19115 United States of America Ms M A I Kovoov @ Anna Kovoov 60 yrs, D/o late Thomas Ipe Kovoov (Sr.) Presently r/a # 105, Purva Parkridge Mahadevapura, Bangalore 48 (By Mr LPE Rego for M/s Rego & Rego, Adv.) And 1 2 3 Mrs Molly Anthony DSouza (nee) Kovoov 65 yrs, W/o late Anthony DSouza & d/o late Thomas Ipe Kovoov (Sr.) Presently r/a XIII/78, Market Road Kottayam 686 001, Kerala Mrs Mary Mathews, 64 yrs W/o T M Mathews & d/o late Thomas Ipe Kovoov (Sr.) Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M AI Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 2/25 Presently r/a Hill View, Devalokam Kottayam 686 038, Kerala Respondents Probate C P is filed under Part IX, Chapter IV, S.278 r/w S.219 of the Indian Succession Act, 1925

praying to grant letters of administration to the petitioner to the estate of the deceased Elizabeth Ipe Kovoor, as she is Capt, Iype Ipe Kovoor, 55 yrs S/o late Thomas Ipe Kovoor (Sr.) Presently r/a Alkov Enterprises C-3/21, Jeevan naiya Society (Behind MTNL) Chembur, Mumbai 400 071, Maharashtra Mr Mathew Ipe Kovoor, 62 yrs S/o late Thomas Ipe Kovoor (Sr.) Presently r/a Malayinkeezhu Kothamangalam, 686 691 Kerala 4 5 6 7 (By Mr R I Dsa, Adv. for R2, R4, R6 & R7; Mr B Krishna Murthy, Adv. for R1 & 3; Mr Vasanth V Fernandez, Adv. for R5) Mr Alex Anthony, 43 yrs S/o late Anthony DSouza Presently r/a E/204, Ranka Plaza Wheeler Road, Frazer Town Bangalore 5 Mr Edward Anthony, 42 yrs S/o late Anthony DSouza Presently r/a # 102, Promenade Place # 45/2, Promenade Road Bangalore 42 Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M AI Kovoor @ Anna Kovoor Vs Mr Thomas Ipe Kovoor (Jr) & Ors. 3/25 a legal heir and one of the next of kin of the deceased Elizabeth, having effect throughout the Union of India, together with her costs, counsels fee and such further or other relief. The Petition having been reserved for orders on 14.7.2016, coming on for pronouncement of orders this day, Dr Vineet Kothari J., delivered the following: Mr LPE Rego for M/s Rego & Rego, Adv for Petnr.

JUDGMENT

Mr R I Dsa, Adv. for R2, R4, R6 & R7 Mr B Krishna Murthy, Adv. for R1 & 3 Mr Vasanth V Fernandez, Adv. for R5 1 The present petition has been filed by the petitioner Ms M A I Kovoor @ Anna Kovoor (Anna for short) under S.278 r/w S.219 of the Indian Succession Act, 1925 seeking a Letter of Administration under the said provisions in respect of estate of her deceased sister Elizabeth Ipe Kovoor who died on 7.7.2011 at Sahaya Holistic Integrative Hospital, Bangalore, and according to the petitioner, she died intestate leaving her property in Bangalore and Mumbai. 2 The said petition was filed by the petitioner Anna on 13.8.2014 after the earlier petition filed by her under S.218 (and not S.219) came to Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M AI Kovoor @ Anna Kovoor Vs Mr Thomas Ipe Kovoor (Jr) & Ors. 4/25 be rejected by this Court as not maintainable in the very case, dismissed on 01.03.2013. The petitioner Anna has arrayed the other siblings viz., brothers, sisters and sisters two sons of the deceased Elizabeth in the following sequence. Respondent 1 Mr Thomas Ipe Kovoor (Jr), (biological brother), aged 66 yrs at the time of filing the present

petition in 2011, living in USA; (Not objecting vide memo dated 22.5.2012) Respondent 2 Mrs Molly Anthony DSouza (nee) Kovoov (biological sister), aged 65 yrs, living in Kottayam, Kerala; (contesting respondent) Respondent 3 Mrs Mary Mathews (biological sister), aged 64 yrs, living in Kottayam, Kerala; (Not objecting vide memo dated 22.5.2012) Respondent 4 Mr Mathew Ipe Kovoov (biological brother), aged 62 years, living in Kothamangalam, Kerala; (contesting respondent) Respondent 5 Capt. Iype Ipe Kovoov (biological borther), aged 55 yrs, living in Mumbai, Maharashtra; (contesting respondent) Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 5/25 Respondent 6 Mr Alex Anthony, 43 yrs and Respondent 7 Mr Edward Anthony, 42 yrs; the last two being the sons of the 2nd respondent Mrs Molly Anthony DSouza and being contesting respondents. The petitioner Anna was of 60 yrs when she filed the present petition. 3 The petitioner claims that the deceased Elizabeth, during her lifetime, remained unmarried and therefore, she was not having any lineal descendants and since the biological parents of deceased Elizabeth viz., her father Thomas Ipe Kovoov (Sr.) died on 16.8.1988 and his spouse Annamma Ipe Kovoov (nee) Mathew died on 6.11.2003 and all the members of the family being Indian Christians, the case is covered by the provisions of the Indian Succession Act, 1925 (Act for short). The petitioner being a sibling and real sister of the deceased Elizabeth and is otherwise not suffering from any disability or disqualification to be appointed as Administrator for the estate of the deceased, the details of which are given in the schedule of the present petition. She valued the said estate at Rs.2,45,26,700/- and after deducting all lawful deductions, Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 6/25 the net value is declared at Rs.1,77,89,371/- including movable and immovable assets. 4 The petitioner also claimed that she undertakes to duly administer the estate of the deceased Elizabeth and in paragraph 20 of the petition, it is also stated that some of the estates of the deceased Elizabeth are in the hands of intermeddlers who are respondents 2, 6 and 7 and her sister Mrs Molly Anthony and her two sons respondents 6 & 7 Mr Alex Anthony and Mr Edward Anthony besides respondents 4 and 5 also have contested this case and opposed the grant of letter of administration in favour of the present petitioner. 5

The petitioner expressed the apprehension in paragraph 20 of the petition that these contesting respondents are claiming the estate of the deceased on the basis of an alleged unregistered Will purportedly executed by the deceased Elizabeth on 5.1.2011 and a photocopy of which has been produced by the petitioner herself as Ex.B. The petitioner has expressed that the deceased Elizabeth lacked the testamentary capacity as Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 7/25 she suffered from adverse medical condition in the form of cancer prior to her death and the alleged Will claimed by respondents 2, 6 & 7 aforesaid is heavily shrouded in suspicion and improbability and therefore, petitioner should be allowed to administer the estate of the deceased sister Elizabeth as having died intestate. 6 The 1st respondent Mr Thomas Ipe Kovoov (Jr.) and respondent 3 Mrs Mary Mathews have filed a memo on 22.5.2012 of their No Objection for grant of letter of administration in favour of the petitioner, but respondents 2, 6 & 7 and respondents 4 and 5 have filed their statement of objections in this Court on 29.6.2012 stoutly opposing the grant of letter of administration in favour of the present petitioner. 7 Both the sides were represented by counsels, Mr Rego for the petitioner, Mr R I Dsa for the contesting respondents 2, 4, 6 & 7, Mr B Krishna Murthy for respondents 1 and 3 and Mr Vasanth V Fernandez for respondent 5, who also opposed the grant of letter of administration in favour of the present petitioner. 8 Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 8/25 Before coming to the merits of the present petition and contest put up by the contesting respondents, it is considered appropriate to have a look at the relevant provisions applicable in the present case of the Indian Succession Act, 1925. S.47 of Chapter II of Part V dealing in intestate succession, provides for Rules in cases of Intestate other than Parsis and S.47 provides for a situation where the intestate has left neither lineal descendant nor father nor mother which is a stated fact in the present case. The said provisions of S.47 are quoted below for ready reference: S:47: Where intestate has left neither lineal descendant, nor father, nor mother - Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than

one) taking in equal shares only the shares which their respective parents would have taken if living at the intestates death. 9 Chapter II, Part VI of the Act deals with Testamentary Succession which, according to the petitioner, is not applicable in the present case, since the deceased died intestate, according to the petitioner. Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 9/25 Part IX of the Act comprising of S.217 to S.369 divided in 12 10 separate Chapters, provide for probate, letters of administration and administration of estates of the deceased. S.217 of the Act in Part IX provides for application of this part and it reads as under: S:217: Application of Part: Save as otherwise provided by this Act or by any other law for the time being in force, all grants of probate and letters the Will annexed and the of administration with administration of the assets of the deceased in case of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part. Apparently Part IX therefore, applies in the cases of intestate succession as well as grant of probate and letters of administration with the Will annexed and the administration of estates of the deceased in cases of intestate succession, shall be carried out in accordance with the provisions of this part. 11 Chapter I of the said Part IX of the Act comprising of S.218 to S.236 A provides for the grant of probate and letters of administration. Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 10/25 S.218 of the Act deals with as to whom administration may be granted, where the deceased is a Hindu, Mohammadan, Buddhist, Sikh, Jaina or exempted person whereas S.219 of the Act and which is applicable in the present case, deals with the cases where the deceased is not a Hindu, Mohammadan, Buddhist, Sikh, Jaina or exempted person. S.220 deals with the effect of letters of administration, S.222 provides for probate only to the appointed executor; S.223 provides for persons to whom probate cannot be granted and so on. Chapter IV deals with rules and procedure regarding grant of probate and letters of administration and which is relevant and applicable to the present case and S.278 under which the present petition has been filed in this Court, is quoted below for ready reference: S: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; Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 11/25 (c) the right in which the petitioner claims; (d) the amount of assets which are likely to come to the petitioners hands; (e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and (f) When the application is to a 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 petitioners 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. S.295 provides for procedure in contentious cases which is also relevant in the present case and the said provision is also quoted below for ready reference: S:295: Procedure in contentious cases: In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 12/25 the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant. Thus, S.295 in its terms provides that in cases where there is a contest, the District Judge shall take the proceedings in the form of a civil suit in accordance with the provisions of CPC, 1908 in which the petitioner for probate or letter of administration shall be treated as plaintiff and those opposing it shall be treated as defendant/s. 12 S.301 of the Act provides for removal of executor or administrator and provision for successor in cases of stipulated conditions being specified. The said provision is also quoted below for ready reference. S:301: Removal of executor or administrator & provision for successor - The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate. Dt. of judgment: Friday,

22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 13/25 The question which was agitated before this Court by both the sides 13 was about the need of the Will dated 5.1.2011 of the deceased produced by the respondents through Ms Reena Puri, a close friend of the deceased during these proceedings, while the contending respondents urged before the Court that they may be allowed to prove the same in accordance with S.63 of the Act of 1925 and S.68 of the Indian Evidence Act, 1872 before this Court., the rival contention raised on behalf of the petitioner about the said Will is that, firstly the Will has to be ignored as it is shrouded by mystery and is a forged document and secondly, if this Court takes into consideration the existence of this Will, the original having been produced before this Court during these proceedings for grant of letter of administration to the petitioner, then the respondents who have produced the same should be directed to first take a probate of the said Will by proving the same in accordance with law, upon payment of adequate court fees and stamp duty and thirdly, since there is no executor appointed apparently in the said Will dated 5.1.2011 produced through Ms Reena Puri, the present petitioner can still be awarded the letter of administration as prayed in the present petition, notwithstanding the Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 14/25 existence of the said Will and the present petition of the petitioner under S.278 cannot be converted into a regular trial for proving of the said Will as if the probate proceedings have been initiated by the contending respondents for the proving of the said Will of the deceased. 14 This last contention of the learned counsel for the petitioner is sought to be opposed by the learned counsel for respondents with all vehemence that in view of amendment in S.213(2) of the Act with effect from 27.5.2002 by Act 26/2002 inserting the words or Indian Christians in the said S.213(2) of the Act, the Indian Christians which the petitioner as well as the contesting respondents undoubtedly are, and the contending respondents are not required to obtain a probate in respect of the Will produced in the present case as S.213 requiring of probate to be obtained in respect of the Will is made inapplicable to Indian Christians besides Mohammadan, by the aforesaid amendment with effect from 27.5.2002. On this contention of respondents, learned counsel for the petitioner Mr Rego joined issue and urged that such inclusion of

Indian Christians in the provisions of S.213(2) of the Act is not a complete exemption as no such Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 15/25 similar exemption has been given to the Indian Christians under S.214 which is just following the provisions of S.213 of the Act and which confers a right on the administrator holding a letter of administration to recover the debts from the debtors of the deceased person. 15 In the aforesaid context, a look at provisions of S.213 and 214 of the Indian Succession Act, 1925 contained in Part VIII of the Act also becomes necessary and these provisions are also quoted below for ready reference: S.213: Right as executor or legatee when established - (1) No right as executor or legatee can be established in any Court of justice, unless a court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the Will annexed. (2) This section shall not apply in the case of Wills made by Muhammadans or Indian Christians, (inserted by Act 26 of 2002, Sec.3 (w.e.f. 27.5.2002) or and shall only apply - (i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of S.57; and Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 16/25 the Indian of commencement (ii) in the case of Wills made by any Parsi dying, after the Succession (Amendment) Act 1962 (16 of 1962) where such Wills are made within the local limits of the ordinary original civil jurisdiction) of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits. S.214: Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons: (1) No court shall - (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of - (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or (ii) a certificate granted under S.31

or S.32 of the Administrator Generals Act, 1913 (3 of 1913), and having the debt mentioned therein, or Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 17/25 (iii) a succession certificate granted under Part X and having the debt specified therein, or (iv) a certificate granted under the Succession Certificate Act, 1889 (7 of 1889), or (v) a certificate granted under Bombay Regulation No.VIII of 1827, and, if granted after the first day of May, 1889, having the debt specified therein. (2) The word debt in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes. Also the provisions of S.63 of the Indian Succession Act of 1925 and S.68 of the Indian Evidence Act, 1872 are quoted below for ready reference: Indian Succession Act, 1925 S.63: Execution of unprivileged Wills - Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:- (a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction. (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will. 16 Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 18/25 (c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary. Indian Evidence Act, 1872 S.68: Proof of execution of document required by law to be attested - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving the execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a

Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908) unless its execution by the person by whom it purports to have been executed is specifically denied. In view of the aforesaid legal provisions and the rival contentions raised by both sides, this Court is of the opinion that the present petition Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoor @ Anna Kovoor Vs Mr Thomas Ipe Kovoor (Jr) & Ors. 19/25 under S.278 for grant of letter of administration to the petitioner deserves to be rejected but at the same time, these proceedings are not required to be converted into a regular trial for grant of probate to the respondents who have produced the unregistered Will of the deceased dated 5.1.2011 through Ms Reena Puri. The reasons are as follows, S.278 of the Act, as stated above, deals only with the grant of letter of administration in the case of intestate succession provided in Part V of the Act of 1925, whereas Part VI of the Act deals with testamentary succession. The present is not a case where Letter of Administration is sought with a copy of Will annexed, but the petitioner has come with a clear case that the deceased Elizabeth had died intestate. Annexure B Will annexed by the petitioner is not the basis for claiming Letter of Administration but more to lay a challenge to it in advance, which was quite irrelevant while filing a petition under S.278 of the Act. But when a contention is raised against a petition under S.278 of the Act with a original but unregistered Will of the deceased produced before the Court, the provisions of Part V providing for intestate succession becomes Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoor @ Anna Kovoor Vs Mr Thomas Ipe Kovoor (Jr) & Ors. 20/25 inapplicable. The petitioner had filed this petition under S.278 of the Act based on her right of share in the estate of the deceased on the basis of S.47 of the Act which provides for an intestate death and the person concerned who died has left neither any lenial descendants nor father nor mother but such a right of share in the estate itself cannot be claimed by seeking a Letter of Administration under S.278 of the Act. The moment a Will of the deceased is brought before the Court, there are two options before the Court (I) either to allow the person producing the said Will to prove the same and obtain a probate in respect of the said Will by converting the proceeding into a regular trial in accordance with the provisions of CPC as provided under S.295 of the Act quoted above or (II) dismiss the petition under S.278 of the Act for grant of letter of

administration of estate of deceased dying intestate and leave the parties free to claim their share in the estate of the deceased either by way of a partition suit or by proving the Will in appropriate proceedings. This Court would adopt the second option, as this petition cannot be converted into a trial of a civil suit, which is a matter of original jurisdiction before a District Court. Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoor @ Anna Kovoor Vs Mr Thomas Ipe Kovoor (Jr) & Ors. 21/25 This Court need not go into the rival contentions raised before this Court about the amendment of S.213(2) of the Act with effect from 27.5.2002 as to whether the requirement of obtaining a probate will be applicable in the present case or not at this stage nor this Court is inclined to convert these proceedings into a trial for grant of probate by accepting the contention of learned counsel for the respondents. The parties are of course, at liberty to claim their share in the property by instituting a partition suit separately. 18 There are also allegations and counter allegations in the present case between the petitioner and the contesting respondents, though both of them are real sisters of the deceased, about the conduct of the respective parties and their respective treatment to the deceased prior to her death, who unfortunately suffered a deadly disease of cancer or brain tumor but this Court is not required to go into these allegations at all and on the aforesaid legal ground itself, that such a petition is not found to be maintainable the moment the Will is put forth before the Court of the same deceased and this Court comes to the conclusion on the basis of Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoor @ Anna Kovoor Vs Mr Thomas Ipe Kovoor (Jr) & Ors. 22/25 that it can no longer be said to be a case of intestate succession covered by Part V of the Act of 1925 and therefore, the question of examination of the merit of the claim of the present petitioner or her worthiness for grant of letter of administration under S.278 of the Act would not arise. 19 In view of the aforesaid conclusion arrived at by this Court, it is not considered necessary to deal with the various cases cited by both the sides for support of their respective contention in detail but a brief review of the same would not be out of place. 20 Learned counsel for the petitioner Mr Rego heavily relied upon the decision of the learned Single Judge in the case of Rabinarayan Sarangi Vs Smt Tarulata Sarangi AIR2015 Orissa 104 to support his contention that the beneficiary under a Will is obliged to prove the Will in accordance with law and an

un-probated Will cannot come in the way of claim of Succession Certificate under S.213 (1) and S.372 of the Succession Act, 1925. Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 23/25 The said case is of little help to the learned counsel for the petitioner, as the present case is not a case under S.372 of the Act for grant of Succession Certificate and secondly, the very question of requirement of probate for the Indian Christians after amendment of S.213(2) of the Act, with effect from 27.5.2002, is a debatable issue and the case law relied upon by the learned counsel did not pertain to Indian Christians at all. 21 The judgment in the case of Usharani Roy Vs Hemlata Roy AIR (33) 1946 Calcutta 40 dealt with a case where a caveator set up a subsequent Will of the testator revoking the Will set up by the petitioner and in a petition for grant of probate, the Division Bench of the Calcutta High Court observed that the caveator must propound the Will set up by him. This judgment is also of little help in the present case, since as aforesaid, the procedure required to be undertaken for grant of probate may not be applicable to the facts of the present case, but that question is left open in view of the present petition for grant of Letter of Administration under S.278 of the Act found to be not maintainable. Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 24/25 22 Likewise, the case relied upon in the case of Venidas Nemchand Vs Bai Champabai AIR30Bombay 29 to the same effect as was laid by the Calcutta High Court, is of no avail in the present case. 23 The Rajasthan High Court decision in the case of Balkishan & Anr Vs Prabhu & Ors. AIR (37) 1950 Rajasthan 27 which held that where the plaintiff proves that he is entitled to succeed to the property of the deceased in cases of intestacy, the defendant cannot defeat the right of the plaintiff by merely saying that under a Will of the deceased, the property was bequeathed to him and he must obtain the probate of the Will. The said judgment is also distinguishable in view of amendment of S.213(2) of the Act in the present case with effect from 27.5.2002 for Indian Christians. 24 In view of the aforesaid, this Court is of the opinion that the present petition under S.278 of the Act does not merit acceptance of the same and is found to be not maintainable and is liable to be rejected. As such, the Dt. of judgment: Friday, 22.07.2016 Probate CP72011 Ms M Al Kovoov @ Anna Kovoov Vs Mr Thomas Ipe Kovoov (Jr) & Ors. 25/25

same is accordingly, dismissed. No costs. Copy of this order be sent to all Sd/-
Judge concerned parties. An

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