

In Re: Tadimalla Subba Rao

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Court : Karnataka

Decided On : Oct-22-1971

Reported in : AIR1972Kant293; AIR1972Mys293; (1972)1MysLJ578

Judge : E.S. Venkataramiah, J.

Acts : [Succession Act, 1925](#) - Sections 228, 241, 242, 243, 244, 245, 246, 247, 276, 278, 291 and 300; Estate Duty Act - Sections 57

Appeal No. : Probate Civil Petn. No. 6 of 1971

Appellant : In Re: Tadimalla Subba Rao

Advocate for Pet/Ap. : M.K. Viswanath, Adv. for King and Patridge

Disposition : Petition grant

Judgement :

ORDER

E.S. Venkataramiah, J.

1. The above petition has been filed for the grant of letters of administration with copies of the authenticated copies of the will and two codicils annexed thereto in respect of the estate of a certain John Hunter Alexander, hereinafter referred to as the 'testator'. The petitioner is Sri Tadimalla Subba Rao, who happens to be the holder of a Power of Attorney of the Executors and trustees entitled to administer

the estate who are not residing in India. After the petition was received by the Court it was duly advertised in local daily. No objections have been received from any body for the issue of letters of administration as prayed for.

2. Briefly stated the facts of the case are these. The testator was ordinarily residing at Chickamagalur in the State of Mysore. He was a planter by profession owning properties in India and Scotland. While he was in Scotland, the testator made a will on November 16, 1955, and signed the same in the presence of two witnesses, namely, Mr. David Smith and Miss Laura Cecilia Young, who duly attested it. By that will he appointed James Millar and Robert Fair-weather Alexander as the Trustees to act as executors of the will empowering them or the survivor of them or the heir of the last survivor of them to administer the estate as per directions contained in the will. Later at Bangalore on November 1, 1961, he executed a codicil to the aforesaid will and another codicil at Kirriemuir, Scotland, on May 6, 1964. The testator died at Chickamagalur on June 2, 1970.

James Millar one of the executors having predeceased the testator. Robert Fair-weather Alexander, the surviving Trustee and executor under the will assumed the office of the executor and appointed Mrs. Euphemila Margaret Millar and David Smith to act along with him as the Trustees and Executors of the will and codicils of the testator in exercise of the powers conferred on him by the said documents by executing a deed dated July 16, 1970 at Kirriemuir, Scotland. Thereafter the will and the two codicils were duly proved along with the document of July 18, 1970 by which Mrs. Millar and Smith were appointed as Co-trustees and Co-executors before the Commissariat of Edinburgh, Scotland and the confirmation (probate) of the will and the codicils was granted on October 2, 1970. The certified extract of the confirmation and the certified copies of the will and the codicils and the deed appointing co-trustees and Co-executors are produced before this Court. Pursuant to the said grant, an Inventory of the Heritable Estate of the value of 83,379/-in England and Scotland which belonged to the testator was filed before the Commissariat of Edinburgh which committed the same to the possession of the Trustees and the Executors by the certificate dated October 6, 1970, issued by the Depute Commissary Clerk. The certified extract of the aforesaid Inventory is also produced before the Court Because the Trustees and Executors who were all

residents of Scotland did not find it convenient to go to India for the purpose of obtaining the necessary letters of administration and to administer the properties of the testator which were in India, they appointed Sri T. Subba Rao, the petitioner herein, and Sri M. K. Vishwanath, an Advocate of Bangalore Bar to act as their lawful attorneys jointly and severally in connection with the obtaining of the letters of administration and the administration of the properties belonging to the estate of the testator which were in India by a Power of Attorney dated October 1, 1970 executed before J. K. Shepherd, a Notary Public at Kirriemuir, Scotland. The said Power of Attorney is produced before this Court. Pursuant to the said Power of Attorney, the petitioner herein has filed the above petition for the grant of letters of administration with the copies of the authenticated copies of the will and codicils annexed in respect of the estate of the testator in India. The necessary certificate issued under Section 57 of the Estate Duty Act by the Controller of Estate Duty. Mangalore is also produced. The net value of the estate in India is stated to be Rupees 5.41.321-16 in Annexure 'A' attached to the petition.

3. The petitioner has filed the above petition under Sections 228, 241, 278 and 300 of the Indian Succession Act (hereinafter referred as the Act). Section 278 of the Act deals with the particulars which an application for letters of administration should contain and Section 300 confers jurisdiction on the High Court also to issue letters of administration. But the real question is whether the present case falls under Section 228 or Section 241 of the Act, one of the points of difference between the two sections being that whereas when the grant is made under Section 241, no administration bond and sureties can be insisted upon under Section 291, when the grant is made under Section 228 the provisions of Section 291 would be attracted. Section 228 of the Act which is found in Chapter I of Part IX of the Act entitled 'Of Grant of Probate and Letters of Administration' reads as follows :--

'228. Administration, with copy annexed, of authenticated copy of will proved abroad :

When a will has been proved and deposited in a Court of Competent-jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India,

and a properly authenticated copy of the will be produced, letters of administration may be granted with a copy of such copy annexed.' Section 241 is found in Chapter II of Part IX of the Act dealing with 'Limited Grants'. Sections 241 to 247 deal with such of those 'limited Grants' which are made for the use and benefit of others having right. Section 241 reads :

'241. Administration, with will annexed, to attorney of absent executor.

4. When any executor is absent from the State in which application is made, and there is no executor within the State willing to act, letters of administration, with the will, annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.'

5. In this case it is shown that the will and the codicils have been proved and deposited with a competent Court in Scotland and properly authenticated copies of the will and the codicils have been produced along with the petition praying that the letters of administration may be granted with the copies of the same annexed. Section 228 of the Act which authorises the grant of letter of administration under these circumstances, does not prohibit the issue of letters of administration under it to an attorney. But Section 241 of the Act deals with an entirely different set of circumstances. It deals with a case where the executor is absent from the State in which the application is made and there is no executor willing to act within the State. Further Section 276 of the Act insists upon the original will and the codicils, if any, to be produced before the Court by the attorney or agent who could make the application for the benefit of his principal for the issue of letters of administration with the will and codicils. If any annexed until his principal i. e., executor obtains probate or letters of administration to himself. On a perusal of Section 241 of the Act it is clear that the said section is not applicable to this case because (i) grant prayed for is not of limited nature; (ii) the original will and codicils are not produced before the Court; and (iii) the will and the codicils have already been proved before another court of competent jurisdiction and no attempt is made to prove them again before this court. I am, therefore, of the opinion that the grant of letters of administration can be made only under Section 228 of the Act in

this case and not under Section 241 of the Act. My view is fortified by the decision of the Full Bench of the Allahabad High Court, in *Adwait Nath Sil*. In the goods of Alexander James Milne late of Aberdeen. Scotland, AIR 1948 All 351 (FB). In that case also the facts were similar. The testator Alexander James Milne died possessed of properties in India and Scotland. By his will he appointed one Allan Hay as the executor who obtained confirmation of the will in the Sheriff Court of Aberdeen. Kindardine and Banff at Aberdeen. The executor then appointed Adwait Nath Sil as his attorney for the purpose of obtaining letters of administration from the competent Court in India with the copy of the will annexed. The question before the Court in that case was whether Section 228 or Section 241 would apply to the case. Dealing with the said question Mootham, J. b with whom the other two learned Judges agreed observed as follows:--

'It is apparent that there is some difficulty in the application of either section to the case which we have to consider, for Section 228 does not make provision for the grant of administration to an agent or attorney, and Section 241 assumes production by the attorney of the original will; but looking at the scheme of the Act it appears to me that if either section is applicable the more appropriate is Section 228. The two sections are in my opinion intended to apply to very different circumstances, the former where the will has been proved abroad and the latter where it has not been proved at all; and accordingly a Court in India will, when acting under Section 228, grant administration without further proof of the will, whereas, on a Petition under Section 241 he will has to be established and its authenticity may be disputed.'

With great respect to the learned Judges of the Madras High Court who decided the case *In re Laurence Claude Levack* in the matter of the will of Lina Dalrimple Hay, : AIR1954 Mad898 (FB). I find it difficult to agree with their view that Section 241 which deals with a case of a limited grant is also applicable to a case like the present one.

6. In the result, I allow the above petition and direct that letters of administration with the copies of the authenticated copies of the will dated November 16, 1959 and codicils dated November. 1, 1964 and May 6. 1964 of John Hunter Alexander

be issued to the petitioner on Ms furnishing an administration bond with one surety to the satisfaction of the Registrar of this Court as required by the provisions of Section 291 of the Act read, with Rule 17 of the Rules governing Probate and Administration Matters 1964.

Inventory to be filed within six months and accounts to be filed within one year.

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