

In Re: Mariamma Thomas

In Re: Mariamma Thomas

SooperKanoon Citation : sooperkanoon.com/719375

Court : Kerala

Decided On : Feb-24-2006

Reported in : 2006(2)KLT11

Judge : K.M. Joseph, J.

Acts : [Indian Succession Act, 1925](#) - Sections 212, 291 and 291(1); ;Kerala Indian Succession Rules, 1968 - Sections 241 - Rule 18

Appeal No. : Intest Case No. 1 of 2004

Appellant : In Re: Mariamma Thomas

Advocate for Pet/Ap. : Sebastian Champappilly and; P.S. Bobby, Advs.

Judgement :

K.M. Joseph, J.

1. Letters of Administration was ordered to be issued to the petitioner by order dated 19-12-2005. Annexure 7 was the affidavit of the daughter of the deceased. The daughter has not raised any objection to the grant of Letters of Administration in favour of the petitioner, her mother and it was on that basis the Letters of Administration were granted.

2. As per Section 291 of the [Indian Succession Act, 1925](#) read with Rule 18 of the Indian Succession Rules (Kerala) 1968, every person to whom any grant of Letters

of Administration, other than a grant under Section 241 is committed, should give a bond to the Registrar General with one or more sureties, engaging for the due collection getting in and administering the estate of the deceased. A memo was filed by the counsel for the petitioner praying that since the instant case is a non-contentious proceeding and the court has allowed the petition without specific direction regarding the execution of bond and as there is no conflict of interest between the mother and the daughter the execution of the bond as contemplated under Rule 18 of the Indian Succession Rules (Kerala) 1968 was not ordered and this court directed issuance of Letters of Administration on stamp papers already produced by the petitioner. It was prayed that Letters of Administration may be issued without insisting upon the execution of the bond. The office has put up this matter for orders as to in view of Section 291 of the Indian Succession Act whether execution of bond in form No. 6 is necessary.

3. Learned counsel for the petitioner Dr. Sebastian Champappilly reiterates his contentions taken in the memo. He further submitted that even if it is necessary to execute a bond, bond may not be necessitated in respect of the amount which was deposited in the Sub-Treasury, Ernakulam as the said amount had already been released,

4. I am unable to agree with the learned counsel for the petitioner that a bond is not necessary, in view of the fact that Letters of Administration was granted on the basis of the affidavit filed by the daughter stating that she has no objection for the grant of Letters of Administration to the petitioner, her mother. Section 291(1) of the [Indian Succession Act, 1925](#) reads as follows:

every person to whom any grant of letters of administration, other than a grant under Section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct.

Form No. 6 relates to bond to be executed in the case of Intestacy while Form No.7 relates to a bond to be executed in the case of Letters of Administration with Will Annexed. It is clear, on the perusal of the aforesaid provision, that the

execution of the bond is an unavoidable necessity except in the case provided for by Section 241. The law does not contemplate an exemption in the execution of the bond on the ground that the proceedings was non-contentious. Letters of Administration was directed to be issued on the basis of the affidavit as filed in this case. Learned counsel was also unable to point out any provision which confers this court with the power to dispense with the execution of the bond in such a case.

5. However, learned counsel for the petitioner submits that the petitioner has already realized the sum lying in the Sub-Treasury, Ernakulam and therefore if the bond is directed to be executed, the petitioner need not execute the bond in respect of the said sum. Infact Rule 18 of the Indian Succession Rules (Kerala) 1968 reads as follows:

One or more sureties to the bond required: Every person to whom a grant of letters of administration, other than a grant under Section 212 of the Act is committed, shall execute a bond in Form No. 6 and 7 and shall unless otherwise ordered by the Court, be given in the amount of the full value of the property for which the grant is to be made.

6. There is a discretion vested in the Court in regard to the value of the property for which the bond is to be executed. According to the provisions of 291, the execution of the bond is made for the purpose of engaging for the due collection getting in and administering the estate of the deceased. It is true that the parties involved in this case are the mother and her daughter. The case of the petitioner is that the amount has been secured from the Sub-treasury. There is no specific contention that the said amount has been distributed between the parties. In view of the fact that the purport of the bond involves the administration of the estate also, I feel that the petitioner has not made out a case for not including the value of the amount lying in the Sub-treasury for the purpose of execution of the bond. In such circumstances, the petitioner can not extricate herself from the liability of executing bond for the full value and therefore it is ordered that the execution of the bond as contemplated in law can not be dispensed with.

