

Camani Vs. the Administrator-general of Madras and Two ors.

Camani Vs. the Administrator-general of Madras and Two ors.

SooperKanoon Citation : sooperkanoon.com/780530

Court : Chennai

Decided On : Jan-03-1906

Reported in : (1906)ILR29Mad290

Judge : Arnold White, C.J. and; Subrahmania Ayyar, J.

Appellant : Camani

Respondent : The Administrator-general of Madras and Two ors.

Judgement :

1. The question we have to decide is whether the funeral and testamentary expenses of Mrs. Barefoot should be paid out of the legacy bequeathed by her to her daughter, or out of Mrs. Barefoot's residuary estate. By her will Mrs. Barefoot directed that these expenses should be paid out of the legacy' At the time she made her will she was unaware that she was entitled to a sum of Rs. 38,000 being her share of a bequest to her son James Barefoot by her husband under his will which bequest was subsequently held to be void by reason of James having attested his father's will. The rule as laid down in Theobald on 'Wills' is as follows:

It would seem, that if no disposition of the residuary estate is attempted, the proper inference is, that the specific fund is operated for the benefit of the next of kin, and that it and not the residue undisposed of is the primary fund for payment of debts and legacies. See *Milnes v. Slater* 8 Ves. 295, *Dacre v. Patrickson* 1 Dr. & Sm. 186, *In re Grainger*; *Dawson v. Siggins* (1900)2 Ch. 755.' We think the present

case falls within the rule as laid down by Mr. Theobald and not within the exceptions to which the learned author refers. No doubt it may be said that if Mrs. Barefoot had been aware that she had residuary estate to dispose of she might not have directed that her testamentary and funeral expenses should be paid out of the specific bequest. But we are not entitled to speculate as to what the testatrix would or might have done and in effect make a new will for her. We must give effect to the express directions in the will. This appeal is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com