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Court : Chennai

Decided On : Oct-18-1957

Reported in : (1958)2MLJ230

Appellant : Nanjappa Asari

Judgement :

Ramaswami, J.

1. This is a second appeal sought to be preferred against the decree and judgment of the learned Subordinate Judge of Coimbatore in A.S. No. 196 of 1956, confirming the decree and judgment of the learned District Munsif of Coimbatore in O.S. No. 417 of 1955.

2. The facts are : One Velayudha Asari died leaving surviving him two widows, Under his last will and testament he gave the two widows certain amounts as maintenance and deducting certain expenses, mentioned that one-third of the income was to be paid to the plaintiff in this suit. After the death of the widows one-third of the properties itself was made to vest in the plaintiff. The present defendant Angammal applied for letters of administration with the will annexed. On caveat being entered by the opposite party, the proceedings were registered as O.S. No. 116 of 1942. Letters of administration with the will annexed was granted to Angammal; see Exhibit A-6, dated 9th March, 1944. Subsequently this plaintiff had filed O.S. No. 690 of 1952 for accounting by Angammal. That suit ended in a

compromise agreement, dated 4th September, 1953. Subsequent to the said compromise in O.S. No. 690 of 1952 the plaintiff has received several amounts as evidenced by Exhibits B-4 to B-13. Exhibit B-1, dated 4th March, 1955, is the lump sum receipt for Rs. 2,000 executed by the plaintiff in favour of the defendant. It is in these circumstances that the plaintiff had filed another suit for accounts for the period 1st April, 1953, to 31st March, 1955. The defendant took objection that in O.S. No. 116 of 1942, the Sub-Court of Coimbatore had appointed her as administrator and that she has to render accounts of her management to the Sub-Court and has been doing so, that the present suit for rendition of accounts is not maintainable and that the remedy of the plaintiff is to move the probate Court for appropriate orders or file an administration suit.

3. Both the Courts below held that this independent suit for accounts from 1st April, 1953, to 31st March, 1955, is not maintainable and dismissed the suit. Hence the second appeal by the defeated plaintiff.

4. Probate is a document issued under the seal of the Court and is the official evidence of an executor's authority. A person, therefore, who has been nominated by a will to act as executor, must obtain a grant of probate before he can take any steps which require formal proof of his authority, e.g., if he wishes to sue for debts due to the deceased or to sell the deceased's land. It is sometimes said that unlike an administrator an executor derives his title from the will for probate does no more than certify the validity of the will and of his appointment and does not itself appoint him to his office. There is a sharp distinction between metropolitan and mofussil wills. In the former case the will has got to be probated and in the latter it is optional. But even in the latter case the executor may be compelled to apply for probate at the instance of the persons interested.

5. If the validity of the will is contested in Court by entering caveat, the original petition is converted into a suit and probate will not be granted unless the Court pronounces in its favour.

6. In uncontested cases an executor is able to obtain a grant of probate by merely applying with abbreviated technical formality. This is known as 'probate in common form.' On the other hand, if the validity of the will is contested, probate will not be

granted until the Court of probate has pronounced in its favour and in such a case the grant of probate is stated to be in the 'solemn form'. The corresponding description under Indian Succession Act is non-contentious and contentious proceeding (Section 265 and Section 286, Indian succession Act).

7. If the deceased left no will or nominated no executor therein, or if all the executors nominated die before him or refuse to act, an administrator will be appointed to administer the deceased's estate. Grants of administration may be obtained in much the same way as grants of probate. The document issued to an administrator as his authority is known as letters of administration and where there is a will but no executor, the grant of administration is said to be cum testamento annexo, in order to distinguish it from a grant of administration arising through intestacy.

8. Section 317 of the Indian Succession Act creates a statutory obligation upon the executors and administrators to exhibit in Court an inventory of all the property, movable and immovable, and of all credits and debits due to the estate of the deceased within six months from the date of the grant, without any proceedings calling upon them to do so. In like manner there is a statutory obligation on the executors and administrators to exhibit, within one year from the grant or within such further time which such Court may appoint, an account of the estate. The phrase 'from time to time' which occurred in the Indian Succession Act of 1865 has been omitted from the present Section 317. The section contemplates the submission of one initial inventory and one final account after the completion of administration and does not warrant an order requiring a series of yearly accounts. There is therefore no warrant for saying that the account which an executor has to file under Section 317 must be an account for one year. In short, the one final account to be filed under Section 317 must be a complete one up-to-date. When it is filed in Court it must give the probate Court an idea of the condition of the testator's estate in the hands of the executor up-to-date when he files and that one final account over a long period may be between the grant of the letters of administration and the exhibition of that final account contemplated under Section 317. These principles are deducible from *Moheshchandra v. Biswanath* I.L.R.(1897) Cal. 250, *Hemandas v. Chellaram* (1915) 32 I.C. 554, *Notandas v.*

Krishna Bed (1917) 47 I.C. 750, Chandra Kumar v. Prasanna I.L.R.(1921) Cal. 1051, Hiralal v. Jiban 43 C.W.N. 754. Sengupta : 'Commentaries on the Indian Succession Act' page 666; N.D. Basu : 'The Indian Succession Act' Third Edition, page 1179.

9. The protection afforded to parties interested in the will and as against persons appointed as administrators is threefold. First of all, if the final account is filed under Sub-section (4) of Section 317 and if that account is false in any particular the executor or administrator makes himself punishable under the Indian Penal Code. The other remedy open thereunder to the interested parties is to file an action against the executor or administrator questioning the correctness of the accounts. Secondly, it is open to the parties interested under the will to apply for revocation of the grant of probate or letters of administration under Section 263(e). Thirdly, an administration suit can be filed for enforcing the obligations under the will. These remedies are deducible from Bai Panbai v. Mororji (1926) 29 Bom. L.R. 683 : A.I.R. 1927 Bom. 438 Chedalal v. Ram Dulari A.I.R. 1930 Oudh 424. B.B. Mitra : 'Indian Succession Act', sixth edition, page 432.

10. On an examination of these principles the following proposition emerges, viz., that before that one final account is filed under Section 317, one of the beneficiaries under the will cannot file an independent suit for accounts.

11. The object of the account and inventory being exhibited seems to be that the account and inventory should be available for inspection by the legatee or other parties interested in the administration of the estate. If the interested person is either denied the right of inspection, or if, on being permitted to inspect, he is not satisfied with the result of the inspection, he has a right to file an administration suit and ask for administration of the estate by the Court. Moreover when the Court is seized of the proceedings under sections 301 and 302 of Indian Succession Act in relation to the administration a person interested in the estate can move the Court to scrutinise the accounts filed under Section 317 in order to show whether the executor has so misconducted himself as to make it necessary for him to be removed. The Court can also scrutinise the accounts suo motu for this purpose even when not specifically moved to do so. But the mere fact that

accounts have been filed in the probate Court or even the fact that accounts have been passed by the Court does not absolve the executor or administrator from his liability for any particular sums of money which may have been misappropriated by him and he may be sued in the ordinary way for such sums by a person interested in the administration of the estate and he may also be made criminally liable under Section 406, Indian Penal Code, with the previous sanction of the probate Court. It is only after the inventory and final account contemplated by Section 317 have been filed and passed and the executor or administrator has been discharged, that a legatee or beneficiary can take action. The remedy of the party not satisfied with the accounts is not under Section 317 but a suit for accounts. *Gulati v. Reeves Brown* A.I.R. 1939 Lah. 463. *Krishnalal v. Emperor* A.I.R. 1921 Cal. 431, *Mantha Ramamurthi* : 'Law of the Wills', M.L.J. Edition, page 553, P.L. Paruck : 'Indian Succession Act', Fourth Edition, page 590, Sengupta : 'Commentaries on Indian Succession Act', page 667.

12. Bearing these principles in mind, if we examine the facts of this case, a suit for accounts will not lie because the administrator has not been discharged by the probate Court and that Court is still seized of the proceedings. The administration can be wound up and the final account can be filed in this case only after the death of the two widows when under the will the distribution of the assets can be made. Ultimately when the accounts are filed in the probate Court if the parties interested are dissatisfied with the accounts they could take steps either in the criminal Court or file a suit questioning the correctness of the accounts and make the executor liable. A reading of Exhibit A-1 does not show that there is a liability undertaken by the respondent defendant in the lower Court to render accounts to the plaintiff every year except as an executor. As an executor the defendant has got a liability to render accounts and that is all that is mentioned in Exhibit A-1 also. There is no separate right created under Exhibit A-1 in favour of the plaintiff to call upon the defendant to render accounts.

13. Therefore, both the Courts below relying upon *Bai Panbai v. Mororji* A.I.R. 1927 Bom. 438, *Krishna Lal v. Emperor* A.I.R. 1921 Cal. 431, and *Pannalal v. Hansraj* : AIR1940 Cal236 , rightly decided that this suit for accounts was not maintainable. This second appeal cannot be admitted as there is no point of law

and it is hereby dismissed.

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