

1957 Present : Basnayake, C.J., and L. W. de Silva, A.J.

TALAYARATNE and others, Petitioners, and TALAYARATNE,
Respondent

S. C. 544—D. C. Colombo, 11,869/T

Appeal—Necessary parties—Administration of estates—Judicial settlement of accounts—Objections by parties not entitled to the income from the estate—Duty of Court to hear them—Civil Procedure Code, ss. 729, 730, 735.

The Civil Procedure Code does not require a party appellant to name as respondent to an appeal every party to the proceedings in the lower Court. A party against whom no order is sought by the appellant need not be named as a respondent.

When application is made by an administrator under section 729 of the Civil Procedure Code for judicial settlement of his accounts, the Court is bound to take the accounts and hear the allegations and proofs of the objecting parties even when the objectors are not entitled to the income from the Estate.

APPPEAL from an order of the District Court, Colombo.

H. V. Perera, Q.C., with *T. B. Dissanayake* and *D. R. P. Goonetilleke*, for Petitioners-Appellants.

H. W. Jayewardene, Q.C., with *P. Ranasinghe*, *Miss Maureen Seneviratne* and *N. R. M. Daluwatte*, for Petitioner-Respondent.

Cur. adv. vult.

September 2, 1957. BASNAYAKE, C.J.—

The respondent to this appeal, the administratrix *cum testamento annexo* of the Estate of the deceased Don Charles Talayaratne, applied

to the District Court by petition to have the accounts filed by her judicially settled. She named 18 persons, including the four appellants, as respondents to her application. The appellants and another filed a statement of objections in which they alleged that the accounts filed were incorrect and lacking in detail and had not been kept regularly. They gave details of their objections by specifying their grounds of objections against each item of the accounts objected to.

After inquiry the learned District Judge held that the accounts had not been kept in a proper or business-like manner and found that a large number of items of expenditure were unsupported by vouchers. He also held that, as the 17th respondent to the application, who was the only party entitled to the "balance income", had accepted the correctness of the accounts and as the objectors were not entitled to the income from the Estate, they were not entitled to contest the accounts; but that if a party entitled to the income of the Estate contested them a large part of the accounts would have to be rejected and the administratrix surcharged in respect of the sums of money derived as income which have not been properly accounted for. He therefore ordered decree to be entered to the effect that the accounts filed by the administratrix are accepted and passed. The present appeal is from that order.

A preliminary objection was taken by learned counsel for the respondent on the ground that all the parties to the application for a judicial settlement had not been made respondents to this appeal. We do not think that there is any substance in this objection. The Civil Procedure Code does not require a party appellant to name as respondent to an appeal every party to the proceedings in the lower court. Clearly no order can be made against a party to an action in appeal unless that party has had an opportunity of being heard. In the instant case the appellants do not seek an order against anyone not named as a respondent to this appeal. Their prayer is as follows:—"Wherefore the Appellants-Petitioners pray that Your Lordship's Court be pleased to set aside the judgment and order of the learned Additional District Judge of Colombo and direct that the said accounts be rejected and the administratrix be called upon to file a fresh account, for costs, and for such other and further relief as to Your Lordship's Court may seem meet."

We shall now consider the main questions arising on this appeal. The administratrix by petition under section 729 of the Civil Procedure Code prayed that her accounts be judicially settled. Among others the appellants were made respondents to the petition and they were rightly cited by the court. Upon the return of the citation the court was bound to take the accounts and hear the allegations and proofs of the parties (section 730). This the court declined to do, even though it was satisfied that the administratrix had failed to properly account for the money received by her. The learned trial Judge is wrong in holding that he has power to take the accounts and hear the allegations and proofs of the parties only where the objectors are entitled to the income. The fact that sub-section (2) of section 730 provides that a party may contest

the accounts with respect to a matter affecting his interest in the settlement and distribution of it does not relieve the court of the obligation imposed on it by sub-section (1) to take the accounts and hear the allegations and proofs of the parties respecting the accounts.

We therefore set aside the order of the learned District Judge and direct him to hear the objections respecting the accounts and examine the accounting party under section 735 and make his order on the application of the administratrix praying for a judicial settlement of her accounts.

The appellants are entitled to the costs of this appeal.

L. W. DE SILVA, A.J.—I agree.

Order set aside.

