

ARON FERNANDO

v.

BUDDHADASA

COURT OF APPEAL.

ABEYWARDENA, J. AND T. D. G. DE ALWIS, J.

C.A. No. 371/76(F).

D.C. CHILAW No. 18828.

SEPTEMBER 10, 1985.

Administration of estates—Administrator's suit in ejectment—Is administrator functus officio on closing of estate?—Section 540 of the Civil Procedure Code.

An administrator is functus officio only when he has duly completed the administration of estate. Closing of the proceedings or rendering of a final account or even a judicial settlement of the estate will not make the administrator functus if he has not completed the administration.

Cases referred to:

- (1) *Ekanayake v. Appu*—(1899) 3 N.L.R. 350.
- (2) *Soyza v. Abeydera*—(1909) 12 N.L.R. 349, 351.
- (3) *Supramaniam Chetty v. Palaniappa Chetty*—3 Bal 59.
- (4) *Ramalingam v. Kailasapillai*—(1942) 43 N.L.R. 425.

APPEAL from judgment of the District Court of Chilaw.

P. A. D. Samarasekera, P.C. with *K. Abeypala* for appellant.

J. W. Subasinghe, P.C. with *J. C. Nilanduwa* for respondent.

May 14, 1986.

T. D. G. DE ALWIS, J.

The plaintiff in his capacity as administrator of the estate of the late D. Rajapakse filed this action against the defendant to have him ejected from the land described in the schedule to the plaint and for damages. Judgment was entered for plaintiff as prayed for. A point was taken at the trial that the plaintiff was *functus officio* and no longer the administrator of the estate of the deceased, and hence he could not maintain this action. This is also the only point taken at the hearing of this appeal.

In support of this contention learned counsel relied on the following facts: letters of administration to the estate of the deceased were issued to the plaintiff on 31.1.70; plaint in this case was filed on 6.1.71; final account was filed on 1.7.70; final accounts were accepted on 10.12.70; scheme of distribution in respect of the immovable property was dispensed with; the estate was closed on 2.6.71; and judgment was entered on 11.10.76. It was the submission on behalf of the defendant that since the closing of the estate on 2.6.71 the plaintiff was *functus officio*, and for the action to further proceed substitution should have been effected under section 404 of the Civil Procedure Code and this has not been done.

I should think that section 540 of the Civil Procedure Code is a complete answer to this question. This section states:

"If no limitation is expressed in the order making the grant then the power of administration, which is authenticated by the issue of probate, or is conveyed by the issue of a grant of administration, extends to every portion of the deceased person's property movable and immovable, within Ceylon, or so much thereof as is not administered, and endures for the life of the executor or administrator or until the whole of the said property is administered, according as the death of the executor or the administrator, or the completion of the administration, which comes first."

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In the case of *Ekanayake v. Appu* (1) it was thought that the rendering of a final account does not make an administrator *functus officio* without a judicial settlement or a formal discharge or removal from office. But however in the case of *Soysa v. Abeydera* (2) Middleton, J. stated as follows:

"Under English Law an executor is entitled to his release from the beneficiaries under the will upon a filing of proper accounts and vouchers showing a due discharge of his obligations under the will, and so far as I can gather from a perusal of Chapters XXXVIII and LIV of the Civil Procedure Code an executor may get his discharge in Ceylon on the same grounds and for the same reasons, although under sections 725 and 729 the court may either order a judicial settlement of accounts, or the executor may petition for one to be ordered if he desires to do so."

In the case of *Supramaniam Chetty v. Palaniappa Chetty* (3), Layard, C.J. expressed the opinion that even where there has been a judicial settlement an administrator may still be sued and it may be proved that he had not duly administered the estate. In the case of *Ramalingam v. Kailasapillai* (4) it was held that it was not necessary for an administrator to obtain the judicial settlement of an estate as a preliminary to a plea of plene administravit.

It could be inferred from these decisions that an administrator could be considered *functus officio* not because he has rendered a final account, nor even because there has been a judicial settlement of the estate. The true criterion appears to be whether he has duly completed the administration of the estate. As he has done in this case it was the duty of the plaintiff as administrator of the estate of the deceased to institute action for the recovery of the property in suit. That is a part of the administration of the estate. At the time that the final account was rendered, and the estate was declared closed the administration of this part of the deceased's estate was not complete. Hence the power of administration under section 540 of the Civil Procedure Code still subsisted where this property was concerned. Therefore we are of the view that the plaintiff was not *functus officio*, and he had the capacity to continue the action.

The appeal is accordingly dismissed with costs fixed at Rs. 525.00.

ABEYWARDENA, J. – I agree.

Appeal dismissed.