

1948

*Present: Basnayake J.**In re BERESFORD BELL*APPLICATION FOR SOLE TESTAMENTARY JURISDICTION IN RESPECT
OF THE ESTATE OF S. BERESFORD BELL

*Courts Ordinance s. 68—Sole testamentary jurisdiction—Last Will proved in England—
Proper procedure—Re-sealing—British Courts Probates Re-sealing Ordinance,
section 3—Administration of Ceylon estate.*

B domiciled in England died leaving a last will which was duly proved in the High Court of Justice at Lewes. On an application by the petitioner for sole testamentary jurisdiction on the District Court of Colombo in respect of B's estate in Ceylon—

Held, that the proper procedure for the petitioner was to take steps under section 3 of the British Courts Probates (Re-sealing) Ordinance.

Quaere, whether the Supreme Court has power to grant an order under section 68 of the Courts Ordinance in a case which falls within the ambit of the British Courts Probates (Re-sealing) Ordinance.

APPPLICATION for sole testamentary jurisdiction.

A. E. Keuneman (Jnr.), for the petitioner.

Cur. adv. vult.

January 5, 1948. BASNAYAKE J.—

One Shurland Beresford Bell (hereinafter referred to as the testator) a person domiciled in England died on September 16, 1946, at Uckfield in England. He left a last will dated May 18, 1943, whereby he appointed as Executors his sister Minnie De Montenache Caruth, his son Cecil George Bell (hereinafter referred to as the petitioner) and his daughter Daphne Edith Bell.

The Testator's will was duly proved in the District Probate Registry of His Majesty's High Court of Justice at Lewes on February 12, 1947, by Minnie De Montenache Caruth and Daphne Edith Bell, two of the Executors.

The estate in Ceylon of the Testator at the date of his death consists of a sum of Rs. 955.02 in the Mercantile Bank of Colombo and shares in tea and rubber companies valued by the petitioner at Rs. 30,187.50.

The present application by the petitioner is for an order under section 68 of the Courts Ordinance directing and appointing the District Court of Colombo to have and exercise sole and exclusive Testamentary Jurisdiction in respect of the property and effects in Ceylon of the Testator. There is nothing before me to show that the other executors consent to the present application but the petitioner states that he does not anticipate any opposition to it and claims a grant of probate of the Testator's will as one of executors named therein "power being reserved to Minnie De Montenache Caruth and Daphne Edith Bell the other executors to prove".

The petitioner does not state why he desires to go through the procedure of proving the Testator's will all over again in our Courts when he can proceed under the provisions of the British Courts Probates (Re-sealing) Ordinance, nor has learned counsel for the petitioner been able to enlighten me on the point.

Section 3 of the British Courts Probates (Re-sealing) Ordinance which provides for the re-sealing in Ceylon of probates and letters of administration granted outside Ceylon reads—

"Where a court of probate in any part of His Majesty's dominions or a British court in a foreign country has, either before or after the date on which this Ordinance comes into operation, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters if so granted may, on being produced to, and a copy thereof deposited with a competent court, be sealed with the seal of that court, and thereupon shall be of like force and effect, and have the same operation in Ceylon as if granted by that Court".

The competent court for the purpose of the Re-sealing Ordinance is the District Court of Colombo or the District Court having jurisdiction over the place where—

(a) the Ceylon estate or any part of the Ceylon estate of the deceased person is situate, or

- (b) the executor or administrator, or the attorney of the executor or administrator, of that part of the estate of the deceased person which is being administered outside Ceylon is resident (Section 2).

In view of the provisions of law I have cited above, it is unnecessary for the petitioner to obtain an order of this Court under section 68 of the Courts Ordinance directing and appointing the District Court of Colombo to have and exercise sole Testamentary jurisdiction in respect of the property of the Testator within the Island. The Legislature has clarified the position by the amendment of section 68 of the Courts Ordinance by the addition of the following proviso (section 6 of Ordinance No. 40 of 1938)—

“ Provided that no such order of the Supreme Court shall be necessary to confer jurisdiction upon a District Court for the purposes of the British Courts Probates (Re-sealing) Ordinance or to enable a District Court to have and exercise jurisdiction as a ‘ competent Court ’ under that Ordinance ”.

I am doubtful whether this Court has power to grant an order under section 68 of the Courts Ordinance in a case which falls within the ambit of the British Courts Probates (Re-Sealing) Ordinance. As the matter has not been argued before me and as it is not necessary to decide it for the purposes of this case, I reserve it for decision when a suitable case arises. For the present it is sufficient to state that where a person entitled, as in this case, to proceed under the British Courts Probates (Re-sealing) Ordinance desires to obtain probate under the procedure prescribed in Chapter XXXVIII of the Civil Procedure Code and for that purpose moves for an order designating a court for the purposes of section 518 of the Civil Procedure Code the applicant must explain to the satisfaction of this Court why he does not adopt the special procedure prescribed by the enactment I have cited above. There is no such explanation in this case. I therefore refuse the application.

Application refused.
