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Present : Dalton and Lyall Grant JJ.

NONOHAMY *v.* PUNCHIHAMY.

199—*D. C. (Inty.) Galle, 6,524.*

Administration—Passing of final account—Estate closed—Claim of heir to share of estate—Right to reopen proceedings.

Where a final account has been filed in administration proceedings and the estate declared closed, the Court has no power to reopen proceedings in order to entertain a claim to a share of the estate on the ground that the claimant is an heir.

A PPEAL from an order of the District Judge of Galle.

Weerasooria (with *Samarawickreme*), for appellant.

Navaratnam, for respondent.

December 4, 1929. LYALL GRANT J.—

This is an appeal from an order made in the District Court of Galle in an administration suit.

The appellant is the administratrix and the respondent is a claimant.

The administratrix, Manikku Badaturuge Nonohamy, is the paternal aunt of the deceased, who died on August 11, 1927. She applied to the District Court of Galle to administer the estate on the footing that she was the sole heir of the deceased and obtained a decree *nisi* for letters on November 28, 1927. No one appearing to object, the decree was made absolute on March 4, 1928. On July 10,

1928, she filed an inventory and accounts and the proceedings were closed. On January 29, 1929, the respondent made an application to Court in the administration proceedings to be entitled to a half share of the estate on the footing that she was a sister of the deceased's mother.

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The application was opposed on various grounds, but after inquiry the learned District Judge declared the claimant entitled to a 1/7th of a $\frac{1}{2}$ share and ordered the appellant to pay all the costs of the respondent.

From this order the present appeal is brought. In the lower Court various preliminary objections were taken by the administratrix, the principal one being that as the administration was closed, the claimant could only proceed by way of action.

This objection was repelled and the case went to trial on the issue whether the claimant was an heir to the estate as a sister of the deceased's mother.

No appeal was taken against this order, but the question of the regularity of the proceedings was raised in this Court, and it seems desirable that an opinion should be given on this point.

Various cases were cited by the respondent to show that the administration suit was still open and that the claimant was entitled to make her claim by petition by virtue of section 720 of the Civil Procedure Code.

In re Will of Appuhennedigeey Baban,¹ an application under section 720 was entertained although there had been what purported to be a final account. Clarence J. there said:—

In my opinion all that is necessary to found the jurisdiction under section 720 is simply the *factum* of an estate not wholly distributed.

In that case the executor admitted that the petitioner was originally entitled to a share.

The case cited which comes nearest the present is that of *Vallipillai v. Ponnusamy*.² There were various items in the account filed by the administratrix of amounts due to the estate, not recovered and not distributed. For this reason, among others, an application for a judicial settlement was allowed.

In *Perera v. Sinno*,³ where the appellant alleged that he was not aware of the pendency of the proceedings and also that certain property had not been included in the estate, Wood Renton C.J. held that if the latter statement were correct, the estate could not be said to be finally closed.

¹ (1891) 1 C. L. R., p. 41

² (1913) 17 N. L. R. 12

³ (1915) 4 Balasingham, Notes of Cases, 77.

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In the present case the case was undoubtedly finally settled on the footing that the administratrix was the sole heir and no question arises of any amount not included in the estate, of debts not collected, or of shares not distributed to persons admittedly entitled to them. The proceedings have been regularly conducted and regularly concluded on the footing that the administratrix was sole heir.

I can see nothing in the Code which entitles the Court to reopen such proceedings for the purpose of examining fresh claims nor do any of the cases cited support such a contention.

The present appeal, however, is from the order of October 2, allowing the claim on its merits, and it is necessary to examine the evidence adduced by the claimant in support of her assertion that she is the maternal aunt of the deceased.

At the trial on July 30, 1928, the claimant produced two documents—P 1, which she said was the birth certificate of the deceased's mother, and P 2, which she said was her own birth certificate. P 2 is the birth certificate of one Dingihamy, daughter of Bodabadaturuge Juan, while the claimant's name is Bodiya Baduge Punchihamy.

The claimant admitted that she never signed as Dingihamy and only found that she was registered in that name when search was made for her birth certificate. She says that at some unspecified date her "ge" name was altered to Bodia Baduge.

The case was adjourned to August 30, 1929, and on that date the District Judge intimated that he would allow the parties to call further evidence in support of their respective claims.

On October 1, 1928, the claimant produced a bill of sale, P 3, given by various people, including one Bodia Baduge Punchihamy of Weligama, and one Bodia Baduge Nikohamy of Ahangama, to show that she was a sister of the deceased.

The deed is dated March 22, 1896, and the claimant avers that she is the Punchihamy mentioned in the deed and that Nikohamy is her sister and mother of the deceased.

The learned District Judge finds that P 1 is the birth certificate of Nikohamy and P 2 the birth certificate of Punchihamy.

P 1 gives the "ge" name of Nikohamy as Bodiabaduge, her father's name as Bodiabaduge Juwan and her mother's name as Dodanduwe Lahanda Waduge Nona Baba.

P 2 gives Dingihamy's father's name as Bodabadaturuge Juan, and her mother's name as Dodanduwe Waduge Nona Baba.

The claimant's present name is Bodiabaduge Punchihamy, and the administratrix name is Manikku Badaturuge Nonohamy.

The learned District Judge finds that the claimant Bodiabaduge Punchihamy is the same person as Bodiabadaturuge Dingrihamy and that she is the sister of the deceased's mother, Bodia Baduge Nikohamy.

On appeal it was admitted that neither P 1 nor P 2 could be relied upon. P 1 is not a birth certificate, but a certificate of an unsuccessful search for a birth. The names contained in it are obviously names supplied by the claimant. It has no probative value.

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Counsel for the claimant admitted on appeal that he could not rely on P 2 as the birth certificate of the claimant. I think he was right in doing so, but one effect of this admission is to destroy any reliance not only on the claimant's own evidence, but also on that of the ~~ex~~-Patabendi Aratchi called by her at the adjourned date, evidence to which the learned District Judge attaches great weight.

Most of the evidence on which the learned District Judge relied in admitting the claim has therefore disappeared, but there remains to be considered the effect of P 3—a document produced by the claimant at the adjourned trial.

That document is a copy of a registered bill of sale executed by various people, including Bodiabaduge Punchihamy and Bodiabaduge Nikohamy.

The claimant asserts that these persons are herself and the mother of the deceased and that it shows that they are sisters.

In my opinion this deed is insufficient to establish the claim. The only other evidence led, was that of the Police Officer of Ahangama, a relative of the deceased and of the administratrix. He admits that he did not know Nikohamy, the mother of the deceased, and only knew the deceased, Davith, for a year or two, and he does not say what grounds he has for stating that the claimant is a full sister of an uncle of the deceased.

The evidence led in support of the claim seems to me unsatisfactory. Some of it is probably false and the remainder is inconclusive. The evidence relied on by the learned District Judge has been abandoned by respondent's counsel on appeal, and I would accordingly allow the appeal with costs against the claimant in both Courts.

DALTON J.—I agree.

Appeal allowed.