Tharmalingam V. Chandrasegaram

4/1963

Present: Basnayake, C.J., and Abeyesundere, J.

THARMALINGAM, Appellant, and CHANDRASEGARAM and another, Respondents

S. C. 36/61 (Inty.)—D. C. Trincomalee, 374/T

Administration of estates—Filing of account by administrator—Procedure thereafter—Absence of provision in the Civil Procedure Code for Court to order the Secretary to report on the account or to hear objections from the heirs—Scope of power of Court to order the administrator to hand over or account for property—Civil Procedure Code, ss. 530, 531, 532, 534, 538, 553, 718, 720, 723 et seq.

Where the administrator of a deceased person's estate files an account in terms of section 553 of the Civil Procedure Code, there is no provision in the Code for the Court to order the Secretary to report on the account or to issue notice to, or hear objections from, the heirs in regard to the account filed.

Where the Court hears objections from the heirs, it has no power to make an order that can only be made in appropriate proceedings under Chapter LV of the Code. Even under that Chapter the administrator cannot be made to account for property that has not come into his hands qua administrator.

Where a husband appropriates and spends his wife's money with or without her consent the husband qua administrator cannot be called upon to account for such property unless it is proved that that property came into his hands qua administrator after his wife's death.

APPEAL from an order of the District Court, Trincomalee.

V. Ranganathan, with *Siva Rajaratnam*, for Petitioner-Appellant.

No appearance for Defendants-Respondents.

Cur. adv. vult.

July 16, 1963. BASNAYAKE, C.J.—

This is an appeal from the decision of the District Judge made in the course of proceedings for the administration of the estate of the deceased wife of the appellant. The Judge held that the appellant was liable to pay a total sum of Rs. 11,546-52 and a further sum of Rs. 1,200, being the value of his wife's thalikody.

Briefly the material facts are as follows:— In December 1946 the appellant married the sister of the respondents. She died childless and intestate in January 1956. He applied under section 530 of the Civil Procedure Code for letters of administration naming the two respondents as heirs. In the affidavit attached to that application, although he was not required by the Code to do so, the appellant gave the description and value of the property, both movable and immovable, left by the deceased. The Court made an order nisi under section 531 which was served on the respondents and advertised as required by section 532. No objection was taken to the application either by the respondents or any other person. The order nisi was therefore made absolute under section 534 and grant of administration issued.

On 13th December 1957 the appellant filed, as he is required to do so by section 538 of the Code, an inventory of the deceased's property and effects with the valuation of the same verified on affirmation, but not in the form prescribed which requires the administrator to state—

"1. To the best of my knowledge, information, and belief, the above written inventory contains a full, true and correct account of all the property movable and immovable, and rights and credits of the said deceased, so far as I have been able with due diligence to ascertain the same.

2. I have made a careful estimate and valuation of all the property, the particulars of which are set forth and contained in the said inventory, and to the best of my judgment and belief the several sums respectively set opposite to the several items in the said inventory fully and fairly represent the present values of the items to which they are so respectively set opposite."

The appellant's declaration does not contain the 2nd paragraph above quoted. However no complaint was made about the inventory, nor was objection taken by the respondents to the form of the declaration. The inventory disclosed the following movable and immovable property:—

Movables:

1. Money in Ceylon Savings Bank - Rs. 834.48
2. Money due from Insurance Co. - Rs. 2,175.55
3. Jewellery - Rs. 1,500.00

Immovables:

1. A divided extent of one Lachcham of Varagu Culture (ILms. V. C.) on the Eastern side out of all that land called ‘Mathanthariyam Kanthantharaiyum’ in extent 4 Lms. V. C. with its appurtenances situated at Vannarponnai.
2. Land called Mathan Tharai situated at Vannarponnai in extent 2 Lachchams (Varagu Culture).
3. An undivided half of a piece of land called ‘Venavathaium Pallyavudaiyum’ in extent 12 Lachchams 15 kulies in Punnalai Kadduvan.

It is not clear why the appellant did not set out the value of the immovable property in the inventory which also contains a statement of "Liabilities" although such a statement has no place in an inventory filed under section 538 of the Code.

Thereafter on 1st April 1958 the appellant filed, presumably as required by section 553, an account of his administration described as "Final Account". The minutes in the journal also describe it by that name. Now that section provides that "every executor and administrator shall file in the District Court, on or before the

expiration of twelve months from the date upon which probate or grant of administration issued to him, a true account of his executorship or administration, as the case may be, verified on oath or affirmation, with all receipts and vouchers attached, and may at the same time pay into Court any money which may have come to his hands in the course of his administration to which any minor or minors may be entitled". Upon the filing of this account the Court ordered the Secretary, though there is no provision to that effect in the Code, to report on the account. After several dates had been given for his report the Secretary reported to the Judge pointing out the shortcomings in the account. The appellant was thereupon required to amend his account and file an amended account. After he had done so, notice was issued on the respondents though there is no such requirement in the Code. Both respondents appeared in response to the notice and appointed a proctor to represent them. Although there is no provision in the Code for hearing objections in regard to an account filed under section 553, they were given time to file "objections" and on 21st April 1960 they filed the following objections in a joint statement:—

"1. The parties to this action are governed by the law of Thesawalamai according to which the only heirs of the deceased are the two respondents abovenamed, her two brothers, who therefore become entitled to the entirety of the estate which belonged to the deceased at the date of her death.

2. In the light of the averment contained in the above paragraph the petitioner's Final account is erroneous in that it does not include some items of assets which belonged to the deceased and it includes as liabilities some items which are false.

3. More particularly the respondents state that the following items have not been included by the petitioner in the Final account: — (a) Sum of Rs. 10,000 given in cash as dowry to the deceased by the grantors, one of whom is the first respondent on deed No. 765 of 11.12.46. Of this Rs. 10,000, the respondents give (sic) the petitioner credit for Rs. 2,225 for which sum he had purchased a piece of land and shown in his

Final account. (b) A sum of Rs. 1,450 being the difference between Rs. 3,000 to the value of which jewellery has been furnished to the deceased by the grantors on the deed referred to in paragraph 3 (a) and Rs. 1,550-50 which is the sum declared by the petitioner in his account as being the value of the said jewellery. (c) The value of the 'Thaali' which the respondents estimate at Rs. 1,200 is omitted from the list of jewellery deposited in Court. (d) A sum of Rs. 5,087-09 cts. being the sum received by the deceased on or about 1.5.53 from the Ceylon Railway Benefit Association on account of the death of her brother, late V. Pararajasingham, who was also the elder brother of the respondents. (e) A sum of Rs. 1,835-42 cts. being the share received by the deceased on or about 21.3.55 in D. C. Colombo Testy. 15740/Testy. (1953) on account of the intestate estate of her brother, the said V. Pararajasingham, referred to in 3 (d). (f) A sum of Rs. 2,000 given to the petitioner by the grantors on the dowry deed referred to in paragraph 3 (a) on the occasion of his marriage with the deceased in 1946.

4. Item (2) appearing under the column of "expenditure" in the Final Account is false as the deceased owed no money to the Bank of Ceylon.

5. The petitioner has omitted to include a half-share of his acquired property to which the deceased was entitled according to law, which half-share the respondents estimate at about Rs. 15,000."

They prayed that the Court do order— (a) the petitioner to rectify the final account in accordance with the averments contained in the statement of objections. (b) the property of the deceased to be vested in the respondents, who are the only heirs-at-law of the deceased.

These objections were fixed for inquiry by the learned Judge. On the date on which the matter came up for hearing the appellant's counsel objected to the respondents being heard as they had not filed affidavits as required by section 718 of the Code. Counsel for

the respondents relied on section 729. The learned Judge held that 718 was the appropriate section and that the requirement as to affidavits would be met if the respondents give viva voce evidence.

The following issues were adopted by the Court— "1. Was a sum of Rs. 10,000 cash given as dowry to the deceased? 2. Does a sum of Rs. 7,775 form the separate property of the deceased as set out in paragraph 3 (a) of the petition? 3. Were jewellery to the value of Rs. 3,000 given to the deceased? 4. Is a further sum of Rs. 1,450 due to the estate as set out in paragraph 3 (b)? 5. Was the deceased given a thalikody worth Rs. 1,200? 6. Is the said sum due to the estate? 7. Did the deceased receive a sum of Rs. 5,087-09 from the Ceylon Railway Benefit Association as set out in paragraph 3 (b)? 8. Is the said sum due to the estate? 9. Did the deceased receive a sum of Rs. 1,835-42 as her share in D. C. Colombo Testamentary Case No. 15,740? 10. Is the said sum due to the estate? 11. Was a sum of Rs. 2,000 given to the petitioner on the occasion of the marriage? 12. Is the said sum due to the estate? 13. Was a sum of Rs. 1,530 due from the deceased to the Bank? 14. If not can the petitioner claim this sum out of the estate of the deceased? 15. What is the value of the Thediatheddam half of which share should accrue to the estate?"

After hearing evidence on both sides the learned Judge held— (a) that there was no satisfactory evidence to show that any item of jewellery belonging to the deceased at the time of her death has not been disclosed. (b) that the sum of Rs. 4,751 in the Ceylon Savings Bank which formed part of the cash dowry the petitioner had accounted for the full sum. (c) that the appellant did not receive into his hands the sum of Rs. 500 invested on a mortgage of land. (d) that the appellant is liable to pay to the credit of the estate of the deceased the sum of Rs. 2,000 given in cash as dowry, the receipt of which is admitted; but denied liability as he spent it on the wedding. (e) that the appellant was bound to refund Rs. 1,476-78 out of the sum of Rs. 2,476-78 which was in deposit in D. C. Jaffna Case No. 778G and withdrawn from the Court. (f) that the appellant was liable to bring the thalikoddy or its value into Court. The value was fixed at Rs. 1,200. (g) that the appellant was liable to bring into

Court the sum of Rs. 5,087-09 received by the deceased from the Railway Benefit Association. (h) that the appellant was liable to bring into Court the sum of Rs. 1,835-42 which the deceased had received in D. C. Colombo Testamentary Case No. 15740. (i) that a sum of Rs. 1,530 was not due from the appellant to the Bank of Ceylon. (j) that the appellant was bound to bring into Court a sum of Rs. 1,147-22 out of the refund of his provident fund of Rs. 10,325.09 of which Rs. 8,432.13 was paid in August 1958. (k) that the appellant was entitled to relief in Rs. 3,000 on account of the loss of money loaned to one Rahim.

It would appear from the proceedings that both Judge and counsel lost sight of the real issues involved in administration proceedings. They confused the appellant's liability to hand over to the heirs property that has vested in them and which may happen to be in his hands with the obligations of the appellant qua administrator. The wrong procedure adopted by the District Judge misled the respondents to take a course of action unwarranted by the Code when there are provisions which prescribe— (a) the course a person entitled to a distributive share may adopt in order to enforce his right to that share (s. 720), or (b) a person interested in the Estate may take to compel the filing of a true inventory or valuation or accounts (s. 718).

The order made by the District Judge is not one he had the power to make except in appropriate proceedings under Chapter LV of the Code. Even under that Chapter the administrator cannot be made to account for property that has not come into his hands qua administrator. Where, as is alleged in the instant case, the husband appropriates and spends his wife's money with or without her consent, the husband qua administrator cannot be called upon to account for such property unless it is proved that that property came into his hands qua administrator after his wife's death. We therefore set aside the order appealed from with costs both here and below.

ABEYESUNDERE, J.— I agree.

Order set aside.