

(1943) 09 MAD CK 0004
In the Madras High Court

E.J. John

APPELLANT

Vs

The Collector of Malabar and Others

RESPONDENT

Date of Decision : 02-09-1943

Acts Referred:

Citation : AIR 1944 Mad 189 : (1944) ILR (Mad) 658 : (1943) 56 LW 730 : (1943) 2 MLJ 638

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellant filed an application for letters of administration in favour of the Collector of the district with reference to the

will of one Antony Chandikunjan, who died on 7th June, 1934, having executed and registered a will dated 20th September, 1924. By that will the

testator appointed as his executors (1) his son, the third respondent, (2) the Rev. Father John, who has since died and (3) the vicars of two

churches within the diocese of Cochin. The will provided a sum of Rs. 40,000 for the establishment of a convent within the parish of Santa Cruz,

Cochin, and also set apart a considerable extent of land for the endowment of a chapel. The petition alleges that the petitioner is a prominent

parishioner of Santa Cruz Cathedral Church and a person interested as a beneficiary in the proper administration of the properties set apart by the

testator for trust purposes. It is also alleged that the executors named in the will have ""slept over the will,"" making it easy for the third respondent to

get possession of the properties and utilise them for his own purposes in contravention of the will. There is no specific averment that the surviving

executors are unwilling and incompetent to execute the will. But the general purport of the allegations is to impute indifference to the executors and,

so far as the third respondent is concerned, to allege a hostile interest. The petitioner impleaded in his petition the Collector of Malabar whom he proposes as administrator, the Bishop of Cochin who is the ecclesiastical superior of the two vicars who are the executors, and the third respondent who is one of the executors.

2. The lower Court has rejected the petition in limine on three grounds. Firstly there is the lack of a specific averment satisfying the conditions of

Section 254 of the Indian Succession Act that the executors named in the will are not willing and competent to act. Secondly, the lower Court

holds that a petition u/s 254 of the Indian Succession Act can only be preferred by the person who himself seeks letters of administration in his

own favour and that a petition seeking letters of administration in favour of a third party or a public official is incompetent. Thirdly, it is held that the

provisions of Section 229 of the Indian Succession Act require a special citation to the persons appointed executors in the will and that the petition

has to be rejected in the absence of proof of such citation.

3. The first of these three objections is, in our opinion, the most substantial. No doubt, Section 276, which lays down certain legal requirements for

a petition for: letters of administration, does not refer to the special circumstances which have to be established in order to justify an appointment

u/s 254. It is, however, apparent that Section 254 will have no operation unless the deceased has either died intestate or has left a will of which

there is no executor willing and competent to act or unless the executor is, at the time of the death of the testator, resident outside the province and

it is obviously desirable that a petition filed under this section should plead specifically the existence of such circumstances as would make the

section operate. We are, however, of the opinion that, while this petition is drafted in very loose language, the averment that the executors have

slept over the will"" thereby making it possible for one of those executors to misappropriate the trust funds, may be treated as a sufficient averment

that the executors named in the will are not willing and competent to execute the will. If necessary the petitioner might have been required to amend

this petition making the pleading more specific."" But we do not think that the vagueness of this plea is of itself a sufficient ground for the rejection of

the petition.

4. The second objection that letters of administration can only be sought by a person in his own favour is not based on any authority which has been brought to our notice. The learned Judge derives this rule from the words of Section 276 read with the form prescribed as Form No. 3, Appendix III (F) to Volume 2 of the Civil Rules of Practice and Circular Orders. Section 276 of itself provides no support for the conclusion of the learned Judge. The form certainly concludes with the words, ""Your petitioner therefore prays that letters of administration, etc., may be granted to him."" It seems to us that it is going too far to hold, merely from the use of these words, which would be applicable to the vast majority of cases of applications for letters of administration, that it is illegal for a petitioner to apply for letters of administration in favour of a public officer. The wording of Section 254 gives the Court a very wide discretion as to the person who is to be appointed administrator on a petition under that section and we can see no reason why a person interested in the estate should not, where there is no executor willing or competent to act, ask the Court to appoint a public official or even such person as the Court may think fit as administrator, rather than allow the will to fail. It would no doubt have been better had the petitioner framed his prayer so as to ask the Court to appoint the Collector or such other person as the Court thinks fit as administrator, but the hands of the Court are not tied in this matter by the frame of the petition.

5. Thirdly, there is the objection based on Section 229 of the Act. Section 229 merely provides that, where a person appointed as executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship. The corresponding section under the old Probate and Administration Act has been considered in a decision in *Sarojini Dasi v. Rajlakshmi Dasi* I.L.R.(1920) Cal. 838 which was a case in which there was a general citation to the executors named in the will, but no special citation such as is contemplated by Section 229 before the hearing of the petition. The learned Judges pointed out that, though the special citation was necessary before letters could issue in favour of somebody else, the special citation need not necessarily precede the enquiry into the validity of the will. In the present petition there has been no general citation to either of the two vicars named in the will

as executors. The petitioner has however taken out notice to the Bishop of Cochin to whom these two vicars are subordinate. It would have been

more appropriate had the "notice been taken to the vicars themselves, leaving them to take the orders of their ecclesiastical superior. There is,

however, no reason to think that the notice to the Bishop did not apprise the vicars of the proceedings and it seems to us, that, rather than reject

the petition, the Court would have been well advised to have directed notice to the two vicars themselves. It has been pointed out to us that the

procedure in testamentary matters on the Original Side of this Court as laid down in Order 34, Rules 24 and 25 places the responsibility upon the

Registrar of directing that such persons as are interested in the will should have notice thereof and it is not the practice to reject a petition merely

because the petitioner does not ask for notice to some of the persons to whom notice should be

6. On behalf of the third respondent it has been represented that the will which the petitioner propounds is not the last will and testament of the

deceased Chandikunjan, but that there is an unregistered will executed in May, 1934, shortly before the death of the testator which has revoked

the will now propounded. It is also alleged that the former Bishop of Cochin held some sort of enquiry and satisfied himself that this later will was

genuine. The present Bishop is however represented before us and he is anxious that there should be a judicial enquiry into the validity of these two

wills. The third respondent also represents that he is prepared to file a petition seeking probate of this later will. If he does so, it will no doubt be

convenient to hear together the petition for probate and the petition for letters of administration. But we are of opinion that the present petition for

letters of administration should not have been rejected because of the formal defects in its drafting and that if necessary the petitioner should have

been given an opportunity to rectify those defects.

7. The appeal is therefore allowed and the petition is remanded to the lower Court for enquiry. The costs of this Court will abide by the result and

be provided for in the final orders to be passed by the lower Court.