

(1927) 11 MAD CK 0012
In the Madras High Court

Gnanamani Nadathi

APPELLANT

Vs

Esunadian Nadar

RESPONDENT

Date of Decision : 17-11-1927

Acts Referred:

Succession Act, 1925 — Section 230

Citation : AIR 1928 Mad 797 : 110 Ind. Cas. 439

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—This is an appeal against the grant of letters of administration to the petitioner, the father-in-law of the testator Samuel Nadar.

Under his will he made his brother-in-law, Manuel, Nadar, the executor and the latter apparently administered the estate for four years and then

renounced his office by Ex. 1 on 28th August 1922. It is contended that this renunciation is invalid in law under the provisions of Section 230,

Succession Act. That section says:

The renunciation may be made orally in the presence of the Judge or by writing signed by the person renouncing....

2. There is nothing in the section to show that the writing also must be in Court; it is sufficient if there is a written renunciation and it is proved to the

satisfaction of the Court. It must, therefore be held that Manuel Nadar renounced the executorship, and, therefore, the argument based upon

Section 229, namely, that it was necessary to issue a citation to him has no force. As there is no executor, or rather as the executor has

renounced, under the provisions of Section 219 the widow is ordinarily the person entitled to administration, but she is not so entitled if there is any

personal disqualification. Among other disqualifications the illustration shows that adultery is one. It is argued that we must take adultery as having the limited meaning given to the offence of adultery in the Penal Code. There seems to be no reason why it should be so limited and not bear the ordinary meaning of adultery which is sexual intercourse of the married person with a person of the other sex, whether married or unmarried. Here it, is alleged that the widow, the appellant, has been living in adultery with one Abraham Ramalinga whose wife is alive for some considerable period before this petition; was filed. There is the evidence of her father and of her son, who was aged, seventeen when he gave his evidence, that she has been living with this man and sleeping in the same room with him, and also they both give evidence that she appeared to be pregnant. This evidence is corroborated by a good deal of other evidence, and it is not disputed that the widow has parted with most of her property in favour of this man. The District Judge has found on the evidence that she has been living in adultery. The learned vakil for the appellant has not satisfied us in any way that that conclusion is wrong. The evidence is very clear and there seems to be no room why it should be disbelieved. As, therefore, the appellant has been guilty of adultery she is disqualified for the administration of the estate.

3. The question then arises as to who should administer it. The contention is raised that, although the widow is disqualified u/s 219, she is an executor under the will, that is an executor according to the tenor of the will. It is true that in the will she has been directed to pay a legacy to her stepdaughter and also to carry on the business in the testator's shop. After giving these directions the testator appointed an executor for carrying out the directions in this will, that is to say, to see not only that the widow did what she was told to do, but also that the other directions were carried out. When an executor is nominated according to the tenor, it must be clearly shown that from the terms of the will it was the testator's intention that that person should be an executor, and when there is an express appointment of an executor it is less probable that there would be an indirect appointment in this manner. In the present case there is no express intention of the testator that the widow should be a joint executor.

To hold that she was an executor with limited powers is still more unlikely, for that would give rise to conflict between the general executor and the

limited executor whose powers would overlap. We must find therefore, that the widow was not made an executor according to the tenor of the

will. In order to determine the question to whom are the letters of administration to be granted we have been referred to Section 231 which the

appellant contends is applicable in this case. That section runs:

If an executor renounces, or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the will may be proved and

letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

4. It is argued that under this section the persons so entitled would be the stepdaughter who is a legatee and the minor son who is also a legatee.

Naturally the minor son cannot be appointed and it may be observed that the stepdaughter is a young woman who has recently been married and

has already received the whole of her legacy under the will. Neither of these persons would be suitable for administering the estate. Then we have

Section 254 which says:

When a person has died intestate, or leaving a will of which there is no executor willing and competent to act...and it appears to the Court to be

necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, in ordinary circumstances,

would be entitled to a grant of administration, the Court may, in its discretion appoint...such person as it thinks fit to be administrator.

5. If this section is applicable, the Court has, discretion to pass over persons who u/s 219 would be entitled in the case of intestacy and appoint

some other fit person, but it is "contended that Section 254 is not applicable because when it speaks of leaving a will of which there is no executor

willing and competent to act"" it means that at the time of the testator's death when the will came into effect there was no executor willing to act.

This argument is based on some English cases, but the English section corresponding to Section 254 is not worded in the same manner. This Act

was based on English law, but whether this alteration was intentional or not, we have to construe the words as they are. When the section says,

leaving a will of which there is no executor willing and com petent to act"" it is clearly intended to refer to the time when the Court has to decide as

to whether there is no executor willing and competent. The fact that a named

executor has acted for a short time can make no difference, so far as the powers of the Court are concerned, if, when the Court has to take action, there is no executor willing and competent to act. As at present there is no executor of the will willing to act the section becomes applicable. The District Judge has in his discretion appointed the father-in-law of the testator. He is the maternal grandfather of the minor son, who is the person most interested now in the estate and consequently cannot be deemed to be an unsuitable person for the grant. We, therefore, see no reason to alter the order of the lower Court and dismiss this appeal with costs.

A.A.O. No. 47 of 27 is also dismissed.