

(1962) 11 KAR CK 0004
In the Karnataka High Court
Case No : Probate Civil Petition No. 5 of 1961

H.C. Ramaswamy Iyengar and Others	APPELLANT
Vs	
H.C. Lakshminarasimhan and Others	RESPONDENT

Date of Decision : 09-11-1962

Acts Referred:

Estate Duty Act, 1953 — Section 60
Succession Act, 1925 — Section 276

Citation : AIR 1965 Kar 87

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Judgement

1. This petition u/s 276 of the Indian Succession Act relates to the estate of one H. Channkeshava Iyengar who was a permanent resident of the City of Mysore and died in that city on 12-6-1959. He left a widow Venkatalakshmma, 3 daughters Lakshmma, Jayalakshamma and Vedavalli, and 4 sons Ramaswamy Iyengar, Lakshminarasimhan, Narayana and Krishnamurthy. The widow is the second petitioner; the first, third and the fourth sons are respectively petitioners 1, 3 and 4. The second son is respondent 1 and three daughters respondents 2, 3 and 4.

(2) Excluding paras 1 and 2 giving addresses for service of parties, all material allegations are contained in para 3 of the petition.

(3) The relationship stated above is set out in paragraph 3(1) of the petition.

(4) In paragraph 3(2) of the petition it is stated that the deceased H. Channakeshava Iyengar had made a will on 1st June 1959 which was registered as Document No. 18 in Book III, Volume 50, pages 102-113 at the office of the Sub-Registrar, Mysore City. A registration copy of the will is annexed to the petition.

(5) Paragraph 3(3) mentions Door No. 2861, Saraswathipuram, Mysore, as the fixed place of abode of the said deceased at the time of his death. It is also

stated therein that because the value of the estate situated beyond the limits of the State and in respect of which the grant of letters of Administration is prayed exceeds Rs. 10,000/- this petition has been made to this Court.

(6) The fifth and last sub para of Paragraph 3 of the petition, after stating that to the best of the petitioners' belief no application has been made to any other Court for the grant of letters of administration of the estate intended to have effect throughout India, sets out the prayer in the following terms :

"The petitioners therefore pray that this Hon'ble Court be pleased to grant the letters of administration with the will annexed to the estate mentioned below belonging to the deceased H. Channakeshava Iyengar."

(7) The expression "estate mentioned below" obviously refers to the schedule to the petition with reference to which the statement in paragraph 3(4) of the petition is that the amount of assets likely to come to the petitioners' hands is Rs. 14,500/- the particulars and value whereof "are given below in the schedule annexed to this applications."

(8) The schedule has three parts, the headings whereof are--

"Estate bequeathed to H.C. Ramaswamy Iyengar, the 1st petitioner with their value;"

"Estate bequeathed to H.C. Narayana, the 3rd petitioner with their value;"

and

"Estate bequeathed to H.C. Krishna Murthy, the 4th Petitioner."

(9) The items or assets set out in the schedule consist of shares in incorporated Companies and Government securities or Government promissory notes.

(10) Under the will mentioned above, the testator bequeathed the moveables and Bank deposits described in Schedule-A thereto to his wife with the direction that she should keep them in her possession till her death and that thereafter they should be divided equally between the third and fourth sons Narayana and Krishnamurthy. The reason stated therefore is that the testator had already spent for the marriages of his first two sons but he had not till then performed the marriages of the other two sons. The remaining items of property belonging to the testator are set out in Schedules B, C, D and E, each of which consists of both Immovable and moveable properties. The properties described in these Schedules are bequeathed respectively to the first, second, third and fourth sons. The testator also states that the properties described in B Schedule bequeathed to the first son are of a slightly less value than those in the remaining Schedules and that the reason for such distinction was that he had spent considerable amounts for the education of the first or eldest son.

(11) The testator has not in his will expressly appointed any person as the executor thereof, nor is it possible to gather any such appointment by implication.

(12) The petitioners have also produced a certificate u/s 60 of the Estate Duty Act which discloses that the total value of the estate of the deceased liable to Estate Duty was determined at Rs. 88,875/- which includes deposits in Post Office, etc., amounting to Rs. 38,790/-, Government Securities valued at Rs. 6,387/- and shares in Companies valued at Rs. 40,655/-.

(13) It is thus obvious that the grant of letters of administration prayed for in this petition is not in respect of the entire estate of the deceased. The schedule of the assets in respect of which the grant is prayed for is not even exhaustive of the legacies under will in favour of the four petitioners. The schedule to the petition makes no reference whatever to the legacy in favour of the widow, the second petitioner, nor does it make any mention of the Immovable properties or Bank deposits or cash bequeathed to the other petitioners. The list of assets in the schedule to the petition is limited to the Company shares and Government Securities forming part of the legacies under the will in favour of petitioners 1, 3 and 4.

(14) The petition does not state whether and if so, in what manner, the estate excluding that part of it set out in the schedule to the petition has been administered or distributed under the will.

(15) No special reasons or circumstances are stated why the grant of letters of administration prayed for in the petition is sought to be limited to only a few of the assets forming part of the estate of the deceased described in the schedule to the petition.

(16) The question for consideration is whether the limited grant prayed for in the petition can validly and properly be ordered.

(17) At the first hearing of the petition, I put above question to Mr. Gopivallabha Iyengar, learned counsel for the petitioners, and requested him to consider, the position and also to examine whether he would like to place further facts on record either by way of amendment of the petition or by way further affidavit so as to make out, if possible, a case in support of a limited grant. However, after taking two adjournments to consider the position, the learned counsel has preferred to argue the petition as it stands.

(18) The general argument addressed by him in support of the petition is that there is nothing in law which prohibits the grant of letters of administration limited to a portion of the estate and that the relevant provisions of the Court-fees Act such as those in Chapter VI of the Mysore Act 16 of 1958 also contemplate cases where a grant limited to a portion of the estate may be made. He also cited three cases, one decided by the Bombay High Court reported in *In Re Haji Ismail Haji Abdula* ILR 6 Bom 452, and two decided by the Lahore High Court reported in *Gurbachan v. Satwant Kaur* AIR 1925 Lah 493 and *Satpal Ram v. Collector, Multan* AIR 1931 Laj 310.

(19) It need hardly be stated that the provisions relating to Court-fee cannot

form the basis for inferences on questions of substantive law. The fact that a provision is or may have been made therein for payment of duty in respect of part only of an estate if probate or letters of administration are granted in respect of such part need not necessarily suggest that letters of administration may be granted as a matter of course in respect of a part of an estate.

(20) The procedure relating to the grant of probate and letters of administration followed by the Supreme Courts of Calcutta, Bombay and Madras which later became the original side of the chartered High Courts of Calcutta, Bombay and Madras, which was referable to the testamentary and intestate jurisdiction conferred upon them in the relevant Charters, originally applied or was available only to British subjects and was not available or applicable to Hindus. Section 179 of the Indian Succession Act of 1865 corresponding to section 211 of the 1925 Act did not apply to Hindus until the Hindu Wills Act of 1870 was passed. Even thereafter, section 190 of the Succession Act of 1865 corresponding to section 212 of the 1925 Act which makes the taking out of letters of administration in the case of intestacy compulsory did not apply to Hindus. At present the section 211 of the 1925 Act according to which the executor or administrator as the case may be of deceased person is a legal representative for all purposes and all the property if the deceased vests in him as such does apply to Hindus also, except that nothing contained therein operates to vest in an executor or administrator any property of a deceased Hindu which would otherwise have passed by survivorship to some other person. The compulsion of taking out letters of administration in the case of intestacy u/s 212(1) of the Indian Succession Act of 1925 is made inapplicable to Hindus by Sub-Section 2 thereof.

(21) As early as in 1879, the Calcutta High Court in *The goods of Ram Chand Seal* ILR 5 Cal 2 held that "if Hindus take out letters of administration at all, they must take out general letters", rejecting the argument that because section 190 of the Succession Act of 1865 did not apply to Hindus they could ask for letters of administration in respect of any portion of the estate of the deceased as they may choose. In ILR 6 Cal 483, *In the matter of the goods of Grish Chunder Mitter*, Garth C.J., delivering the judgment of Full Bench consisting of himself, Mr. Justice Pontifex and Mr. Justice Morris the second of whom had delivered the judgment in ILR 5 Cal 2 stated--

"We think it quite clear that, in this case, and as a rule in all cases, general letters of administration of a Hindu's estate must be taken out for the Immovable as well as the moveable property, and that duty must be paid upon the value of the whole. Limited administration can only be granted under special circumstances."

ILR 10 Cal 554 *In the goods of Cower Suttia Krishna Chosaul* was a case in which the court found that the circumstances of the case were sufficiently special to take the case out of the operation of the rule laid down by Mr. Justice Pontifex in ILR 5 Cal 2.

(22) The case of the will of Haji Ismail Haji Abdula ILR 6 Bom 452 relied upon by Mr. Gopivallabha Iyengar was also, in my opinion, a case in which special circumstances obliged the Bombay High Court to make a limited grant of probate. Their Lordships after examining the extent and nature of testamentary and intestate jurisdiction of the Bombay High Court under its Charters and other statutory provisions applicable thereto came the following conclusion :--

"Under the High Court Charters of 1862 and 1865 the testamentary and intestate jurisdiction of this Court remained the same as it was at the time when the Supreme Court charter was granted--qualified, however, by Act XXVIII of 1860, Section 18, with respect to Hindus, Mahomedans and others not usually designated as British subjects in the manner already stated; and the result is this, in this, in cases to which the Indian Succession Act does not apply that probates and letter of administration granted by this court in respect of such persons take effect only for the purpose of recovering debts and securing debtors paying the same, except so far as it otherwise provided in Act XXVII of 1860. It is, therefore, only for this purpose that probate can be granted; and, in the case now before us, probate must be granted, limited as indicated in section 18 of this Act."

(23) The only case in which the general proposition made by Mr. Gopivallabha Iyengar seems to receive the support is the case of Gurbachan, AIR 1925 Lah 493 in which Abdul Raoof, J. observed as follows:

"The other contention put forward before me is that Letters of Administration cannot be granted in respect of part of the property covered by the will. He has been unable to draw my attention to any provision in the Act prohibiting the grant of Letters of Administration for part of the property only."

(24) With great respect, it appears to me that it is not a correct approach to the question to look for anything like an express prohibition in the statute against a limited grant being made. The real question, is what the statute means by, or purports to effect by providing for, the grant of probate or letters of administration in respect of the estate of a deceased person.

(25) Probate is granted only to an executor appointed either expressly or by implication under a will. Letters of Administration are ordinarily granted in the case of a person dying intestate. Where a person dies leaving a will, letters of administration with the will annexed are granted only when there is no executor appointed by the testator or when the executor appointed by him does not act or is incapable of acting or renounces the executorship. Both probate and letters of administration do not confer on the grantee any right or title to the estate itself. They constitute him the legal representative of the deceased or recognise his character as such with all the powers of administering the estate and distributing or dividing the same among the persons entitle thereto under the will or under the law governing succession to his estate as the case may be. That is why probate and letters of administration are generally referred to as legal

representation of the estate of a deceased person.

(26) u/s 211 of the Indian Succession Act, as already pointed out, all the property of the deceased vests in the executor or administrator as the case may be. So far, as the executor is concerned, the vesting takes place immediately the will becomes operative by reason of the death of the testator. The vesting does not and need not await the grant of probate to him by a Court. In the case of an administrator, his right to representation is traceable directly to the grant of letters of administration made in his favour by a Court. Nevertheless once the grant is made, it entitles him to all rights belonging to the intestate as effectually as if administration had been granted at the moment after his death as provided by section 220 of the Succession Act although according to the next succeeding section viz., section 221, letters of administration do not render valid any immediate acts of the administrator tending to the diminution or damage of the intestate's estate.

(27) The Succession Act also makes separate and detailed provisions in Chapter II of Part IX in regard to limited grants. Sections 237 to 247 therein provide for grants limited in duration. Sections 248 to 260 deal with grants limited by reason of special purposes or any exception or in respect of the rest of an estate remaining after the exception or in respect of estates already partially administered.

(28) From the above scheme of the statute it is clear, in my opinion, that it contemplates grants of probate or letters of administration in respect of the entire estate as a general rule and that limited grants are an exception to the general rule, to be, made in circumstances indicated by the statute.

(29) The obvious reason is that by virtue of section 211, the entire estate vests in the executor or administrator as the case may be for purpose of administration. He is the legal representative of the deceased authorised to manage and distribute the estate either according to the wishes of the deceased stated in the will or according to the law of succession governing him as the case may be in the same way as the deceased himself could have done. The same view was expressed by Broadway J. in AIR 1931 Lah 310, one of the cases cited by Mr. Gopivallabha Iyengar. His Lordship thought that a distinction should be drawn between the letters of administration issued in the case of intestacy on the one hand and probate of a will or letter of administration with a copy of the will be annexed on the other. The distinction consists, according to his Lordship, in the fact that in the case of an intestate the estate has to be distributed according to rules of succession whereas in the case of a person leaving a will, his estate has to be distributed according to his wishes expressed in the will. This distinction, in my opinion, which is confined to the manner of dealing with or distributing the estate does not indicate or need not be taken as indicating any distinction between an executor and an administrator in so far as both of them occupy the position of a legal representative of the deceased. In both of them the entire estate vests and both of them are under an obligation to manage and

administer the entire estate and distribute it among the persons entitled thereto.

(30) In cases where a part of the estate had already been administered in such a way that that part has gone to some of the heirs or legatees both in possession as well as in title, the legal position would be that only the rest of the estate is actually that of the deceased which remains to be administered by an administrator. That would constitute one of the special circumstances in which the Court may make a grant of letters of administration limited to the unadministered portion of the estate.

(31) There may be other special circumstances, but it is not possible nor is it desirable to define them or enumerate them exhaustively.

(32) In the present case, no special circumstances are stated in the petition or are said to exist which will entitle the petitioners to obtain a grant limited to some only of the assets included in the estate of the deceased. Nothing has been stated as to whether and if so, in what manner, the rest of the estate has been administered. The assets set out in the schedule to the petition are in the nature of debts and securities. The will does not appear to be in respect of which probate is compulsory under the Succession Act. If so, the more appropriate course for the petitioners to take to reduce the assets set out in the schedule to the petition to their possession would be to take out a succession certificate under the provisions of Part X of the Succession Act as pointed out in (Unithali) Ramutti and Another Vs. (Kuttala) Padmanabha Chetti, .

(33) In the circumstances, I do not think that the prayer in the petition can be granted.

(34) I therefore dismiss this petition reserving liberty to the petitioners to take such steps as they may be advised in respect of the assets set out in the schedule to the petition.

(35) Petition dismissed.