

(1928) 08 BOM CK 0007
In the Bombay High Court
In Re: Manchershah Pestonji Danania

Date of Decision : 09-08-1928

Acts Referred:

Succession Act, 1925 — Section 230

Citation : (1928) 30 BOMLR 1566 : (1929) ILR (Bom) 172 : 113 Ind. Cas. 402

Hon'ble Judges : Rangnekar, J

Bench : Single Bench

Judgement

Rangnekar, J.—This is a petition for letters of administration of the property and credits of one Dorabji Pestonji Damania who died intestate in Bombay on or about April 7, 1928. The said deceased left him surviving as the only next-of-kin the petitioner, his brother, his widow Soonabai, and four sisters. The petition was declared by the brother on June 1. In para 4 of the petition it was stated that the said Soonabai, the widow of the deceased, had by her letter of renunciation dated May 26, 1928, renounced her prior right to the letters of administration of the property and credits of the deceased. The letter by the said Soonabai was annexed to the petition, but it was not verified.

2. It appears that on June 6, 1928, Messrs. Ardeshir, Hormusji and Dinshaw for the said Soonabai informed the petitioner's attorneys stating that their client the said Soonabai withdrew her renunciation and consent, and that the petitioner should not proceed any further with his petition. They further stated that they were instructed to apply for letters of administration by the said Soonabai,

3. The petition was filed in Court on June 9, and on the 11th Messrs. Ardeshir, Hormusji and Dinshaw wrote to the testamentary registrar as follows :—

We are instructed to state that our client was made to sign a writing of renunciation and consent which the petitioner was trying to file in Court. We on our client's behalf have already written to the petitioner's attorneys stating that our client withdraws her said writing of renunciation and consent.

4. On June 13, Messrs. Shamrao, Minocheher and Hiralal, the petitioner's attorneys, wrote to the testamentary registrar with reference to the letter of

Messrs. Ardeshir, Hormusji and Dinahaw of the 11th instant stating that the said letter of renunciation was signed by the said Soonabai of her free will, and the same being filed in Court was final and permanent.

5. On July 2, the petitioner's solicitors, after setting out the facts already referred to above, requested the testamentary registrar to refer the matter to me. Accordingly, an appointment was given to them and also to the solicitors of the said Soonabai, The latter did not appear on the date fixed, and after hearing the petitioner's solicitors I ordered a notice to issue calling upon the said Soonabai to admit execution of the said letter of renunciation and intimating to her that the petitioner proposed to adduce the same in evidence.

6. On July 26 all the parties appeared before me, and arguments on the present notice were heard. Mr. Framroze Vakil, who appeared for the said Soonabai, stated that the widow had changed her mind, and that it was not necessary for her to assign any reason for retracting the said renunciation, as this being a case of intestacy, she was entitled to change her mind and to retract the letter of renunciation. A note of the admission made by the learned solicitor was taken down.

7. On these facts, the question which arises for consideration is whether the renunciation is final and cannot be withdrawn, and whether the widow can be allowed to retract the same. Mr. Engineer, on behalf of the petitioner, relies on Section 230 of the Indian Succession Act, and on *Brojo Lai Banerjee v. Sharajubala Debi* I.L.R (1924) Cal. 745 Mr. Framroze Vakil argues that Sections 229-231 of the Indian Succession Act, which deal with the subject of renunciation, are applicable only in the case of an executor and not in the case of a mere administrator, and that there is no corresponding provision in the Act with regard to an administrator or administratrix.

8. Now there is no section in the Act which in terms lays down as to when and why an executor or administrator can renounce, and obviously for the simple reason that the act of renunciation is one which depends on the will of a person. No one is bound to act as an administrator or executor against his will. Section 229 up to 231 are sections which lay down and deal with the procedure to be followed when a person renounces or fails to accept the office to which he is entitled.

9. Thus Section 229 says that when a person appointed an 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. Section 230 provides for the form and effect of renunciation of executorship. Section 231 lays down the procedure to be followed where an executor renounces or fails to accept an executorship within the time limited for the acceptance or refusal thereof, and provides that the will in such a case may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled thereto.

10. It is true that in terms these sections apply to the case of an executor. The question is whether that by itself would entitle an administrator or administratrix to act contrary to the practice and procedure laid down in these sections.

11. Rule 609 of the Rules of the High Court in its Original Jurisdiction provides that in cases not provided for by this Chapter, that is to say, Chapter XXXI, or by the rules of procedure laid down in the Indian Succession Act, 1925, or by the Civil Procedure Code, the practice and procedure of the Probate Division of the High Court of Justice in England shall be followed so far as they are applicable and not inconsistent with this chapter and the said Acts.

12. Rule 590 contemplates the case of an administrator renouncing his right to obtain letters of administration of the property of a deceased person.

13. I think, therefore, that the principles of the English law would apply in the present case.

14. In Tristram & Coote's Probate Practice, 16th Ed., at page 266, "renunciation" is defined as the act whereby a person having a right to probate or administration waives or abandons it. Then, the position with regard to a legal personal representative is stated in these terms (p. 268):?

An executor, or an administrator with the will annexed, or an administrator, may renounce the administration with the will annexed, or administration, which he would be entitled to take in his representative capacity. And such renunciation will be a sufficient waiver to admit other interests to administration, if the renunciant be the sole representative of his own deceased. If there be another qualified representative, the latter must renounce also.

15. Turning to the forms of renunciation given in this standard work, Form No. 301, at page 1019, shows clearly that a legal personal representative or a person entitled to letters of administration can renounce his right to letters of administration of the estate of a deceased person.

16. It is clear, therefore, that according to the English law and practice as regards the right of renunciation, there is no distinction made in the case of an executor or an administrator.

17. The next question is, when can a renunciation be retracted? The principles as to this are laid down in Tristram & Coote at page 273 of the same Edition as follows:?

The renunciation of an executor may, as a general rule, be taken to be final, he not being permitted to retract it except by permission of the court, and this permission will not be given without regard to the fifth section of the Administration of Estates Act, 1925 (15 & 16 Geo, 5, c. 23)....

The court may permit a retraction of an executor's renunciation "in a case fit for it", and of this the court is the sole Judge.

A retracting executor must therefore be prepared to show that his retraction is for the benefit of the estate, or of those who are interested under the deceased's will.

18. In *Cradock v. Western*, which is cited in *Tristram & Coote* at page 275, Dr. Bettesworth refused to allow the retraction under the following circumstances as stated by Dr. Oottrell:?

John Cradock died intestate, leaving four children. Upon the renunciation of three of them, administration was granted to a creditor. The other child appeared and the grant was revoked. Then his brothers retracted, and asked for administration to one of themselves. The court said : The persons renouncing had not been deceived or imposed upon in their renunciation, and if any inconvenience followed they must thank themselves for it.

19. Similarly, in *West and Smith v. Willby* (1820) 3 Phill, 374, 379 where the next-of-kin had renounced in order that a creditor might take and one of them retracted before the grant was made, the Court held him to his renunciation.

20. The following statement as to the law and practice on this question appears in *Halsbury's Laws of England*, Vol. XIV, paragraph 261:?

The court may, in a proper case, allow one of several executors to withdraw his renunciation for the purpose of taking a grant: but when all the executors have renounced and letters of administration have been granted, a renunciation cannot subsequently be withdrawn, nor will the withdrawal be allowed merely on the ground that the executor has changed his mind. A renunciation cannot be withdrawn without the leave of the court, and the renouncing executor must show that his retraction is for the benefit of the estate or of those interested under the will.

21. In my opinion, therefore, the same principles would apply in the present case. Now it is true that here the renunciation was made on May 26, 1928, and filed in Court on June 9, and it is true that it was retracted on June 6. Even then the question is whether the widow can be allowed to retract her renunciation? The authorities to which I have referred show that no person has a right to retract, but may be allowed to retract his or her renunciation in a fit and proper case. No such case is made out before me. And when I offered to give an opportunity to the widow to state her reasons, her learned solicitor stated that he did not desire to have any further opportunity, and that the only ground on which he based his contentions was that the widow had changed her mind. The case referred to in paragraph 261 in *Halsbury* clearly shows that a mere change of mind would not be a proper ground on which a renunciation once made can be allowed to be retracted. I must, therefore, hold that the widow cannot be allowed to retract her renunciation in this case merely on the ground that she has changed her mind.

22. Apart from this, it appears that she had passed a writing in favour of the

petitioner in April, long before the letter of renunciation, on the faith of which the petitioner had made diverse disbursements, had recovered out standings, and otherwise carried out various acts of administration before the present petition was filed.

23. On the facts of this case, therefore, I am of opinion that this is not a fit case in which I should allow the widow to retract her renunciation. My answer to the only question raised now is that the widow cannot be allowed to retract her renunciation. The renunciation is, therefore, final. The renunciation is admitted, and therefore, in my opinion, no further evidence is necessary as regards it, and no further proof as regards the execution of the letter of renunciation is needed.

24. In the result the petitioner will be at liberty to proceed further in the matter. Costs of all parties to come out of the estate. Counsel certified.