

(1930) 09 BOM CK 0023
In the Bombay High Court
In Re: Manji Jetha Lakhani

Date of Decision : 12-09-1930

Acts Referred:

Succession Act, 1925 — Section 233

Citation : (1932) 34 BOMLR 606

Hon'ble Judges : Mirza, J

Bench : Single Bench

Judgement

Mirza, J.—This is an application by the only heir of a residuary legatee, who is dead, to have letters of administration to the estate of the deceased testator with the will annexed issued to him. The application is made under the provisions of Section 233 of the Indian Succession Act. That section provides that when a residuary legatee, who has a beneficial interest, survives the testator but dies before the estate is fully administered, his representative has the same right to administration with the will annexed as such residuary legatee. The residuary legatee in this case, who was also the executor under the will, obtained probate of the will after the death of the testator, but died without having fully administered the estate of the testator. The present applicant is the only surviving son of the residuary legatee.

2. A practice which has hitherto prevailed in the office of the Testamentary Registrar is that in such cases the heir of the residuary legatee is required to obtain representation according to law to the estate of the residuary legatee before he can apply for letters of administration with the will annexed to the estate of the deceased testator. The construction placed by the office on the word "representative", appearing in Section 233, seems to restrict the word to one who has obtained representation according to law to the estate of a deceased person. In this view of the matter there would be no distinction between a "representative" and a "legal representative".

3. The word "representative" is nowhere defined either in the Indian Succession Act or in the General Clauses Act. It is used in two other sections of the Indian Succession Act, viz., in Section 94 and again in Section 234. In Section 94 the

words are "Where bequest is made to the " representatives" or legal representatives or "personal representatives" or "executors or administrator" of a particular person..."The term" representatives used in this section, does not appear to be synonymous with " legal representatives" or with "executors or administrators." It is put under inverted commas and the disjunctive "or" separates it from "legal representatives", which two words are put under inverted commas denoting that they are to be taken together as a single legal expression. The words "executors or administrators" also appear under inverted commas.

4. The expression "legal representative" is defined in the Civil Procedure Code, Section 2(11), as meaning "a person who in law represents the estate of a deceased person". This definition would equally apply to the words "legal representatives" appearing in the Indian Succession Act. The term "representative", as distinguished from "legal representative", must have a wider and more popular meaning than "legal representative" unless the context makes it synonymous with "legal representative."

5. In Section 234 the word "representative" occurs in the following connection: "When there is no executor and no residuary legatee or representative of a residuary legatee..." In my opinion the word "representative", appearing in Sections 233 and 234, should not, at least in the case of a Hindu, be restricted to a "legal representative." I am strengthened in this view by a judgment of the Calcutta High Court in Haribhusan Datta v. Manmatha Nath Datta ILR (1918) Cal. 862, where Mr. Justice Greaves has expressed the opinion that the heir of the residuary legatee is the proper person to obtain a grant of administration with a copy of the will annexed, not by virtue of any right to administration which he inherits from the residuary legatee but by virtue of the fact that as heir of the residuary legatee he is the person most interested in the estate of the testator.

6. I order the petition to be admitted. Costs to be costs in the petition. Counsel certified.

7. I may state that I am dealing here with the application of a Hindu heir who is not bound, generally speaking, to obtain representation according to law to the estate of the deceased person whose heir he is. Different considerations might possibly apply if the applicant were a Christian, Jew, or Parsee, governed by the Indian Succession Act.