

(1892) 04 MAD CK 0014
In the Madras High Court

Manasing and Others

APPELLANT

Vs

Amad Kunhi and Another

RESPONDENT

Date of Decision : 23-04-1892

Acts Referred:

Succession Certificate Act, 1889 — Section 4

Citation : (1894) ILR (Mad) 14

Hon'ble Judges : Arthur J.H. Collins, C.J;Wilkinson, J

Bench : Division Bench

Judgement

1. The plaintiffs (appellants 1 to 5) are the executors of the will of one Singjo Rayasi, a native of Cutch, and they sue through their agent

Purushottaman Amarasi Sett to recover a debt due to the estate of the deceased.

2. By Section 4 of Act VII of 1889 it is enacted that no Court shall pass a decree against a debtor of a deceased person for payment of his debt

to a person claiming to be entitled to the effects of the deceased person, except on the production, by the person so claiming of (i) a probate or

letters of administration evidencing the grant to him of administration to the estate of the deceased or (ii) a certificate granted under this Act and

having the debt specified therein.

3. The Lower Courts have found that the plaintiffs are not entitled to sue, inasmuch as they have produced neither probate nor letters of

administration, nor a certificate granted under Act VII of 1889.

4. It is contended by the learned Advocate-General that the executors having obtained probate of the will and letters of administration granted by

the Judge of Varisht Court of Bhuj, and being unable to claim probate in India are entitled, on proof of the will and of their status as executors of

such will, to recover debts due to the estate of the deceased.

5. The Court of the District Judge of South Malabar having been, by the notification published at page 253 of the Fort St. George Gazette, dated

30th April 1889, authorized to receive applications for probate or letters of administration under Act V of 1881, it was open to the plaintiffs

(appellants) to obtain u/s 5 of the Act letters of administration with a copy of the will annexed.

In regard to the title of executors and administrators,"" says Story (Conflict of Laws, 8th Edn., ¶ 512) ""derived from a grant of administration in

the country of the domicile of the deceased, it is to be considered that that title cannot, de jure, extend, as a matter of right, beyond the territory of

the government which grants it. It has hence become a general doctrine of the common law that no suit can be brought or maintained by an

executor or administrator in his official capacity in the Courts of any other country except that from which he derives his authority to act, in virtue of

the probate and letters testamentary or the letters of administration there granted to him. If he desires to maintain a suit in any foreign country, he

must obtain new letters of administration and give new security according to the rules of law prescribed in that country before the suit is brought.

6. The probate or letters of administration referred to in Section 4, Clause (i) of Act VII of 1889, must be probate or letters of administration

granted under Act V of 1881, and as the plaintiffs have not obtained such, they were not entitled to a decree. Then it is argued that the provisions

of Act VII of 1889 have been substantially complied with, as a certificate in the form, as nearly as circumstances admit, of the second schedule has

been granted to the plaintiffs 1 to 5 by the Political Agent of Cutch, and such certificate has been stamped in accordance with the provisions of the

Court Fees Act of 1870.

7. We think the Lower Courts were right in holding that the copy of probate produced by plaintiffs and marked Exhibit E is not a certificate

granted by a British representative in a foreign state within the meaning of Section 171 of Act VII of 1889. There is nothing to show that the

Political Agent when he affixed his signature to the true copy of the probate intended to grant "such a certificate as is required by Act VII of 1889.

If he had no such intention, but merely affixed his signature with reference to

the provisions of Section 86 of the Evidence Act, the payment of the Court fees required by the Court Fees Act, 1870, although it proves the bond, fides of the plaintiffs, will not validate the grant of letters of administration as a certificate.

8. We think, therefore, that the Lower Courts were right in holding that plaintiffs were not entitled to a decree, but were wrong in dismissing their suit. They should have allowed time for the plaintiffs to take out probate or letters of administration or to produce such a certificate as is required by the Act.

We set aside the decrees of the Courts below and remand the suit to the Court of First Instance, which will grant the plaintiffs a reasonable time within which to comply with the provisions of Act VII of 1889, failing which the suit must be dismissed.

All questions of costs must stand over until a final decision is given.

1. Section 17: Where a certificate in the form, as nearly as circumstances admit, of the second

schedule has been granted to a resident within a Foreign State

Effect of certificate granted by the British representative accredited to the State, or where a

certificate so granted has been extended in such form by such

representative in Foreign representative, the certificate shall, when stamped in accordance

State. with the provisions of the Court-fees Act, 1870, with respect to

certificates under this Act, have the same effect in British India

as a certificate granted or extended under this Act.