
(1939) 02 MAD CK 0023
In the Madras High Court

Penubolu Seshiah and Thanniru Venkatrayulu represented by APPELLANT
Penubolu Seshiah and Another

Vs

Ayitha Ramiah and Others RESPONDENT

Date of Decision : 20-02-1939

Acts Referred:

Succession Act, 1925 — Section 304

Citation : (1939) 49 LW 572 : (1939) 1 MLJ 742

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This petition arises out, of, the execution of a Small Cause decree against, the assets pf a dead man. In the suit the first

defendant was his widow and defendants 5 to 8 were certain intermeddlers with the estate of the deceased after his death. They appear to have

taken possession of the stocks in-trade of the deceased, and distributed it rateably amongst certain creditors without including the present

petitioner as one of those creditors. There are also other defendants, who were exonerated. The trial Court found on the strength of Narayanasami

Pillai v. Abbayi Sait I.L.R.(1905) 28 Mad. 351 that defendants 5 to 8 must be regarded as executors de son tort to whom the plea of plene

administravit was not open, they having paid off their own debts without paying the debts, of others. The result of the suit was a decree against the

,assets of the deceased, in the hands of the first defendant and also against ""such assets of their value is have been in the possession"" of defendants

5 to 8. The extent of the assets and the extent of the liability of defendants 5 to 8 in, respect of those assets were left open to be considered in

execution. In the course of execution the learned District Munsif has given a

finding as to the value of the assets-in the hands of defendants 5 to 8 and has held that the present petitioner was only entitled to a rateable share in those assets proportionate to this debt in comparison with the debts of other creditors. It is contended that this is wrong and that the order should have been for defendants 5 to 8 to bring into Court the full value of the assets of the -deceased which had come into their hands, for the satisfaction of the petitioner's decree. It seems to me that this contention cannot be sustained. The judgment of the trial Court left open not only the extent of the assets of the deceased in the hands of defendants 5 to 8 but also the extent of their liability. The decision which I have quoted goes no further than to say that when an executor de son tort has paid his own debts he cannot answer a claim of another creditor who has not been paid by the plea of plene administravit. But it does not lay down any rule, that when an executor de son tort has paid his own debts, a creditor who has not been paid is entitled to claim out of the assets which were originally in the hands of the executor de son tort a disproportionate payment towards his own debt. I see no reason in law or equity for the petitioner to get from the executors de son tort any more than they would have got had they been part-takers in the distribution of the assets of the deceased amongst the creditors shortly after his death. Defendants 5 to 8 made themselves liable u/s 304 of the Indian Succession Act for the assets after deducting payments made to the rightful executor or administrator and payments made in due course of administration. To the extent to which they have paid valid debts of the deceased proportionately to the assets available, those payments have in my opinion been made "in due course of administration". To the extent to which they have paid certain creditors more than the rateable share due to them, having regard to the claims of other creditors who were not paid at all, then clearly the payments were not made "in due course of administration", and the executors de son tort are liable to be required to refund the excess. It seems to me that the lower Court Was quite right in directing defendants 5 to 8 to pay to the petitioner the rateable amount which would have been due to him had his debt been taken into consideration at the distribution of the assets amongst the creditors made by defendants 5 to 8. I see no reason why defendants 5 to 8 should be required to refund any amount which

they have paid towards their own, debts which is not in excess of the rateable amount to which they were entitled.

2. There is no substance in the other contentions put forward before me. The result therefore is that the petition is dismissed with costs of the contesting respondents.