
(1962) 01 MAD CK 0036
In the Madras High Court

R. Rama Subbarayalu Reddiar APPELLANT
Vs
Rengammal RESPONDENT

Date of Decision : 25-01-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15
Tamil Nadu Civil Courts Act, 1873 — Section 29(1)

Citation : (1962) ILR (Mad) 1001 : (1962) 75 LW 452 : (1962) 2 MLJ 318

Hon'ble Judges : S. Ramachandra Iyer, C.J.; S. Ramachandra Aiyar, C.J

Bench : Division Bench

Judgement

S. Ramachandra Iyer, C.J.—This appeal which arises out of an order returning an application for probate of a will, for presentation to the proper Court has been placed before the Full Bench, by reason of a conflict between the decisions reported in Karthiruma Goundan v. Rangammal (1933) 62 M.L.J. 622 : ILR 55 Mad. 701 and P. J. Francis v. P.J. Varghese (1956) M.L.J. 288. The facts relevant for and giving rise to this appeal are : The appellant claiming as an executor under an alleged will of one P. W. Subbaraya Reddiar who died on 1st July, 1957, first applied for the grant of probate of the will in the Sub-Court at Tirunelveli. The application was opposed by the daughter of the deceased who contested the genuineness of the will and who inter alia denied the jurisdiction of the Sub-Court to dispose of a contentious application for probate. To appreciate the latter objection it is necessary to refer to two notifications conferring jurisdiction on the Sub-Court to grant probate of a will. They are : (1) By virtue of a notification made by this Court u/s 265 of the Indian Succession Act, 1925, all Subordinate Judges in the Madras Province have been appointed as ex officio District Delegates under that enactment within the local limits of their respective jurisdiction; (2) By virtue of another notification of the High Court made u/s 29(1) of the Madras Civil Courts Act, 1873, all Subordinate Judges in the Madras Province have been authorised to take cognizance of any proceedings under the Indian Succession Act, 1925, which cannot be disposed of by the District Delegates. (Vide Civil Rules of Practice, Vol. 1, page 275) where the two

notifications are set out.

2. A District Delegate under the provisions of the Indian Succession Act, will have jurisdiction to grant probate of a will or letters of administration only (1) if the deceased had at the time of his death a fixed place of residence within his jurisdiction and (2) in non-contentious cases. The second of the two notifications referred to above issued u/s 29(1) of the Madras Civil Courts Act will, however, authorise a Subordinate Judge to deal with other cases as well, e.g., non-contentious matters. In *P.J. Francis Vs. P.J. Verghese and Others*, Govinda Menon and Basheer Ahmed Sayeed, JJ., held that as u/s 265 of the Indian Succession Act a District Delegate can take cognizance of only non-contentious proceedings, the latter of the two notifications which invested a Subordinate Judge with a jurisdiction over contentious proceedings as well, would be invalid and that a Subordinate Judge would, therefore have no power but to return the application for probate or letters of administration which turned out to be contentious for presentation to the District Judge. While coming to that conclusion the learned Judges did not, however, refer or consider Section 29 of the Madras Civil Courts Act or the decision of this Court in *Karthiruma Goundan v. Rangammal* (1933) 62 M.L.J. 622 : ILR 55 Mad. 701. That was a case relating to a petition u/s 192 of the Indian Succession Act. It was contended therein that the notification made u/s 29(1) of the Madras Civil Courts Act authorising all Sub-Judges to take cognizance of all proceedings other than those that could be dealt with by District Delegates would be restricted only to matters concerning the grant of probate or letters of administration under Part IX of the Indian Succession Act and not to applications under the other parts of the Act. This contention was rejected. In so doing Reilly and Anantakrishna Iyer, JJ., observed that Section 29 of the Madras Civil Courts Act would extend the powers of the Subordinate Judge over the whole field of the former Act.

3. The learned Subordinate Judge in the instant case following the decision in *P.J. Francis Vs. P.J. Verghese and Others*, as indeed he was bound to do, returned the application which was a contentious one, for presentation to the appropriate Court. The appellant who thereupon took back his application, presented it to the District Court at Tirunelveli. In the latter Court there was no contest by either of the parties as to the jurisdiction of the Court, the only point left for the determination being about the genuineness of the will. But the learned District Judge suo moto raised a question as to his own jurisdiction. He found that there was a conflict between the view expressed in *P.J. Francis Vs. P.J. Verghese and Others*, and the earlier decision of a Bench of this Court in *Karthiruma Goundan v. Rangammal* (1933) 62 M.L.J. 622 : ILR 55 Mad. 701 holding that it was open to him " to follow the decision which appealed " to him most, and choosing the earlier of the two decisions as laying down the correct procedure he directed a return of the application for presentation to the proper Court, namely, the Sub-Court at Tirunelveli. The appellant who was placed in the unenviable position of having his application returned by both the Subordinate Judge as well as by the District Judge, each holding that the other had jurisdiction to deal with his

application, has filed this appeal against the order of the District Judge returning his application for presentation to the Sub-Court.

4. Before we deal with the question, involved in the appeal, it is necessary to examine the propriety of the procedure adopted by the learned District Judge. The normal rule as to the precedents is, that subordinate Courts are bound in the absence of any decision of the Supreme Court, to follow the decisions of the High Court to which they are subordinate. Where, however, there is a conflict between two decisions of the High Court, the rule to be adopted is as follows :--Where the conflict is between the judgment of a single Judge and a Bench or between a Bench and a larger Bench, the decision of the Bench or the larger Bench as the case may be, will have to be followed. But where the conflict is between two decisions both pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decision came to the conclusion that both" of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one. To enable the subordinate Court to do so, the two apparently conflicting decisions must directly relate to and expressly decide the question that arises before the Court; otherwise a subordinate Court should follow that ruling which specifically deals with the point. It will not be open to it for example to follow the other decision which only impliedly or indirectly or by way of a mere observation gave expression to a contrary view. It follows that the learned District Judge in the present case was not justified in refusing to follow the decision referred in P.J. Francis Vs. P.J. Verghese and Others, , for his preference a decision which impliedly decided the point as against the one that directly did so is neither consistent with established rules relating to precedents nor conducive to orderly administration of justice.

5. The question then is whether the view taken in P.J. Francis Vs. P.J. Verghese and Others, , is correct. We shall first refer to the relevant statutory provisions.

6. The Indian Succession Act, 1925, is a consolidating statute which repealed and re-enacted several statutes which dealt with succession to and protection of the property of a deceased person. Certain parts of it relate to particular class of citizens or to disposition of properties situate in the former Presidency Towns. It is unnecessary to examine them now. Chapter VI of Part IX of the Act relates to the practice and procedure in the matter of granting and revoking probate of a will or letters of administration to the estate of a deceased person. Section 264 confers jurisdiction on the District Judge to grant or revoke probate or letters of administration. Section 265 lays down that the High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious matters. A District Delegate's powers in that regard is however circumscribed. The distinction between the powers of a District Judge and District Delegate is that while the former, can grant a probate or letters of administration where the deceased at the time of his death had a fixed abode or where any property

movable or immovable is alone situate within his jurisdiction, the District Delegate can grant them only in the former class of cases (vide Sections 270 and 273 of the Act). The District Delegate can only dispose of non-contentious cases : once a contest arises he will have to transfer the case to the District Judge. An application for revocation of a grant originally made in a non-contentious proceeding cannot even be decided by him (Vide Section 286) as the very filing of the application for revocation will raise a contest. A District Delegate can also refer a non-contentious matter for disposal by the District Judge. There is also a difference in regard to the conclusiveness of a grant made by the District Delegate and the District Judge. The limited jurisdiction granted to District Delegate is not a peculiar feature of the Succession Act of 1925. It existed in the earlier Succession Act of 1865 and the Probate and Administration Act of 1881. Under those enactments (as well as under the present Act) all contentious proceedings, and all those proceedings in which the deceased at the time of his death did not have permanent abode within the jurisdiction of the District Delegate whether contentious or not had to be disposed of by the District Judge. Accumulation of work in the District Court became inevitable. The Bengal, Agra and Assam Civil Courts Act, 1887, made a provision by Section 23 therein enabling the High Court by a general or special order to authorise any subordinate Judge or Munsif to take cognizance or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control any contentious proceeding under the Indian Succession Act, 1865 and Probate and Administration Act, 1881. There was a similar legislative provision in the Punjab Civil Courts Act, 1918, the Central Provinces Courts" Act, 1917 and the Bombay Civil Courts Act, 1869, the respective statutory provisions being Sections 30, 19 and 28-A. No such provision was made originally in the Madras Civil Courts Act, 1873. The Civil Justice Committee who enquired into the laws delays noticed this deficiency and recommended that appropriate provisions should be inserted in the Madras Civil Courts Act similar to those in force in other provinces, enabling the High Court by a general or special order to authorise any Subordinate Judge to take cognizance of contentious cases. Act XIV of 1926 was thereupon passed by the Central Legislature by introducing Section 29 in the existing Madras Civil Courts Act, 1873. Sub-clause (1) to that section, which alone is relevant to the subject under consideration, states:

The High Court may by general or special order authorise any Subordinate Judge to take cognizance of, or any District Judge to transfer to any Subordinate Judge under his control any proceeding under the Indian Succession Act, 1925, which cannot be disposed of by the District Delegates.

The terms of the section are clear. It authorises a disposal by the Subordinate Judge of any proceeding under the Indian Succession Act, 1925, other than those that could be disposed of by the District Delegate. The clause relating to transfer also emphasises the fact that a Sub-Judge duly authorised can dispose of all proceedings that could be disposed of by the District Judge himself. The words " cognizance of" will imply a right to deal with the matter legally and judicially and

will also include a power to entertain such proceedings. Therefore the jurisdiction of a Sub-Judge invested with a power u/s 29(1) of the Madras Civil Courts Act is that of a District Judge and not that of District Delegate under Succession Act. This view is also borne out by Sub-clause (3) to that section which provides a right of appeal from the decision of a Subordinate Judge authorised under Clause (1) as if he is a District Judge. Thus a notification under the above section confers a new jurisdiction on a Sub-Judge to decide all matters, under the Succession Act which cannot be disposed of by a District Delegate.

7. Much of the argument before us proceeded on the assumption, an assumption for which there is no warrant, that the notification u/s 29(1) of the Madras Civil Courts Act confers a jurisdiction on a District Delegate, (Sub-Judge) to dispose of matters which he would have no jurisdiction to do directly under the provisions of the Indian Succession Act, 1925. A District Delegate appointed u/s 265 owes his authority to that source; but a Sub-Judge who is invested with jurisdiction under a notification u/s 29(1) of the Madras Civil Courts Act has a different jurisdiction. Thus there is a distinction between the two authorities. For one thing a notification u/s 265 can authorise any judicial officer, not necessarily a Sub-Judge, to perform the duties given under the statute to District Delegate, whereas u/s 29(1) of the Madras Civil Courts Act a Sub-Judge alone can deal with the matters specified therein. It will also be noticed that the notification made by this Court itself makes the distinction; it consists of two parts : 1) empowering Sub-Judges u/s 265 of the Succession Act so as to enable them to try non-contentious cases; (2) empowering Sub-Judges u/s 29(1) of the Madras Civil Courts Act to take cognizance of all proceedings which they could not do qua District Delegates. The latter jurisdiction therefore, cannot be the same as that of a District Delegate.

8. Mr. V. Ramaswami appearing for the appellant in an able argument contended that what Section 29 of the Civil Courts Act intended in effect to achieve was, to confer a power on District Delegates which Section 286 of the Indian Succession Act expressly prohibited them from exercising. Learned Counsel further submitted that if the Legislature did really intend to confer an unrestricted jurisdiction on the Subordinate Judges they could have simply amended in an appropriate manner the Indian Succession Act and that a harmonious construction of the two statutory provisions would require that the Sub-Judge authorised u/s 29(1) of the Madras Civil Courts Act could do nothing more than what a District Delegate could. This contention, if accepted, would make Section 29(1) of the Civil Courts Act a dead letter and would perpetuate the very mischief which was attempted to be remedied; it is also against the plain terms of the section.

9. In a recent case S.A. No. 179 of 1959 my learned brother Veeraswami, J., had to consider the precise question and in the Course of his judgment observed:

As I said, in view of the provisions of Sections 265 and 286 of the Indian Succession Act, there can be no doubt that a District Delegate is not competent

to deal with a contentious testamentary matter. But the power of the Subordinate Judge of Tuticorin to deal with such a matter is not rested upon the provision in Part IX of the Indian Succession Act, but on the power delegated to him by the notification of the High Court u/s 29(1) of the Madras Civil Courts Act.

If I may say so with respect this is an accurate statement of the position. The question is not whether the Legislature could have better achieved its object by making suitable amendment to the Indian Succession Act but rather whether they have done so by introducing Section 29 in the Madras Civil Courts Act, which is also a Central enactment. It must be noticed that there was legislation in most of the other Provinces or States conferring jurisdiction on Sub-Judges, etc., if they were to be invested with the necessary powers by the High Court to try contentious cases. The cause and necessity for legislation was therefore peculiar to the Madras Province, where there was need to confer jurisdiction on Courts other than those of District Judges, similar to those existing in other States. Evidently it was thought sufficient, if the Madras Civil Courts Act were alone amended. Nor are we able to accept the argument, that there is any inconsistency between Section 265 of the Indian Succession Act and Section 29 of the Madras Civil Courts Act and that both of them cannot stand together unless they are interpreted in the way contended for. The two provisions deal with distinct matters, the former with those entrusted to District Delegates and the latter to all the other matters. In Craies on Statute Law (5th Edition), it is stated at page 339:

Where a new Act is couched in general affirmative language and the previous law can well stand with it, and if the language used in the later Act is in the affirmative, there is nothing to say that the previous law shall be repealed and therefore the old and the new laws may stand together. Thus an Act authorising trial by Quarter Sessions can stand with an earlier Act which enacted that the offence should be tried by the Queens Bench or at Assizes.

In the present case there can be no doubt that the two provisions can be worked together without any conflict of jurisdiction. For example the High Court can confer jurisdiction on a Sub-Judge as a District Delegate alone or under both the provisions referred to above. Assuming however that there is a conflict between the two statutory provisions (in our opinion there is none) it can only mean that the latter to the extent it is contrary will prevail over the former.

10. The view that a Subordinate Judge invested with a power similar to the one u/s 29(1), Madras Civil Courts Act exercises a jurisdiction distinct from that of a District Delegate is well supported by authority. In *Kunjo Behari Gossami v. Hemchunder Lahiri* (1898) ILR 25 Cal. 340, a question arose as to the powers of a District Judge to transfer a contentious probate matter to the Subordinate Judge u/s 23 of the Bengal, Assam and Agra Civil Courts Act which is similar in terms to the provision in the Madras Act. It was held that the provision would enable a transfer of all proceedings contentious or otherwise to the Subordinate Judge although if such a transfer were to be made to a District Delegate, it could

only be a non-contentious proceeding. In *Kaloo v. Moor Jahan* AIR 1935 Oudh. 38 and *Narendra Nath and Another Vs. Sm. Fakirmani Dassi and Others*, , it was recognised that the jurisdiction of a Subordinate Judge invested with powers under the Civil Courts Act, was distinct from that of a District Delegate under the Succession Act.

11. It has been broadly argued on behalf of the appellant that where there is a machinery under the Succession Act itself to empower delegation of the functions of a District Judge, it will be necessary to have a different agency like the High Court for the same purpose and Section 29 of the Madras Civil Courts Act should be so construed as not to cover the same field. In support of this argument learned Counsel referred to the rule-making power of the Government u/s 264 (2) of the Indian Succession Act and contended that the general words of Section 29(1) of the Madras Civil Courts Act should not be interpreted according to their tenor, but a restricted meaning should be given to them, as otherwise it will result in an inconsistency and a conflict of powers. Section 264 (2) of the Succession Act enables the State Government by a notification to authorise Courts outside the Presidency Towns to entertain applications for probate and letters of administration. It was said that to recognise an unlimited power u/s 29(1) of the Madras Civil Courts Act would be to nullify the power of the Government.

12. Section 264 (2) of the Indian Succession Act deals with an entirely different subject-matter from the one now under consideration. It enables the Government to vest a power in Courts other than those specified, to grant probate or letters of administration, where the deceased is a Hindu, etc. That power is different from the one specified u/s 29(1) of the Madras Civil Courts Act which relates to the procedure in regard to the institution and disposal of testamentary matters falling within the jurisdiction of the District Judge. It was then argued that a Subordinate Judge duly authorised by a notification u/s 29(1) of the Madras Civil Courts Act will be competent to dispose of only those contentious matters which relate to the estate of a deceased who had at the time of his death a permanent abode within his jurisdiction. This again is a contention based on the incorrect assumption that a Subordinate Judge invested with a power under the aforesaid section is a mere District Delegate. It has to be rejected.

13. It would appear from the wide terms in which Section 29(1) of the Madras Civil Courts Act is enacted that the Subordinate Judge invested with a power under a notification issued thereunder by the High Court will have jurisdiction to hear and dispose of not merely contentious proceedings relating to the issue of probate or letters of administration but other matter under the Act as well. In *P.O. Karthiruma Goundan Vs. Rangammal and Another*, , the learned Judges observed:

The use of the words " which cannot be disposed of by District Delegates " is perhaps not very happy. But they do not appear to justify the contention for the

petitioner that they limit proceeding with which a Subordinate Judge can be authorised to deal to those comparatively few matters which may have been brought before a District Delegate but of which u/s 286 or 287 or 288 of the Indian Succession Act he finds himself for some reason unable to dispose of. If that had been the intention, the words used would be a very clumsy way of expressing it and the proceedings would naturally have been described as any proceedings under Part IX of the Indian Succession Act with which alone District Delegates are concerned instead of in more general terms... If the words of Section 29 of the Madras Civil Courts Act are interpreted in their plain grammatical meaning the result is that they make it possible to extend the powers of Subordinate Judges over the whole field of the Indian Succession Act to the relief of the District Judges except over the narrow field already covered by the powers of the District Delegates in respect of which they require no relief. The grammatical meaning of Section 29 of the Madras Civil Courts Act fits in therefore with what is the apparent object of the enactment.

14. In *G. Rengaraja Rao Vs. A. Tulasibai Ammal*, , Panchapagesa Sastry, J., was not prepared to accept the foregoing observations as applying to Part X of the Indian Succession Act. In a later case namely, *Chinnakannu Pillai v. Sundaram* (1950) M.L.J. 644, Viswanatha Sastri, J., was inclined to share the same view in regard to a case relating to the grant of succession certificate under Part X of the Indian Succession Act.

15. Section 388 of the Act empowers the State Government by a notification to invest any Court inferior to that of a District Court to perform the functions of a District Judge under Part X of the Succession Act. Panchapagesa Sastri, J., was of the opinion that if Section 29(1) of the Madras Civil Courts Act were to apply according to its tenor, there would be the possibility of a conflict between the notification made by the Government u/s 388 of the Indian Succession Act and that which might be made by the High Court acting u/s 29(1) of the Madras Civil Courts Act. The learned Judge, therefore, held that the two sections referred to above should be read together and reconciled in such a manner that they did not lead to any conflict of powers or jurisdiction. In that view it was held that Section 29(1) of the Madras Civil Courts Act would not cover a case arising under Part X of the Indian Succession Act. The learned Judge was of opinion that a literal interpretation of that section (Section 29) would result in a conflict or inconsistency with any notification that might be made u/s 388. We are unable to see how a mere possibility of inconsistency, will justify a restricted interpretation of the wide words of the statute. There is, however, no reason for assuming any such possibility, as neither the Government functioning u/s 388 of the Succession Act nor the High Court doing likewise u/s 29(1) of the Madras Civil Courts Act are likely to issue notification so as to conflict with each other. Even assuming that the High Court issues a notification under its powers authorising Subordinate Judges to dispose of applications under Part X of the Succession Act and the Government authorises a District Munsif to grant succession certificate in respect of the same subject matter there can be no conflict as u/s 15 of the CPC the

application could be filed only in the Court of the lower of the two grades competent. But if, both the High Court and the Government invest a Subordinate Judge with jurisdiction under Part X of the Indian Succession Act, an event which is not at all likely to happen, there will no doubt be a difficulty in the matter of appeal, for if the Subordinate Judge is held to have exercised jurisdiction under the notification issued u/s 388 of the Indian Succession Act an appeal will lie to the District Court whereas if it is deemed to exercise jurisdiction under the notification of the High Court u/s 29 of the Madras Civil Courts Act, the appeal will lie to the High Court. But an inconvenience of this kind will not justify a limited interpretation being given to the words of the Section 29 of the Madras Civil Courts Act. It is well-settled that the mere fact that the result of a Statute is unjust or absurd would not entitle a Court to refuse to give effect to it. Where the language of a Statute is clear and explicit effect should be given to it regardless of the consequences unless the absurdity is such that it amounts to repugnance. In *Nuth v. Tamplin* (1881) L.R. 8 Q.B. 247, Jessel, M.R., observed at page 253 thus:

Anyone who contends that section of an Act of Parliament is not to be read literally must be able to show one of two things;--either that there is some other section which cuts down its meaning or eke that the section itself (if read literally) is repugnant to the general purview of the Act.

16. It cannot be said that there is any such repugnance in the case. On the other hand Section 29 of the Madras Civil Courts Act was designed for the specific purpose of giving relief to District Judges in regard to their work under the Indian Succession Act; there is no reason why a limited interpretation should be given. We are, therefore, unable to accept, with great respect to the learned Judge who decided *G. Rengaraja Rao Vs. A. Tulasibai Ammal*, , that Section 29 of the Madras Civil Courts Act should be restricted in its interpretation. In our opinion the power vested in the Government u/s 388 of the Indian Succession Act can certainly co-exist with that conferred on the High Court u/s 29 of the Madras Civil Courts Act. There is, therefore, no reason to limit the scope of the power of the High Court u/s 29 of the Madras Civil Courts Act. We are therefore of opinion that *P.O. Karthiruma Goundan Vs. Rangammal and Another*, , was rightly decided. Further we accept with great respect the observations contained in that judgment regarding the scope of Section 29(1) of the Madras Civil Courts Act. It follows that the decision in *P.J. Francis Vs. P.J. Verghese and Others*, , should be overruled. That decision does not keep alive the distinction between a Subordinate Judge invested with power u/s 29 of the Madras Civil Courts Act and a District Delegate appointed u/s 265 of the Indian Succession Act nor do the learned Judges consider the effect of Section 29(1) of the Madras Civil Courts Act. The decision in *P.O. Karthiruma Goundan Vs. Rangammal and Another*, , has not even been referred to. It would follow that the Subordinate Judge of Tirunelveli will have jurisdiction to entertain the application for probate.

17. But this conclusion does not dispose of the appeal. Vesting of authority in a

Subordinate Judge to entertain and dispose of contentious applications for probate, etc., u/s 29(1) of the Madras Civil Courts Act cannot take away the jurisdiction of the District Judge over such matters. The result is that both the Subordinate Judge and the District Judge will have concurrent jurisdiction to take cognizance of contentious applications for probate, etc., relating to matters arising within the jurisdiction of the former. u/s 15 of the CPC where more than one Court has a jurisdiction over the matter, the case should be instituted only in the Court of the lower grade competent to try it. The Sub-Court being a Court lower to the District Court in the hierarchy of Courts the application for grant of probate or letters of administration will have to be instituted only in that Court. But this is only a rule of procedure. Therefore Section 15 of the CPC does not deprive the District Court of its jurisdiction. As observed by Pertheram, C.J., in *Nidhi Lal v. Mazar Hussain* ILR 7 All. 230).

The word "shall" is in my opinion imperative on the suitor; "the word is used for the purpose of protecting the Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. . . . The proviso is for the benefit of the Court of the higher grade and it is not bound to take advantage of it. If it does not wish to try the suit it may refuse to entertain it. If it wishes to retain the suit in its Court it may do so. It is not bound to refuse to entertain it.

18. These observations were made with reference to a provision in the CPC of 1882 (Section 15) corresponding to Section 15 of the CPC of 1908.

19. In the present case the appellant filed the application for probate in the first instance before the Subordinate Judge. That Court erroneously returned the application taking the view that it had no jurisdiction to entertain it. The order of return not having been appealed against has become final between the parties. The result is that so far as the parties were concerned, the District Court was the only Court to which the application could lie. Under those circumstances the learned District Judge should not have returned the application again to the party for presentation to the Sub-Court, as the Sub-Judge could very properly say that he had by his judicial order which has become final between the parties, decided against his own jurisdiction. The learned District Judge should have "respected the finality of the order of the Subordinate Judge holding that the latter had no jurisdiction to entertain the application for probate, however, erroneous that order might be. The matter will however be different if the District Judge had no concurrent jurisdiction with the Subordinate Judge. In such a case he would certainly be justified in refusing to entertain the application for probate. The District Judge therefore having jurisdiction concurrent with that of the Subordinate Judge should have at the stage at which the application came to him, entertained it and either disposed of it himself or transferred the same to the file of the Sub-Court for disposal.

20. In the result the appeal is allowed, the order of the lower Court is set aside

and the District Judge is directed to entertain the application for probate and dispose it of at an early date.

21. As the respondent was unrepresented Sri N. Venugopal Nayagar was appointed to represent her case as amicus curiae. Before parting with the case we must express our thanks to Sri N. Venugopal Nayagar for the able assistance he gave us in deciding the points arising in the appeal.