**(1954) 11 MAD CK 0015**

**In the Madras High Court**

**Case No :** Appln. No. 4230 of 1954 in O.P. 42 of 1954

Ramamurthy APPELLANT

Vs

President, Attur Co-operative Society, Attur RESPONDENT

**Date of Decision :** 22-11-1954

**Acts Referred:**
Succession Act, 1925 — Section 302

**Citation :** AIR 1955 Mad 417

**Hon'ble Judges :** Ramaswami, J

**Bench :** Single Bench

**Advocate :** R. Rajagopala Iyer and R. Subramania Iyer, for the Appellant; N.S. Raghavan, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ramaswami, J.—This is an application for directions purporting to be u/s 302 of the Indian Succession Act.

2. The facts arc: One K. G. Krishnaswami Ayyar had three fixed deposits and a savings bank deposit amounting to Rs. 1842 in the Attur Co-

operative Society, Salem District. This Krishnaswami Ayyar died on 4-3-1943 surviving him his widow Meenakshi Animal. One S. Ramamurthi,

applicant herein, alleging that he was the sister''s son of this Meenakshi Ammal filed an application for probate in regard to the will said to have

been executed by Meenakshi Ammal on 5-7-1953 on the foot that he is to be construed as executor by implication. The only asset which this

Meenakshi Animal is said to have bequeathed is the aforesaid deposits standing in the name of her husband. In those proceedings no notice had

been taken to the relatives of Krishnaswami Ayyar or publication made in Salem district. Probate was granted in O. P. 42 of 1954.

Thereupon this Ramamurthi has been dunning the Co-operative Society to pay him the sum of Rs. 1842. The Co-operative Society has been

insisting that this Ramamurthi should produce a succession certificate to the estate of the deceased Krishnaswami Ayyar as the Society is not

aware of the fact whether the deceased Meenakshi Ammal had any rights to leave a will, for it may be that Krishnaswami Ayyar might have some

brothers of his who may be entitled to the property on the demise of the widow who had only a life interest in the property. The Society being a

registered body doing the work of banking claimed to be protected by the production of a succession certificate.

In these circumstances this application has been filed purporting to be u/s 302 of the Indian Succession Act for directing the Co-operative Society

to deposit the amount into Court. This application is opposed by the Society on the grounds set out above.

3. The short point for determination is whether this application lies at all u/s 302 of the Succession Act. Section 302 runs as follows:

Where probate or letters of administration in respect of any estate has or have been granted under this Act, the High Court may, on application

made to it, give to the executor or administrator any genera! or special directions in regard to the estate or in regard to the administration thereof"".

4. This section corresponds to Section 87-B of Act V of 1881 and Section 264 (B) of Act 1865. It appears from the provisions of Act V of

1902, Section 5, Subsection (2), that the High Court may give directions to any private executor or administrator other than the Administrator-

General acting officially. This provision has been recently repealed and transferred to the Indian Succession Act as Section 264B by Act XVII of

1919.

5. The High Court alone has power under this section similar to that which Courts have u/s 34 of the Trusts Act in respect of trustees to give

directions to the administrator in regard to the estate or the administration thereof which the Court of Chancery in England has under Order 55

Rule 3 of the Rules of the Supreme Court 1883: -- ''Afsar v. Ram Bakht'', AIR 1945 Oudh 82 (A). The District Judge has no power to give such

directions to the executor or administrator once the probate and the letters of administration have been granted. -- ''Mina Winsor v. E. Winsor

 

AIR 1920 Bom 19 (B). The exercise cf this power by the High Court is discretionary and the High Court should not exercise the discretion in

complicated matters of fact and law. -- ''Arya Priti Nidhi Sabha v. Om Prakash'', AIR 1934 Lah 120 (C); -- Sudhansu Mohan Sirkar Vs. Harish

Chandra Dutta, ; -- In Re: Eliza Martin, .

6. Order 55, Rule 3, is set out in Williams on The Law of Executors and Administrators (13th Edition), Vol. II, at page 1131. Under Order 55,

Rule 3, personal representatives or any of them, creditors, devisees, legatees or next-of-kin or persons claiming through such creditors, or

beneficiaries by assignment or otherwise may apply to the court by originating summons for the determination, without an administration of the

estate, of any of the following questions or matters:

(a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or ''ces-tui-que-

trust; (i.e. beneficiary under the trust).

(b) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others;

(c) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;

(d) The payment into court of any money in the hands of the executors or administrators or trustees;

(e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or

administrators or trustees.

(f) The approval of any sale, purchase, compromise or other transactions;

(g) The determination of any question arising in the administration of the estate or trust.

Under (b) where no members of the class are known, the executor should make the Attorney-General party; -- ''Re Chillagoe Ry and Mines Ltd.,

Trust Deed'', 1930 MWN 41 (F). Under Clause (d) only money actually in the hands of executors, administrators, or trustees will be ordered to

he paid into court under this rule: see also page 1160 (Ibid) see also AIR 1945 Oudh 82 (A)''. Under Clause (e) the act must be something within

their trust: --''Suffolk v. Lawrence'', (1884) 32 WR 899 (G).

 

7. This Section 302 has been construed in a leading decision of this Court in -- ''Akayya v. Lakshamma'', AIR 1928 Mad 356 (H). Devadoss J.,

has examined therein the relevant English and Indian decisions in ''In re Lorenz''s Settlement'', (1861) 62 ER 453 (I); -- ''Conway v. Benton'',

(1889) 40 Ch. D 512 (J); -- ''In re Samuel Marie Brereton'', 7 Bom 381 (K), and ''In re Lakshmi Bai'', 12 Bom 638 (L), and has also extracted -

the observations of Kindersley V. C., at page 404 (1861) 1 Dr & Sm 401 (I) and of Mr. Justice Scott in 12 Bom 638 (L), and of Mr. Justice

Kekewich in (1889) 40 Ch D 512 (J)'', Kindersley, V. C., observed:

My understanding of that section of the Act is that it was intended by the Legislature that the court should have the power to advise a trustee or

executor as to the management and administration of the trust property in the manner which will be most advantageous to the parties beneficially

interested, but not to decide any question affecting the rights of those parties ''inter se''; otherwise the effect would be, that a deed or will involving

the most difficult questions and relating to property to an amount, however large, might be construed, and most important rights of parties decided,

by a single Judge without any power of appeal whatever"".

Scott J., observed;

The question on which the court has advised trustees, have relation strictly to undisputed matters of management such as questions of

advancement, maintenance, change of investment, sale of a house, compromises, taking proceedings. But disputed points of law or fact have never

been included. The Court will not, for instance construe an instrument or make any order affecting the rights of parties"".

Mr. Justice Kekewich observed;

The object of that order was to enable trustees or persons beneficially interested under a settlement or will to come by summary mode to the

court and to obtain the determination of any question, whether of administration or of law, or of construction, without the necessity of what used to

be known as an administration suit or action.

Thus Devadoss J., who reviewed these judgments came to the conclusion that this High Court has power u/s 302 to give directions, which the

Court of Chancery in England has under Order 55, Rule 3 and any directions as regards the administration of the Estate means such directions as the executor may seek in order to administer the estate properly and that this section gives ample power to the Court to settle questions arising

between the executor and the legatees themselves and also power to construe a will whenever the Court is asked to do so.

8. To sum up, the directions which can be given under this section are those relating to the administration of the estate, that is on questions which

could be dealt with in an administration suit: --''Re Medland; Eland v. Medland'', 1889 41 Ch D 476 (M); -- ''Re Carlyon v. Carlyon'', (1887) 35

WR 155 (N); -- ''Re Davies; Davies v. Davies'', (1888) 38 Ch D 210 (O). The only effect of this section is to enable the High Court to give

directions on an Originating Summons without a regular administration suit. No directions can be given by the Court on questions which could not

arise in an administration suit, such as for instance, questions affecting rights of third persons claiming adversely to the will or those relating to claims

for broaches of trust; -- ''Re Bridge; Franks v. Worth'', (1887) 56 LJ Ch 779 (P); -- ''Re Royle; Royle v. Hayes'', (1889) 43 Ch D 18 (Q).

9. An order under this section is neither appealable nor revisable: -- ''Dwarka Nath v. Thakurain Rai Rani'', AIR 1945 Oudh 54 (R). That is why

the nature of the directions which can be given is hedged with so many restrictions to safeguard the rights of third parties.

10. These powers are now being sought to be abused by asking this Court tq be converted into a bill-collecting agency and this petition is

thoroughly misconceived. In the result, this application is dismissed with the costs of the contesting Society.

 