

(2025) 01 KL CK 1722
In the High Court Of Kerala
Case No : Writ Petition (C) No.37711 Of 2024

Smt. Ambily Jose

APPELLANT

Vs

Sub Registrar

RESPONDENT

Date of Decision : 06-01-2025

Acts Referred:

Indian Succession (Kerala Amendment) Act, 1996 — Section 213, 213(2)

Citation : (2025) 01 KL CK 1722

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : John Varghese, Ayisha T.S, Leo George, Deepa Narayanan

Final Decision : Allowed

Judgement

C.S.Dias, J

1. The petitioner is the executor of Ext.P3 registered Will executed by the late Fr. George Valiaveetil. He died on 08.07.2024. The deceased has deposits in the 3rd respondent bank. The testator has bequeathed his properties, assets and deposits in favour of the petitioner and other legatees as per the Will. On the testator's death, the petitioner submitted Ext.P4 letter to the 3rd respondent informing them that he is the executor of the Will and requesting them to furnish the account details of the deceased. In response to the letter, the 3rd respondent has directed the petitioner to submit the death certificate of the deceased and a copy of the probated Will. As per the guidelines of the Reserve Bank of India, all scheduled Banks are bound to settle claims of the deceased depositors within 15 days from their death. In the light of the amendment to Section 213(2) of the Indian Succession Act, the insistence of the respondents to probate the Will is unwarranted. Ext.P5 reply is illegal and arbitrary. Hence, the writ petition.

2. Heard; the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 2 and 3 banks.

3. Ext.P3 is a registered Will of Fr. George Valiaveetil. He was an Indian

Christian. Ext.P1 death certificate proves that he died on 08.07.2024.

4. It is contextual to refer to Section 213 of the Indian Succession (Kerala Amendment) Act, 1996, which came into force with effect from 08.03.1997, and it reads as follows

"213. Right as executor or legatee when established. —

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

(2) This section shall not apply in the case of Wills made by Muhammadans or Indian Christians, or and shall only apply—

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits."

(highlighted)

5. The testator was an Indian Christian, and he died after the coming into force of Section 213 of the Succession Act (Kerala Amendment) Act, 1996.

6. The apprehension of the learned counsel for the respondent banks is that if the amounts under the deposits are paid to the petitioner on the strength of Ext.P3 Will before it is probated, the Banks may become answerable if any person stakes a claim over the deceased's money. The above contention is naïve and untenable because of the provisions of the Succession Act and its well-settled interpretations.

7. In interpreting Section 213 of the Succession Act (Kerala Amendment) Act, 1996, a Bench of this Court in Lilly George v. Francina James and Others [2008 (2) KHC 926] held as follows:

"6. We shall now deal with the last contention that as the Will has not been probated the bar under S.213 of Indian Succession Act will apply. The Indian Succession Act was amended with effect from 14/03/1997. Ext. A1 will was executed on 28/02/1985. The testator passed away on 30/08/2000. In Syndicate Bank v. Soji Chacko, 1998 KHC 313 P. K. Balasubramanyan (J.) (as his Lordship then was) considered the effect of amendment to S.213 of the Indian Succession Act, 1925, by the Indian Succession Act (Kerala Amendment) Act which came into force on 14/03/1997. The learned Judge held that from the date of the

amendment, the need for obtaining a probate or letters of administration of a Will executed by an Indian Christian is not to be insisted upon. It was held that the benefit of the amendment is available to those litigants who invoke the jurisdiction of the Court to establish a right under a will subsequent to 14/03/1997”.

8. Subsequently, another Bench of this Court, while considering the impact of the Amendment to Section 213 of the Succession Act (Kerala Amendment) Act, 1996, in *Kurian @ Jacob v. Chellamma John and Others* [2017 (5) KHC 257] has held thus:

“42. Impact of the Amendment: Now, with the amendment, any bar against recognising the rights of an executor or a legatee under a Christian Will without his or her producing a probate has been done away with. In other words, a person nominated as an executor or a legatee under a Will executed by a deceased Christian can establish his rights under the Will without obtaining a probate”.

9. On the testator's death, his properties have vested in the petitioner, the executor of the Will, who is cast with the duty to distribute the deceased's property and assets to the legatees under the Will. [Read the decision in *Commissioner, Jalandhar Division and Others v. Mohan Krishan Abrol and Another* (2004 KHC 1515)]

10. If the contention of the Banks is accepted, it would render Section 213 of the Act redundant. Nonetheless, to allay the fears of respondents 2 and 3, I deem it appropriate to direct the petitioner to execute an indemnity bond in favour of the 3rd respondent bank, undertaking to indemnify respondents 2 and 3 in case any person raises any claim in respect of the deceased's deposits' released to the petitioner on the strength of the Will, which in turn will insulate the Banks and do complete justice to both sides.

In the result, the writ petition is allowed in the following manner:

1. The directions in Ext.P5 are set aside.
2. Ext.P4 application is allowed by directing the respondents 2 and 3 to release the deposits of the deceased to the petitioner, on the strength of Ext.P3 Will, in accordance with the law, and as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a certified copy of this judgment.
3. The petitioner shall execute an indemnity bond in favour of the third respondent at the time of the release of the deposits, undertaking to indemnify the respondents 2 and 3 in case any person makes a rival claim in respect of the deposits of the deceased.

The writ petition is ordered accordingly.