

(1955) 09 BOM CK 0017
In the Bombay High Court
Case No : A.F.O. No. 93 of 1954

Temul Ardeskar

APPELLANT

Vs

Bejanji Navroji

RESPONDENT

Date of Decision : 13-09-1955

Acts Referred:

Succession Act, 1925 — Section 212, 220

Citation : AIR 1956 Bom 159

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : K.H. Kazi, for the Appellant; B.G. Thakor, for the Respondent

Judgement

1. One Navroji died in 1829 leaving him surviving three sons Bejanji, Rustomji and Hormusji. Rustomji died in 1935 and Hormusji died in 1937. Bejanji, the surviving son Of Navroji, then filed suit No. 620 of 1938 for a declaration that certain lands belonged to his father Navroji and that he was entitled to a decree for possession of those lands. The suit was resisted by the defendants inter alia on the plea that before filing the suit, Letters of Administration to the estate of Navroji were not obtained by the plaintiff.

The plaintiff Bejanji then applied by application No. 15 of 1840 for Letters of Administration and Letters of Administration were granted generally to him to the estate of Navroji. In appeal No. 83 of 1942 of the file of the District Court at Surat the Letters of Administration granted to Bejanji were limited to the prosecution of suit No. 620 of 1938.

As however Bejanji had filed the suit without in the first instance obtaining Letters of Administration the suit was dismissed on 26-2-1844. Bejanji then applied by Miscellaneous application No. 50 of 1944 for amending the Letters of Administration, and he claimed Letters of Administration to the estates of Rustomji and Hormusji as well.

The amendment applied for by Bejanji was granted. It appears that the

amendment applied for was made in the Letters of Administration granted by the Court of first instance and that the attention of the Court was not directed to the modification made in Appeal No. 83 of 1942.

The result of the grant of the amendment applied for in Mis. Application No. 50 of 1944 was therefore that Letters of Administration to the estate of Navroji were limited to suit No. 620 of 1938, and Letters of Administration generally were granted to the estate of Rustomji and Hormusji, though in form Letters of Administration were granted to the estate of Navroji, Rustomji and Hormusji generally.

Bejanji then filed suit No. 9 of 1948 for possession of the properties in suit and alternatively for the value of a house and certain lands described in the plaint. The suit was again resisted by the defendants contending that the plaintiff Bejanji had failed to obtain Letters of Administration.

The learned trial Judge dismissed the plaintiff's suit holding that Letters of Administration were not obtained by the plaintiff generally and therefore the plaintiff's suit was liable to fail. Against the decree passed by the trial Court the plaintiff appealed to the District Court at Surat; and in appeal the learned District Judge held that the Letters of Administration originally granted were by reason of the order passed by the court of appeal limited to suit No. 620 of 1938.

But he held that the Letters of Administration having been amended by grant of Letters of Administration to the estates of Rustomji and Hormusji the plaintiff had a right to file a suit in so far as the plaintiff was by the Letters of Administration appointed administrator of the estates of Rustomji and Hormusji.

The learned District Judge accordingly modified the decree passed by the trial Court and held that the plaintiff was entitled to maintain the suit as administrator of the estate of Rustomji and Hormusji and that he was not entitled to maintain the suit as administrator of the estate of Navroji.

The learned District Judge accordingly remanded the suit for trial in the light of the directions given by him. It is against the order of remand passed by the District Court that defendant No. 4 has come to this court in appeal.

2. Mr. Kazi who appears on behalf of the appellant defendant No. 4 has contended that when the original Letters of Administration granted by the Court of first instance were amended by the Court of appeal so as to make them limited to suit No. 620 of 1938 the subsequent amendment made by the Court of first instance when granting Letters of Administration to the estates of Rustomji and Hormusji must also relate to suit No. 620 of 1938 and the court could not be regarded as having granted Letters of Administration generally to the estates of Rustomji and Hormusji.

Mr. Kazi contends that if that contention is correct the plaintiff's suit must fail as a whole.

3. I am unable to accept that contention. It is true that when the court amended the Letters of Administration in favour of the plaintiff Bejanji by amending the letters of Administration to the estates of Rustomji and Hormusji the Court was not apprised of the fact that the original Letters of Administration had been modified by the appeal Court so as to limit them to suit No. 620 of 1938. But that is not a ground for holding that the Court intended when it granted the letters of Administration to the estates of Rustomji and Hormusji to limit them also to suit No. 620 of 1938.

The Letters of Administration having been *ex facie* granted generally no such limitation: would be regarded as implicit in them. In that view of the case the appeal must fail.

4. Mr. Thakor who appears on behalf of the plaintiff has filed cross-objections contending that the learned District Judge should have held that the plaintiff, was entitled to maintain the suit even in respect of the estate of Navroji.

Section 212 of the Succession Act provides that no right to any part of the property of a person who has died intestate can be established in any court of justice unless Letters of Administration have first been granted by the Court of competent jurisdiction. Evidently Letters of Administration have not been granted to the estate of Navroji at any time.

Letters of Administration to suit No. 620 of 1938 had been granted, but that suit has been disposed of, and it is difficult to appreciate the contention sought to be raised in this suit that the plaintiff is entitled to maintain a claim to the estate of Navroji even though no Letters of Administration have been granted to the plaintiff in respect of the estate of Navroji. The cross-objections therefore fail.

5. Both the appeal and cross-objections fail and are therefore dismissed with costs.

6. Appeal and Cross-objections dismissed.