

**(2016) 02 SC CK 0051**  
**In the Supreme Court Of India**  
**Case No : Civil Appeal No. 1618 of 2011.**

Vatsala Srinivasan

APPELLANT

Vs

Shyamala Raghunathan

RESPONDENT

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**Date of Decision :** 11-02-2016

**Acts Referred:**

Succession Act, 1925 — Section 232

**Citation :** (2016) 163 AIC 118 : (2016) 117 ALR 440 : (2016) 3  
ApexCourtJudgments(SC) 76 : (2016) 3 HLR 341 : (2016) 4 ICC 364 : (2016) 5  
JT 495 : (2016) 4 LawHerald 3006 : (2016) 3 LawHeraldSC 2376 : (2016) 3  
RCRCivil 750 : (2016) 132 RD 611 : (2016) 4 RecentApexJud

**Hon'ble Judges :** Anil R. Dave;Adarsh Kumar Goel, JJ.

**Bench :** Division Bench

**Advocate :** Sanjay Parikh, Ms. Anitha Shenoy, Ms. Ninni Sasan Thomas,  
Advocates, for the Appellant; Farid F. Karachiwala, Aman Gandhi, Ms. Sneha  
Mehta, Advocates, for the Respondent

**Final Decision :** Disposed Of

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## Judgement

Anil R. Dave, J. - The issue involved in this appeal is whether upon death of the executor, during the pendency of testamentary suit proceedings, the proceedings abate.

2. In the instant case, during the pendency of the testamentary suit proceedings before the Original side of the High Court (in exercise of its testamentary and intestate jurisdiction), the executor of the Will expired. In these circumstances, the respondent, as a sole legatee, applied for grant of letter of administration with regard to the Will alleged to have been executed on 4th January, 2001 by the mother of the respondent herein. The respondent also sought an amendment to the plaint as well as to the petition in the said proceedings. The aforesaid prayer was opposed by the appellant on the ground that on death of the executor, the entire proceedings abated and it could not be continued. The said submission put forth by the appellant was not accepted by the learned Single

Judge of the High Court exercising testamentary and intestate jurisdiction vide order dated 16th August, 2010.

3. In the circumstances, the proceedings were converted into the proceedings for getting the letter of administration. Being aggrieved by the said order passed by learned Single Judge, the appellant preferred an appeal before the Division Bench of the High Court. By the judgment dated 19th January, 2011, the said appeal was dismissed and the order dated 16th August, 2010 was affirmed.

4. Being aggrieved by the aforesaid judgment rendered by the Division Bench of the High Court, the appellant has preferred this appeal with a prayer that the impugned judgment of the Division Bench be quashed so that the proceedings be undertaken by the respondent afresh for grant of letter of administration.

5. We have heard the learned counsel for the parties and gone through the various judgments cited by them. While dismissing the appeal, the Division Bench of the High Court relied upon the following judgments - Govind M. Asrani v. Jairam Asrani and Anr. AIR 1963 Madras 456, Kamalamma v. Somasekharappa AIR 1963 Mysore 136 and Jadeja Pravinsinhji Anandsinhji v. Jadeja Mangalsinhji Shivsindhji and Others AIR 1963 Gujarat 32.

6. In view of law laid down in the aforesaid judgments, the Division Bench observed that both the proceedings with regard to the probate and the letter of administration are of the same nature and therefore, the proceedings cannot abate. The essence of both the proceedings is the same and they relate to ascertainment of genuineness and authenticity of the Will. By considering the afore-stated judgments, the Division Bench has rightly confirmed the view expressed by the learned Single Judge.

7. We also agree with the view expressed by the Division Bench of the High Court, which has followed the judgment delivered in the case of Govind M. Asrani (supra), as the logic behind dismissing the appeal, in our opinion, is just and proper. In any case, so as to establish the Will, the probate proceedings are required. The function of the executor is to execute the Will. The main purpose can be very well achieved by obtaining a Letter of Administration so that the property can be administered by the Administrator as per Section 232 of the Indian Succession Act, 1925. In the instant case, the said practice has been rightly followed.

8. We are also in agreement with the view expressed in the impugned judgment, which has also relied upon law laid down in the case of Jadeja Pravinsinhji Anandsinhji (supra), in which it has been held:-

"6. ....An executor, in the capacity of an executor, has no personal interest in the estate of the deceased. .... The object of the executor in these proceedings is to get an adjudication not of any dispute in which he is personally interested but the object is to propound the will of the deceased for the benefit of those who take an interest in the will.

9. It is, therefore, clear that an executor in applying for probate is not fighting a personal action but fighting for the interests of all the beneficiaries under the will. Therefore the action of an executor in applying for a probate is not in substance a personal action and as observed earlier by me the maxim *actio personalis moritur cum persona* could not apply to such a case. If the executor fails in his duty, any of those whom he represents are entitled to intervene and carry on the proceedings with a `formal modification" that the prayer must then be for letters of administration with the will annexed".

9. We are in agreement with the view expressed by all the three High Courts and in the interest of justice, for the afore-stated reasons, we dismiss the appeal. There shall be no order as to costs. Pending applications, if any, stand disposed of. We hope that hearing before the testamentary court shall be expedited and proceedings for grant of letter of administration shall continue in accordance with law.