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SWAMINATHAN & ORS.

v.

ALANKAMONY (DEAD) THROUGH LRS.

(Civil Appeal No.798-799 of 2013)

B

March 09, 2022

**[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]**

- Succession Act, 1925:s. 263 – Revocation of letters of administration – When – Held: As per s. 263, the grant of letters of administration may be revoked for “just cause” – Explanation (a) states that just cause would be deemed to exist where the proceedings were defective in substance – Illustration (ii) u/s. 263 deals with a case where “the grant was made without citing parties who ought to have been cited” – On facts, the brother of the testator filed application for revocation of letters of administration on the ground that all the legal heirs were not impleaded in the proceedings for the grant of letters of administration – High Court was right in holding that a just cause existed for revocation of Letters of Administration – Thus, the order of the High Court does not call for interference.*
- E CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 798-799 of 2013.

From the Judgment and Order dated 05.11.2008 of the High Court of Judicature at Madras at Madurai Bench in CMA No.1004 of 2002 and dated 21.07.2009 in Review Application (MD) No.08 of 2009.

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A. Mariaputham, Sr. Adv., Anurag Dayal Mathur, Avneesh Arputham, M/s Arputham Aruna And Co., Advs. for the Appellants.

Beno Bencigar, M. A. Chinnasamy, Advs. for the Respondents.

The following Order of the Court was passed :

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**ORDER**

1. The challenge in the present appeals is to an order dated 05.11.2008 whereby an appeal under Section 299 of the Indian Succession Act, 1925 (for short, ‘the Act’) filed by the brother of the testator for revocation of Letters of Administration dated 09.03.2002 was allowed.

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2. The appellants sought Letters of Administration of a registered Will deed dated 23.08.1991 said to have been executed by one Thankappan Nadar in favour of the appellant – brother of the testator and his two sons. After the grant of Letters of Administration, another brother of testator filed an application for revocation of the Letters of Administration on the ground that all the legal heirs were not impleaded in the proceedings for the grant of Letters of Administration. The Civil Court dismissed the application for revocation but the order was set aside in appeal. Aggrieved, the legatee is in appeal before this Court.

3. Drawing our attention to the difference in the language employed between Section 276 and Section 278, the learned counsel for the appellants contended that what was filed by the appellants was a petition under Section 276(1) and that therefore, the requirement to make a mention about the details of the family and other relatives of the deceased, contained in Section 278(1) cannot be imported into Section 276. According to the learned counsel, the petition filed by the appellants was one for the grant of Letters of Administration with the Will annexed. It was not a petition filed under Section 278(1).

4. In order to appreciate the above contention, it is necessary to present Section 276(1) and Section 278(1) in a table as follows:-

Section 276	Section 278
<p><b>276. Petition for probate.—</b></p> <p>(1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—</p> <ul style="list-style-type: none"> <li>(a) the time of the testator's death,</li> <li>(b) that the writing annexed is his last Will and testament,</li> <li>(c) that it was duly executed,</li> <li>(d) the amount of assets which are likely to come to the petitioner's hands, and</li> <li>(e) when the application is for probate, that the petitioner is the executor named in the Will.</li> </ul> <p>(2)... (3)...</p>	<p><b>278. Petition for letters of administration.—</b></p> <p>(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—</p> <ul style="list-style-type: none"> <li>(a) the time and place of the deceased's death;</li> <li>(b) the family or other relatives of the deceased, and their respective residences;</li> <li>(c) the right in which the petitioner claims;</li> <li>(d) the amount of assets which are likely to come to the petitioner's hands;</li> <li>(e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and</li> <li>(f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.</li> </ul> <p>(2) ...</p>

A        5. But unfortunately for the appellants, the catch is not to be found in the distinction between Section 276 and Section 278. It is to be found in Section 263 which reads as follows:-

B        **263. Revocation or annulment for just cause.** —The grant of probate or letters of administration may be revoked or annulled for just cause.

*Explanation.* —Just cause shall be deemed to exist where—

(a) the proceedings to obtain the grant were defective in substance; or

C        (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

D        (d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

#### Illustrations

F        (i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

G        (iii) The Will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

H        (v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a latter Will has been A discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind. B

6. As per Section 263, the grant of Letters of Administration may be revoked for “just cause”. Explanation (a) under Section 263 states that just cause shall be deemed to exist where the proceedings were defective in substance. Illustration (ii) under Section 263 deals with a case where “the grant was made without citing parties who ought to have been cited”.

7. It may be of interest to note that some of the colonial statutes contain Illustrations which form part of the statutes themselves. The Indian Succession Act, 1925 is one such enactment. D

8. Therefore, the High Court was right in holding that a just cause existed for revoking the grant. Hence, we do not find any error in the order of the High Court warranting our interference. Therefore the appeals are dismissed. E

9. Pending applications(s), if any, also stand disposed of.

Nidhi Jain

Appeals dismissed.