

Calcutta High Court

Santiram Das vs Proshad Das And Ors. on 16 September, 1948

Equivalent citations: AIR 1952 Cal 358

Author: R Mookerjee

Bench: G Das, R Mookerjee

JUDGMENT R.P. Mookerjee, J.

1. This is an appeal on behalf of an executor against an order passed by the learned Subordinate Judge, Howrah, directing him to file an inventory & accounts.

2. Srinibash Das, the testator, died leaving a widow, Sabitri & 3 minor sons, Prosad, Shiv Chandra & Tarapada. By his will he had appointed his two brothers Asutosh & Santiram as executors & after the death of the testator the latter applied for grant of probate which was actually directed to be issued on 9 5-1925. On 6 6-1926, Sabitri, the widow of the testator started revocation proceedings on various grounds which were ultimately disposed of on 13 11-1926, on agreed terms, the probate which had been issued being maintained. The properties left by the testator Srinibash were mainly held jointly with his other three brothers, Asutosh, Santiram & Kantiram. It is stated that the executors, appointed by the Court, did not file either an inventory or accounts within one year as required both under Section 817, Succession Act & the Probate was issued.

3. On 28 11-1946, an application was filed by Prosad the eldest son of the testator against Santiram, the surviving executor-the other executor Asutosh having died about 1936. Prosad prayed before the Probate Court, for being put in possession of the properties left by his father & for a direction on the executor to render accounts upto-date & bring in Court the amount lying with him. Santiram, the executor filed an objection on 28-6-1947, contesting the prayers made on the merits as also on grounds of jurisdiction, On 3-4-1948, this application came up before the Subordinate Judge, Second Court, Howrah for final hearing when the pleader for the petitioners stated that he would not press the prayer for making over possession of the property. Hence the only question for consideration was as to the rendering of accounts by the executor.

4. The learned Subordinate Judge without giving any opportunity to the parties to adduce evidence directed the executor to submit an upto-date account as also an inventory within a month.

5. The present appeal is on behalf of Santiram the executor & it is urged that after the probate had been directed to be issued in 1925 & the revocation proceedings disposed of on agreed terms in 1926, Santiratn, the executor appellant left for Burma & it is alleged that he had remained in Burma until his return in September 1945. He was, therefore, neither concerned with the management of the Estate nor was it possible for him to render accounts for the period he had been away. Moreover it is alleged that Asutosh, who remained in India, was in charge of the -management until such time when Prosad, the eldest son of the testator attained majority near about 1934. It is claimed that Prosad had been managing his father's properties ever since & he could not demand the submission of accounts from either of the executors far less from Santiram who had all along been away to Burma. It is pointed out that the executor appellant had not been given sufficient opportunity to prove the facts alleged by him about his absence from India to Burma & also about his

non-participation in the management of the Estate left by Srinibash.

6. But it is in the first instance to be considered whether the executor who had failed to file an inventory & accounts ever since the issue of the probate, can be heard to plead his inability to manage the Estate or that he was not concerned with the property at all. This question is one of first impression.

7. In our opinion the Court has to consider in the first instance whether the administration by the executor is still continuing. The present application is before a Probate Court, purporting to be under Section 317 of I. Section Act. Unless the administration be still in force it is not possible to invoke the jurisdiction of this Court, though it may be open to the person interested to apply before the competent Court either for rendition of accounts or for any other relief if such proceedings are not barred by lapse of time *Nabachundra v. Tripura Charan*, 2 C. W. N. 597, *Banerjee J.* notices this point but no decision is given. See also *Sankarnath v. Biddutlata*, 28 C. L. J. 271 at p. 274. The summary procedure laid down in Section 317 can be available only if the administration was continuing & the opposite party was still functioning as an executor. Reference in this connection may be made to the observation in *Mt. Kulwanta v. Karamchand* 43 C. W. N. 4, that the power of an administrator does not last after the administration has been completed whereupon the grant would stand revoked in effect, if not by a formal order of the Court. The principle applicable in the present case would be the same on which the Court refuses to make a grant if there is reason to believe that the estate has been fully administered, *Lalit Chandra v. Baikunthanath* 14 C. W. N. 463, *Prasanno Kumari v. Ramachandra*, 17 C. L. J. 66. When an allegation is made by an executor that the properties had already been taken charge of by the legatee & nothing is being administered by the executors the truth or otherwise of that allegation must in the first instance be gone into, the parties being allowed to give evidence in support of the respective allegations- If it is found that the executors had not been administering the estate of the deceased testator the application made under Section 317 stands to be dismissed in limine.

8. The other allegations made by the executor also require scrutiny. It is claimed by Santi-ram that after the probate had been directed to be issued in 1925 he left for Burma the next year & that Prosad has been in possession of his father's share in the estate ever since he attained majority in 1934. Asutosh died in 1936 & the appellant alleges he had no concern with the estate after his return, in 1945. If the estate is still being administered by the executors there is no doubt that the Court has jurisdiction not only as to entertain an application or to require the executor to, file an inventory & accounts. Section 317 of the Act imposes a statutory obligation on all executors & administrators to exhibit an inventory and accounts. Non-filing of the inventory & accounts leads to three consequences - (1) the executor makes himself liable to punishment under Section 176, Penal Code, if the requirements of sub Section (3) are fulfilled, (2) subjects himself at the instance of an interested party to an administration suit & (3) the grant is liable to be revoked if the provisions of explanation (e) to section 263 are satisfied.

9. The executor is required to exhibit the inventory & accounts only once. & if such step is taken within one year as required under the probate & Sub Section (1) of Section 817 the Probate Court loses all jurisdiction to require him to file a revised account. (*Sarat Sundari v. Uma Prosad*, 31 Cal.

628, Ram Prasad v. Emperor, A. I. R. (27) 1940 Oudh 424, Morarji Kanji v. Bai Panbai, 29 Bom. L. R. 683.) All that the Court is to do is to see that the inventory & accounts prima facie satisfy the requirements of the sections. The inventory must be a full & true estimate of all the properties in possession of the receiver or administrator. Rameshwar v. Collector of Gaya, 40 I. A. 236 at p. 240. The filing of accounts in the Probate Court does not constitute a bar to a suit by the aggrieved party for accounts against the executors. Kshitish v. Osmond Beeby, 39 Cal. 587 and the remedy of the party is to file either an administration suit or a suit for accounts, Balakbala v. Jadunath, 57 Cal. 1358.

10. The powers of the Probate Court are, therefore, of a limited character, but the statutory obligations to file the inventory & accounts are there. If the accounts are not filed within one year or within such extended time as the Court may allow the executor is to submit accounts upto the date on which it is submitted or up to the date on which the person interested applies for a direction (Hiralal v. Jibon Kumar, 43 C. W. N. 754) The Court in this last mentioned case was not required to consider the point which is raised before us as to whether the Court has any discretion in the matter when it is moved under Section 317 (or requiring the executors to file accounts & inventory).

11. For a proper appreciation of the legal position both as regards the jurisdiction of the Court, to exercise a discretion in the matter or of the right of the person interested to claim filing of account irrespective either of lapse of time or special circumstances in any particular case, we have to examine the different parts of this section.

12. The provisions now contained in Section 317, Succession Act, are analogous to those which were to be found in Section, 277, Succession Act (X [10] of 1865), and Section 98, Probate & Administration Act (v [5 of 1881.) It may be noticed that the provisions as referred to in the older Acts were introduced by Act (vi [6] of 1889) & since then the law on the subject has continued to be uniform. The principal difference in the language used in the present Act in Section 317 is that in the expression "or within such further time as the Court which granted probate or letters may from time to time appoint", the phrase "from time to time" has been omitted. That has not introduced any change whatsoever from as under the old Acts. Ever when that expression was there the Court had held that only one account was required to be filed & the Court has no jurisdiction to ask for successive accounts (Mahesh Chundra v. Biswanath, 25 Cal. 250). We may, therefore, refer to decisions both under the old Acts as under the existing one for determining the implication of the provisions contained in this Act.

13. It is neither profitable nor helpful to refer to the English law on the point as the statutory provisions & the rules of procedure laid down in England are substantially different from those in India. The decision must, therefore, be rested on an interpretation of Section 317 of the Act & reference to the decided cases only in India. As noticed already the powers of the Probate Court in connection with the filing of accounts are of a limited character, it being remembered that the provisions of Section 302 of the Act do not apply to the District Court. The H. C. may, on an application made, give to the executor or administrator any general or special direction in regard to the estate or in regard to the administration thereof. These powers are similar to those conferred

upon the Court of Chancery in England to give direction under O. 65 E. 8 of the Supreme Court Rules but such powers have not been given to the District Courts. *Winsor v. Winsor*, 44 Bom. 682, *In re Madras [Doveton Trust Fund]*, 18 Mad. 443.) The District Court before whom the present application was made, had not the wide powers as under Section 302 of the Act. The enquiry is also of a summary fashion without any authority to implement any lacuna or to give any direction except to proceed under Sub Section (3) or Sub Section 4 of Section 817. It will be noticed that what the executor or administrator is required to do is to exhibit the inventory of all the property "in possession". If, therefore, it is alleged by the executor that the properties are not in his possession or that the legatee has already entered into possession, the Court must enquire as to whether a direction can or ought to be issued for exhibiting the accounts. It may also transpire that the persons interested had acquiesced in the executor not filing the accounts or that the present application purporting to be under S. 317 is otherwise a frivolous or vexatious one. It will be an abuse of the process of the Court if the Judge cannot enter into the merits to ascertain whether the powers which he has got under Section 817 should not be exercised. Taking an extreme case, it may happen that a person interested files an application under S. 317 after an administration suit had already been filed. It goes without saying that if the Probate Court were compelled to direct the executor to exhibit the accounts in that case & that also for a limited purpose that will be merely going into a question in part & imperfectly which will be thoroughly examined & all the disputed facts decided by another Court. Reference may in this connection be made to the observations by Tyabji J. in *Re: Jetha Padamsi*, 7 Bom. L. B. 451, holding that the Court has discretion in the exercise of this power & in proper circumstances the Court would be entitled to hold that such a prayer should not be allowed. See also *Cassim v. Abdul Rahim*, 35 I. C. 950 (L. B.) The Court repelled the arguments that it is bound to order the executor to perform the duty imposed upon him by law. If there be lapse of time the provision of the Limitation Act does not apply to the case. No doubt lapse of time by itself is no defence when the Court has no discretion to refuse an application. It was held, however, that the relevant provisions in Section 98 (3), Probate & Administration Act, 1881, do not make it obligatory on the Court to require an executor to exhibit an inventory & accounts:

"Sub Section (1) of the Section itself imposes the duty of doing this on the executor, or administrator if he does not do it the Court may require him to do it but that is a matter of discretion."

14. If reference is made to the provisions contained in Sub Section (3) & (4) of Section 817 which are in the nature of sanction for due performance of the duties enjoined in Sub Section (1) it will immediately appear that it is not in each & every case of failure to exhibit the accounts & inventory that sub-sections (3) & (4) are to be attracted. It is only when the executor omits to comply with the requisition by the Court, to file accounts & inventory & that, "intentionally" he shall be deemed to have committed an offence under Section 176 or when he "intentionally" exhibits a false inventory or account that he will be committing an offence under Section 193, Penal Code. *Nabachundra v. Tripuracharan*, 2 C. W. N. 697.

15. In our view, therefore, merely because an application is filed under Section 317 of the Act the Court is not bound to pass an order requiring the executors to file accounts & inventory, irrespective of the facts & circumstances of each particular case. This view is not in conflict with that expressed

in Hiralal v. Jibon Kumar, 43 C. W. N. 754, as the-Court was not required to consider in that case-any special ciroumstances except the lapse of time. As indicated already mere lapse of time by itself is no defenoe by an exeoutor to decline to file accounts. It will, therefore, be necessary for the Ct. below to allow the parties opportunity to adduce evidence in support of the respective allegations made by them & take up the prayers made in the petition.

16. It transpires now that although the petnr did not ask for requiring the executor to file the inventory along with the accounts the learned Subordinate Judge has passed an order not only about the filing of account but about the inventory as well. It may be that the legatee petitioner did not require any inventory as one had been filed along with the application for the probate which might have been accepted as sufficient by the party concerned. It is not for us to speculate but the fact remains that there is no prayer about the filing of the inventory & it was not necessary for the Subordinate Judge to go. into that question suo motu. It is also not necessary for us at this stage to consider whether such an order can be passed by the Court suo motu or if such an order is called for on the facts of the present case.

17. The judgment & order passed by tbe Subordinate Judge on 8-4-1948 must therefore be set aside & the case remanded for re-hearing accord-ing to law & in terms of the directions given above. Costs in this appeal will abide the result. Hearing fee being assessed at five gold mohurs.

18. The application filed by the Respondent for receiving additional evidence in this Court will also be sent down to the trial Court. It will be open to the parties to use such evidence as may be required by them to prove their respective cases along with the additional evidence which may be adduced by them.

G.N. Das, J.

19. I agree.