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O.P.No.1092 of 2018

C.V.KARTHIKEYAN,J.

This original petition has been ostensibly filed seeking Letters of Administration and taking advantage of Sections 218 and 278 of the Indian Succession Act, 1925 read with Order XXV Rule 5 of the Original Side Rules with respect to one single property as stated in the petition, which is situated at old Door No.145, NSC Bose Road, Sowcarpet, Cehnnai – 600 079, which property according to the petitioner belonged to his mother Meena Bai Mundhra, who, according to him died intestate on 20.06.1976 at Haridwar. Her husband / father of the petitioner, Chottu Lal Mundhra had died on 14.09.1978. The petitioner is the younger son. The 1st respondent is the eldest son. The 2nd to 7th respondents are the children of another deceased son and the 8th to 11th respondents are the children of yet another deceased son. There is a further deceased son who was married but it is claimed that he died without children. The details of that son and his wife and the date of the death of either one of them or both of them, has not been disclosed in the petition.



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2. In effect, Letters of Administration are sought by the Class I legal heirs. If they are to do so, they must also mention about the deceased other Class I legal heirs, which has not been mentioned in the petition. The Letters of Administration without will annexed, particularly, if it is to be filed under Sections 218 and 278 of the Indian Succession Act, 1925, can be filed by the Class II heirs, if there are no Class I heirs surviving to the deceased and seek to administer the property left behind by the deceased. Class I heirs automatically get a right and share in the property on the death of either one of the parents, in view of their birth in the family. Special rights to administer the property need not and should not be conferred on them. It is a right which accrues to them by birth. Both the petitioner herein and the respondents have a share in the property.

3. By giving a consent affidavit in an application seeking Letters of Administration, the title of the property cannot devolve on to the petitioner. The consent affidavits are only a scrap of paper and cannot be used for any purpose, in a petition like this. If at all, anyone of the Class I legal heirs want to give away their share, they must release the share by way of a registered Release Deed, if their share is more than Rs.100/-.



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4. In the present case, the petitioner has taken recourse to a back door method and is trying to take hold of the property, when he is the younger son and fortunately for this Court and fortunately for the administration of justice, the 10th and 11th respondents who are the legal heirs of a deceased son of the Meena Bai Mundhra have raised objections.

5. I must place credit on the learned counsel appearing for the 10th and 11th respondents for having stood upon and having raised objections.

6. It is also seen that the 1st, 3rd to 7th respondents have given their consent and the learned counsel for the petitioner places reliance on such consent affidavits. By those consent affidavits, their rights and title over the property cannot be willed away or cannot be consented to be transferred, to the petitioner. As a matter of fact, the entire petition suffers and I hope it has not been filed with malafide intentions.

7. It is also pointed out by the learned counsel for the 10th and 11th respondent that there is yet another property at Nanganallur, which had not been disclosed in the petition. It is also stated that the father, Chottu Lal Mundhra was a businessman and had established business of wholesale electrical goods in the name of M/s. Mundhra Brothers.



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8.The father had died on 14.09.1978. The petitioner claims that this particular property mentioned in the petition herein had been purchased by his mother Meena Bai Mundhra with the funds given by the father of the petitioner. However, the sale deed was executed in the name of the mother. That is a fact which has to be established only through evidence.

9.This Court sitting in Testamentary jurisdiction cannot examine the title of any property or the title of the petitioner to any of the property. The bonafide to administer the property alone will have to be examined. The petitioner fails in that test. The petitioner is a son and owing to birth, he has a right over the property, as the respondents herein. They all have a share in the property. The petitioner cannot claim exclusive right to administer the property by filing this Original Petition and cannot place reliance on the consent affidavits given by any of the respondents. Those consent affidavits cannot give any additional right to the petitioner herein.

10.The learned counsel for the 10th and 11th respondents pointed out Sections 254 and 257 of the Indian Succession Act, 1925 and in this connection, placed reliance on a judgment of the Division Bench of this Court reported in *AIR 1955 Mad 411, T.K.Parthasarathi Naidu V.*



Unknown. The Division Bench in that particular case, had to examine the application filed seeking Letters of Administration with Will annexed and they had taken the assistance of the then Assistant Government Pleader, Shri. K. Viraswami, who was later the Chief Justice of this Court and had held as follows:-

4.Thus, an examination of the relevant sections of Chapter I only confirms the general principle that normally the executor or the administrator represents the whole estate of the deceased, and if the executor, if any, appointed under the will were to apply for probate, or, in the absence of an executor, if any other person entitled to apply should apply for letters of administration, then, it should be for the whole of the estate, and not for a fraction of it or in respect of a specific property in which alone the particular legatee might be interested.

5.Chapter II of Part IX embodies several sections dealing with limited grants, that is, (1) grants limited in duration, (2) grants for the use and benefit of others having right, and (3) grants for the special purposes. It will be seen that there is no section dealing specifically



with grants in respect of a portion of the estate or a particular item of property. However, there are four sections, namely, 254 to 257 in that chapter, which throw light on that question and Which constitute the exception to the general rule we have stated above. S. 254 contemplates a case where a person had died intestate or leaving a will of which there is no executor willing and competent to act, or where the executor is at the time of the death of such person, resident out of the province; and in such a case, if it appears to the Court to be necessary and convenient to appoint some person to administer the estate or any part thereof, other than the person who, in ordinary circumstances, would be entitled to a grant of administration, the Court may, in its discretion, appoint such person as it thinks fit to be administrator.

10. It will be noticed that the learned judge did not question the general principle, but brought the case under the exception provided by S. 42 of the Probate and Administration Act, corresponding to S. 255 of the Present Act. The question came up more directly for consideration before Krishnaswami Nayudu, j., in. Diary No. 4149 in connection with the will of the late Diwan Bahadur T. Raghavayya.



*Under that will, the testator appointed two executors and bequeathed his properties to certain legatees of whom the petitioner, his widow, was one. The executors had put the respective legatees in possession of the properties bequeathed to them; that is to say, they had administered the estate of the deceased except in regard to the realisation of the amounts mentioned in the affidavit of assets. The petitioner alleged that as the executors had administered the estate, they had renounced their office by their letter addressed to the legatees. The result was that no petition for probate was filed by the executors and the first petition before the Court was the petition by the widow asking for letters of administration for a portion of the estate, under Ss. 232 and 254 did not apply and the petition could only be under S. 232(b), as the petitioner was a residuary legatee. The learned judge did not, however, consider the applicability of S. 255. Treating it as a case falling under S. 232(b), he declined to grant limited administration unless the provisions of S. 191 read with third schedule of the Court Fees Act were complied with, following the decision in *Bhai Khubchand v. Smt. Motibai*(1), referred to above. On another reference. Diary No. 8632, Chandra Reddi, J., observed:*



“Without expressing any opinion as to whether S. 254 of the Indian Succession Act is applicable in this case or not, I think there are no special circumstances to warrant the grant of letters of administration limited to the beneficial interest conferred on the petitioner's husband under the will of her father-in-law. It is only under very special circumstances that even under S. 254 a limited grant will be made. Vide In the goods of Girish Chander Mitter(2).”

11.The examination of the cases, therefore, confirm the conclusion we reached on a consideration of the relevant sections of the Indian Succession Act, namely, where the deceased died intestate or died leaving a will appointing or without appointing executors, the probate or the letters of administration with or without the will annexed must, as a general rule, relate to all the properties, that is, the entire estate of the deceased, and that only in exceptional cases falling under Ss. 254 to 257, probate or administration limited to specific item of property or a fraction of the estate will be granted. The question whether a particular case would fall under these exceptions would depend upon the facts and circumstances of that case. It is impossible, and we do not propose to make any attempt to prepare a catalogue of cases which would fall within those exceptions. It was only on that question that the decisions differed.

11.It is clear that the petitioner appears to have taken advantage of a



stray provision of law in the Indian Succession Act, 1925 and has attempted to put it to his advantage and take control over the property, to which the respondents have a share and which share cannot be willed away by an affidavit giving consent for grant of Letters of Administration.

12. Specifically, as stated in the judgment referred, the entire estate of the deceased must be given in the schedule and administration limited to specific item of property cannot be granted.

13. The 10th and 11th respondents have a share in the property. The shares of the respective parties will have to be decided only in a suit for partition, if at all filed or they can mutually agree for the division of properties. Even then the entire estate must be the subject of partition.

14. This Original Petition seeking Letters of Administration has to necessarily fail and the same is dismissed. No costs.

28.10.2022

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