

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 4113 OF 2024

Ralph Joseph Fernandes & Anr.

...Petitioner

Wallace Pereira S/o Ansie Pereira

...Deceased

Adv. Reis Bernando a/w Amrin Khan and Ketki Gokhale i/by A. M. Gokhale and
Sandesh Kamble for the Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 11TH FEBRUARY, 2025

P.C.:-

1. The captioned Petition is filed for Letters of Administration (without a Will) in respect of the estate of Wallace Pereira, ("the deceased"). On 26th September 2024, the office raised the following requisition:

"1. Ld. Advocate for the petitioner submitted that the petitioner is from the maternal side and the heirs from paternal side have given their consent to the petitioner for obtaining Letters of Administration. Hence, in view of Sec. 27(a) of the Indian Succession Act, 1925, the petitioner is capable to present the petition. However, Sec. 27(a) of IS act is speaking about the chain of inheritance and the petitioner or heir, as the case may be, must be related to the deceased through his/her or heir (petitioner's) father or mother.

2. Even as per Sec. 219 of IS Act, the petitioner must establish his capacity to present the petition."

2. Mr. Reis, Learned Counsel for the Petitioner, has submitted a family tree of the deceased, to point out that (i) the deceased has not left behind any lineal descendant, nor parent, nor brother nor sister and (ii) that the Petitioners are related to the deceased through their mother. He submitted that accordingly, the Petitioners, by virtue of Section 48¹ of the Indian Succession Act, 1925, have applied for Letters of Administration in respect of the estate of the deceased.

3. Mr. Reis then placed reliance upon a decision of the Division Bench of the Andhra Pradesh High Court in *Kavuri Lilliyamma Vs. K. S. Joshua and Ors.*², to submit that Section 27 of the Indian Succession Act, 1925 itself provides that there is no distinction between those related to a person deceased his mother and those related to a person who are related through the mother. Thus, the Petitioners were entitled to file the present Petition and are eligible under Section 219 to seek Letters of Administration in respect of the estate of the deceased.

1 **48. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.**— Where the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations

- (i) A, the intestate, has left a grandfather, and a grandmother and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.
- (ii) A, the intestate, has left a great-grandfather, or a great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree will take equal shares.
- (iii) A, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree will take equal shares.
- (iv) Ten children of one brother or sister of the intestate and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They will each take one-eleventh of the property.

2 2010 (2) U.P.L.J. 4 (HC)

4. After having heard Mr. Reis and having perused the provisions of the Indian Succession Act, 1925 upon which reliance has been placed I find that the aforesaid office requisition/objection deserves to be dismissed. Section 27(a) of the Indian Succession Act, 1925 itself provides *"between those who are related to a person deceased through his father, and those who are related to him through his mother;"*. Additionally Section 48 leaves no manner out doubt that clearly provides that the deceased having passed away without leaving any lineal descendant, nor parent, nor brother nor sister, the Applicant could well file a Petition for Letters of Administration. He also additionally, pointed out that the all the legal heirs of the deceased have consented.

5. Hence, I find that the above requisition raised by the Registry is unwarranted and is accordingly set aside. The Office is directed to proceed with granting the Letters of Administration, subject to the Petitioners fulfilling all other procedural requirements.

(ARIF S. DOCTOR, J.)