KANTAIYAR *v.* RAMOE.

1904.
September 14.

D. C., Jaffna, 1,334.

Administration—Application for letters of—Opposition thereto.

The fact of an estate being in value below the limit at which administration is compulsory is not a bar when a person otherwise entitled to them applies for letters.

And it is no objection to his application that he declares his son V by his deceased wife to be the sole heir of the deceased, while the respondents claiming to be heirs of R declare that R, who died in infancy, was the true heir of the deceased wife.

The issue as to whether V or R is the heir should be tried subsequently when the administrator enters upon the distribution of the estate.

IN this case the petitioner applied for letters of administration to the estate of his deceased wife, who died in 1885. The sole heir of the deceased was their son, a minor, and the sisters of the deceased were made respondents. The application for administration was opposed on the following grounds: (*a*) that the application was a stale one; (*b*) that the estate was less than Rs. 1,000 in value; (*c*) that in C.R., Point Pedro, 8,511, where the petitioner was one of the defendants, it was held that the alleged heir was not a son of the deceased. The learned District Judge upheld the contention of the respondents and refused to grant letters of administration.

The petitioner appealed.

Wadsworth, for appellant.—The Court ought to encourage administration of estates, and the Supreme Court has repeatedly held that letters of administration should always be issued, however stale the application may be (*6. N. L. R. 194; 4 N. L. R. 201*). Even if the estate was of a value less than Rs. 1,000 administration should be allowed, if application is made (*7 S. C. C. 50*). Here is no proof that the estate is a very small one. The Judge has not taken any evidence. The Court of Requests case is not *res judicata*. The question whether the alleged heir was or was not the son of the deceased has still to be decided. When the petitioner has applied for letters of administration to his deceased wife's estate, he is by right entitled to be appointed administrator. It will be time for the respondents to question whose child the heir is when the administrator distributes the estate (*1 S. C. R. 253*).

14th September, 1904. WENDT, J.—

In this case a husband applies for a grant of administration to the estate of his wife, who died intestate in 1885. According to the

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petition her sole heir was a son named Velupillai, now living with his father, the petitioner. The respondents are sisters of the deceased, who, in the absence of the son, would have been her next of kin. They oppose the application on two grounds, viz., (1) that the estate is less than Rs. 1,000 in value, having in an earlier judicial proceeding been sworn by the petitioner himself at Rs. 900; and (2) Velupillai is not the son of the deceased, but of her sister, the third respondent. The District Judge upheld both these objections.

As regards the first, it is sufficient to say that the fact of an estate being in value below the limit at which administration is compulsory has never been held a bar when a person otherwise entitled to them has asked for letters. See *Re Sheik Adam*, *7 S. C. C. 50*. The petitioner, as the husband, has a preferential right to the grant under section 523 of the Code. He being so entitled, it is no objection to his application that he declares his son, Velupillai, to be the sole heir, while the respondents assign that position to one Rama Vallipuram, who died in infancy, and whose heirs they in turn claim to be. That question will be a proper one to be tried between the respondents and the administrator in some subsequent proceeding.

I think the order appealed from should be reversed and letters of administration directed to issue to the petitioner. He will have his costs of the appeal, but I think that each party should bear his own costs in the District Court.

SAMPAYO, A.J.—I agree.