

1952

Present : Rose C.J. and Choksy A.J.

KALU SINGHO *et al.*, Appellants, and DE ALWIS, Respondent

S. C. 128—D. C. (Inty.) Kalutara, 1,680

Administration of estates—Judicial settlement of accounts—Possession of property by administrator thereafter—Character of such possession.

Where an administrator of a deceased person's estate remains in possession of the estate after his accounts have been judicially settled, such possession is not in his capacity as administrator and, therefore, cannot be made the basis of a claim by the beneficiaries, in the administration proceedings. The proper remedy of the beneficiaries, in such a case, is a separate action for damages.

APPPEAL from a judgment of the District Court, Kalutara.

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the 6th, 7th and 8th respondents-appellants.

N. E. Weerasooria, K.C., with *Christie Fernando*, for the administrator-respondent.

Cur. adv. vult.

January 22, 1952. ROSE C.J.—

The administrator (the respondent to this appeal) entered into an agreement with the beneficiaries, the 1st to 4th respondents, which was duly filed of record. The agreement was in the following terms:—

- “ 1. Rs. 5,000 of the over expenditure surcharged.
2. The administrator waives his right to recover 1/5th share of the balance over-expenditure and releases the 3rd respondent from all liabilities
3. The administrator can only recover 3/5th share of the balance over-expenditure from the other heirs.
4. The heirs to be placed in possession of their property.
5. The administrator to be entitled to have recourse to the property for the payment of the amount due to him.”

The present dispute concerns the heirs of the 1st and 2nd respondents who are the present appellants. The administrator has applied to issue writ against the heirs of the 1st and 2nd respondents for the recovery of 2/5th of Rs. 5,148 which is admittedly the amount due under the settlement. The respondents-appellants now seek to call evidence to show that the administrator has in fact remained in possession of the property after the date of the settlement in 1937 and that he should therefore account for any income that he had subsequently received from the estate.

The learned District Judge refused to permit the respondents to adduce such evidence and in my opinion was right in so refusing. As he points out, the administrator's accounts were judicially settled on the 9th

November, 1937, and the administrator ceased to function as such from that date. Even if—which is disputed—he remained in possession of the estate thereafter such possession was not in his capacity as administrator but was a wrongful possession which could have given rise to an action for damages at the hands of the respondents-appellants.

That being so the appeal must be dismissed with costs.

CHOKSY A.J.—I agree.

Appeal dismissed.

