

JAYANTHA DE SOYSA
v.
NAOMAL DE SOYSA

COURT OF APPEAL.
ISMAIL, J.
C.A. 25/96.
D.C. COLOMBO 26985/T.
MAY 09, 1997.

Testamentary Proceedings – Objection to Final Account – Whether a certain land forms part of the Estate – Are the administrators obliged to file accounts relating to it – Practice and Procedure to be pursued in taking accounts in a administration suit – Sections 551, 718, 720, 736 – Civil Procedure Code.

Held:

(1) Section 551 provide for the filing of accounts, but there is no provision which deals with the manner of taking account.

In the present case there were two separate matters before Court, final account submitted by the joint administrators under section 551, and the issue whether Olaboduwa Estate forms part of the estate of the deceased and consequently whether it should have been included in the inventory of the deceased person's property filed by the joint administrators.

(2) The District Court should first make an order according to law in regard to the final account and separately determine the question whether Olaboduwa Estate forms part of the estate of the deceased.

AN APPLICATION in Revision from the Order of the District Court of Colombo.

Cases referred to:

1. *Fernando et al v. Fernando* 1 SCC 52 at 54.
2. *De Soysa v. De Soysa* 26 NLR 472 at 479.
3. *Tharmalingam v. Chandrasegaram* 68 NLR 4.
4. *Suppammal v. Govindha Chetty* 44 NLR 193.

S. A. Parathalingam P.C. with *L. B. J. Peiris* for the petitioner-petitioner.

Shammil Perera with *T. Weerakkody* for the joint administrators-respondents

Cur. adv. vult.

June 13, 1997.

ISMAIL, J.

The estate of the late Rt. Rev. Charles Harold Wilfred de Soysa who died on 14.6.1973 is being administered in D.C. Colombo Case

No. 26985/T. The petitioner was appointed as an administrator of the estate in 1983 together with the joint administrators-respondents abovenamed. He made an application on 15.2.90 seeking the permission of Court to have himself discharged and pleaded that disputes had arisen between him and the other two joint administrators regarding the non inclusion of certain properties which ought to have been included as part of the estate of the deceased. The joint administrators-respondents filed their objections dated 20.8.90 and together with their joint affidavit they also submitted the final account of the estate for the period from 1973 to 30th May 90.

The petitioner was discharged from the role of a joint administrator on 7.3.1991.

The petitioner filed his objections to the final account on 14.10.1991 in which he alleged, *inter alia*, that the final account deliberately excluded certain valuable property being part of the Olaboduwa Estate transferred to the estate of the late Rt. Rev. C. H. W. de Soysa as part of a charitable trust by the Land Reform Commission.

In the meanwhile an application was made by the Bishop of Colombo on 17.6.91 to intervene in this case.

The respondents objected to his application for intervention and after inquiry on 25.5.92 the court made order that Olaboduwa Estate formed part of the estate of the deceased. No order was made regarding the application for intervention made by the Bishop of Colombo.

The joint administrators-respondents filed an application bearing No. 604/92 to the Court of Appeal seeking to revise the aforesaid order and taking up the position that Olaboduwa Estate does not form part of the estate of the deceased and that no accounts relating to it need be filed. Upon the agreement of the parties the Court of Appeal in its order made on 25.8.92 permitted the respondents to file further papers in the District Court holding that the finding of the District Judge had no effect, and directed the learned District Judge

to inquire into the question whether Olaboduwa Estate forms part of the estate of the deceased and if so, whether the accounts relating to it need be filed. The District Court was to make the order on the application for intervention prior to the hearing and determination of the final account.

The District Court delivered its order on 17.3.93 dismissing the application of intervenient petitioner to intervene in these proceedings.

Thereafter the 1st joint administrator-respondent filed an affidavit dated 22.10.93 stating that Olaboduwa Estate belonged to De Soysa Estates Ltd. at all times and that it never formed part of the deceased's estate. The 1st respondent also annexed copies of 5 deeds to show that De Soysa Estates Ltd. has transferred the said estate to the parties named therein on 31.11.1985. A resolution dated 20.11.85 signed by the directors of the De Soysa Estates Ltd. authorising such sales was also annexed.

The petitioner filed a counter affidavit in April 94 annexing four documents regarding Olaboduwa Estate and pleaded that in any event the resolution dated 20.11.85 produced by the respondents was in respect of an estate called Kopikanda and not Olaboduwa.

Pursuant to the order of the Court of Appeal made on 25.8.92 in C.A. Application No. 604/92 one of the matters to be determined by the District Court was whether Olaboduwa Estate forms part of the estate of the deceased and whether the joint administrators are obliged to file accounts relating to it. The final account submitted by the joint administrators was the other matter that had to be dealt with by the court.

At the inquiry held on 12.10.95 the parties were at variance on the question as to who should commence the inquiry and they were permitted to tender written submissions in this regard thereafter. The learned District Judge in a brief order delivered on 5.12.95 held that the petitioner who objects to the final account should commence the inquiry and proceed to substantiate his objections. The petitioner in this application seeks to have the aforesaid order dated 5.12.95 set

aside. An interim order has been made by this court on 8.2.96 staying further proceedings in the District Court till the determination of this application.

The practice and procedure to be pursued in taking accounts in a administration suit before the Civil Procedure Code was enacted was explained as follows by Phear, J. in *Fernando et al v. Fernando*⁽¹⁾ at 54.

"...the convenient and proper manner of taking account is for the court to call upon the accounting party to file his account on a certain appointed day. The court should then allow reasonable time to the opposing party to examine the account and to present a statement of his objections to it. This account must be verified by the oath or affirmation of the accounting party and each item on the credit side, i.e. each item of the disbursement on his part objected to by the opposing party, must be proved by sufficient evidence. And the opposing party has the right to meet this by evidence produced for the purpose of falsifying the account in any particular, or of adding new items to the credit side. The evidence adduced in support of the account should first be taken and then that of the opposing party, and the court should finally on a consideration of the whole, determine, as nearly as possible, the true state of the account as against the accounting party, the matter of the account being in fact taken and dealt with as a separate subject of trial, isolated for the time from the rest of the suit. The like course should be taken with regard to the inquiries."

In *De Soysa v. De Soysa*⁽²⁾ at 479, Bertram, C.J. referred with approval to the principals explained above and stated that they are equally applicable to a judicial settlement under our Code.

Section 551 of the Civil Procedure Code now provides for the filing of accounts but there are no provisions which deal with the manner of taking account. Section 551 is as follows:

"551. Every executor and administrator shall file in the District Court, on or before the expiration of twelve months from the date upon which probate or grant of administration issued to him, or within such further time as the Court may allow, a true and final account of

his executorship or administration, as the case may be, verified on oath or affirmation, with all receipts and vouchers attached, and may at the same time pay into court any money which may have come to his hands in the course of his administration to which any minor or minors may be entitled.

Provided that where the party is concerned, the filing of such account and payment shall be dispensed with on payment of the stamp duty that would have been otherwise payable on the filing of such account, and the proceedings shall then be closed."

Basnayake, C.J. observed in *Tharmalingam v. Chandrasegaram*⁽³⁾, that when an administrator of a deceased person's estate files an account, there is no provision in the Civil Procedure Code for the court either to order the secretary to report on the account, or to issue notice to or hear objections from the heirs in regard to the account file. He observed further at page 9 while dealing with the facts of that case "The wrong adopted by the District Judge misled the respondents to take a course of action unwarranted by the Code when there are provisions which prescribe a) the course a person entitled to a distributive share may adopt in order to enforce his right to that share (section 720), or b) a person interested in the estate may take to compel the filing of a true inventory or valuation of accounts (section 718)".

In *Suppammal and Govindha Chetty*⁽⁴⁾, the Court dealt with an application by an heir to have the inventory amended by including therein six sums of money which she alleges forms part of the deceased's estate but which the administrator says, in respect of three sums, that they are his because the intestate had endorsed the promissory notes relating to them to him, and in respect of the three others that they never formed part of the estate". Soertsz, J. said at page 197; "such a case as this appears to me to be within the scope of section 718 more appropriately than it would under section 736". He held further, "in short, the amendment of an inventory may be ordered either under section 718 or under section 736 and it would be in the discretion of the Court to direct amendment under section 718 or to refer a party to the procedure of section 736 according to

the nature and scope of the particular application and the stage at which it is made".

In the present case there were clearly two separate matters before the Court, the final account submitted by the joint administrators under section 551 of the Civil Procedure Code and the other, the issue whether Olaboduwa Estate forms part of the estate of the deceased and consequently, whether it should have been included in the inventory of the deceased person's property filed by the joint administrators.

I am of the view that the learned District Judge has erred in taking up both these matters for inquiry together. I therefore set aside the order dated 5.12.95 as the determination of the question of the right to begin is not relevant to the combined inquiry that has been taken up.

The learned District Judge is therefore directed to make an order according to law in regard to the final account and separately to determine and direct the parties to comply with the appropriate provisions of the Code to determine the question whether Olaboduwa Estate forms part of the estate of the deceased.

The application allowed, case sent back.