

JEGANATHAN
v
SUFIYAN

COURT OF APPEAL
TILAKAWARDENA, J. (P/CA)
WIJAYARATNE, J.
C.A. NO. 212/2003(F)
D.C. MT. LAVINIA 1048/99/T
NOVEMBER 3 AND 17, 2003

Civil Procedure Code, – section 537 – Recall of letters of administration – Fresh inquiry into the application for grant of letters ordered – Order made – Appellant not entitled to interest from mother – No right to the estate – Letters granted to the respondent – Appeal – Is this a final order or an interlocutory order?

Held :

- (1) Though the impugned order is made after a subsequent fresh inquiry, it was only an exercise of jurisdiction under section 537 and any order made consequent to such an inquiry does not amount to a final order.

Per Wijeratne, J.

“Determination of intervenient appellant’s right of inheritance is only incidental to an application to intervene in the testamentary proceedings and recall and revocation of letters of administration cannot be considered to finally settle the issue of inheritance.”

APPEAL from an order of the District Court of Mt.Lavinia.

Cases referred to:

- (1) *Viravan Chetty v Ukku Banda* – 27 NLR 65
- (2) *Settlement Officer v Vander Poorten* – 43 NLR 436
- (3) *Yoosuf v National Bank of India Ltd.*, – 60 NLR 381
- (4) *Siriwardena v Air Ceylon Ltd.*, (1984) – 1 Sri LR 286

Ranjan Suwandaratne for petitioner-respondent–respondent

Jehan Cassim for intervenient petitioner-appellant.

Cur.adv.vult

May 26, 2004

WIJAYARATNE, J.

This is an appeal preferred by the Intervenant-petitioner-appellant (hereinafter referred to as the appellant) against the order of the learned District Judge of Mt.Lavinia dated 08.01.2003. The order is a sequel to the application made by the appellant under and in terms of section 537 of the Civil Procedure Code praying for the recall of Letters of Administration granted to the petitioner-respondent-respondent (hereinafter referred to as the respondent), revoke the same and to allow her to intervene in the proceedings and grant Letters of Administration of the estate to her. This application is dated 29.03.2000.

Consequent to the order of the learned District Judge dated 04.04.2001 made on such application, wherein a fresh inquiry into the application of the appellant for the grant of Letters of Administration, was ordered, there had been a fresh inquiry into such matter culminating in the impugned order dated 08.01.2003 being made. The appellant made this appeal by way of direct

appeal from such order which is alleged to have the effect of declaring that the appellant is not entitled to inherit from her mother, whose estate is being administered in these proceedings and has no right to her estate and Letters of Administration be granted to the respondent. 20

The respondent raised preliminary objection on the basis that the appellant has no right of appeal in as much as the order impugned in this appeal is one made under section 537 of the Civil Procedure Code, is not a judgement or a final order and only an interlocutory order.

The parties who argued the matter of the preliminary objection conceded that only an order having the effect of a final order can be directly appealed from, to this court. The appellant argued that the impugned order has the effect of a final order in as much as the same determined not only her right of inheritance but the rights of her children as well. Hence she is entitled to prefer an appeal direct to this court. On the other hand the respondent argued that an order made on an application under section 537 does not have the effect of a final order because it does not finally settle the matter of Administration of the Estate. 30

It is pertinent to examine the history of the proceedings of this case to determine the nature and scope of the impugned order. The respondent was granted Letters of Administration of the Estate, after notice under section 529 was published and in the absence of any objection and after hearing in terms of the provisions of section 532 of the Civil Procedure Code. Such order of granting Letters of Administration was made on 24.11.1999. When the appellant made application under section 537 dated 29.03.2000 Court after inquiry made order dated 04.04.2001., allowing the intervention and recalling and revoking the Letters of Administration already granted. Such an order could only have been made by the court in the exercise of its jurisdiction under section 537 of the Code. However the order made had left the matter of the appellant's entitlement to inheritance to be determined in a fresh inquiry. The court did not determine the jurisdiction of the court to hold such fresh inquiry under section 537, because there are no provisions under Chapter XXXVIII to hold such fresh inquiry into an intervention to determine the appellant's entitlement to inheritance or share of the 50

estate. The learned District Judge before allowing the intervention and recall and revocation of Letters of Administration, should have satisfied himself, that the applicant under section 537 "had such an interest in the estate of the deceased person as entitles him..... to make such application". The interest the appellant claimed is her entitlement to 1/2 share of the estate on the basis of her inheritance from the deceased mother, which was effectively disputed by the respondent. Then it was the duty of the court to determine her entitlement before allowing the intervention and recall and revocation of Letters of Administration. The learned District Judge has erred in law in allowing the application under section 537 without determining her right to inherit from her deceased mother. However, it is seen that the fresh inquiry was ordered as an extension of the exercise of the jurisdiction under section 537, though not properly exercised in one inquiry resulting in the order allowing the intervention and the recall and revocation of Letters of Administration. The inquiry culminating in the impugned order is one that could only have been held only in the exercise of jurisdiction under section 537 of the Code and hence the order made consequent to the same cannot in law, amount to a final order.

In the instant case, if the inquiry into the matter of intervenient-appellant's entitlement to inheritance too was determined at the inquiry held in terms of section 537, the Letters of Administration could not have been recalled and revoked with the result that was produced in the subsequent inquiry dismissing her claim of inheritance. In such an event the administration of the estate of the deceased would continue without any disturbance of proceedings and the intervenient-appellant could only have appealed against the same with leave of this court first had and obtained. Though the impugned order dated 08.01.2003 is made after a subsequent fresh inquiry, it was only an exercise of jurisdiction under section 537 of the code and any order made consequent to such an inquiry does not mount to a final order.

Testing the finality of the order appealed from, in the light of the decisions of the cases of

Viravan Chetty v Ukku Banda⁽¹⁾

Settlement Officer v Vander Pooten⁽²⁾

Yoosuf v National Bank of India Ltd., (3)

Siriwardane v Air Ceylon Ltd.,(4)

It is noted that the determination of intervenient-appellant's right of inheritance is only incidental to an application to intervene in the testamentary proceedings and recall and revocation of Letters of Administration cannot be considered to finally settle the issue of inheritance.

In these circumstances, I uphold the preliminary objection that the appellant has no right of direct appeal to this court from the order made consequent to an application under section 537 of the 100 Civil Procedure Code.

The appeal of the Intervenant-appellant is dismissed in limine with costs fixed at Rs.5,000/=.

Appeal Dismissed.