

*Present : Hearne and Keuneman JJ.*

JAMILA UMMA *et al.*, Appellants and JAILABDEEN *et al.*, Respondents.

77—D. C. (Inty.) Colombo, 9,379.

*Administration—Contest between widow and son of deceased—Son's interest in estate preponderant—Widow's claim preferred.*

In a contest for letters of administration the preference given by law to the widow's claim cannot be displaced merely because her interest in the estate is small.

**A** PPEAL from an order of the District Judge of Colombo.

*H. V. Perera, K.C.*, (with him *N. Nadarajah, K.C.*, and *Chelvanayagam*), for petitioner, appellant.

*E. B. Wickremanayake* for first respondent.

*Cur. adv. vult.*

KEUNEMAN J.—

In this case the petitioner, who is a son of the deceased intestate, applied for letters of administration. This was opposed by the first respondent, who is the widow of the deceased and the step-mother of the petitioner. First respondent claimed letters for herself. Letters were granted to the first respondent by the District Judge, and the petitioner appeals.

Counsel for the petitioner argues that although under section 523 of the Civil Procedure Code "the claim of the widow shall be preferred," the Court has a discretion to grant administration to another for good reasons. He cited the decision of the Divisional Court in *Sethukavalur v. Alvapillai*<sup>1</sup>, where it was held that "under ordinary circumstances the widow or widower is to be preferred, but that the Court has a discretionary

<sup>1</sup> 36 N. L. R. 281.



power of preferring another person for good reasons. It is, of course, a discretionary power and the Court must give its reasons for its preference.

The "good reasons" urged by Counsel in this case are as follows:—

- (1) that the petitioner and his brother and sister who support him are entitled to seven-eighth of the estate as against the widow's one-eighth. They have, therefore, a preponderant interest in the estate. Counsel argues that grant should follow interest;
- (2) that there is a dispute between the widow, who was the second wife of the deceased, and the children of the first bed as regards the gift by the deceased to the widow of immovable property three days before his death;
- (3) that there had been drawings on deceased's bank account before his death from time to time of large sums amounting in all to Rs. 21,000. Counsel suggests that these sums were improperly drawn by the widow, who has appropriated these sums for herself wrongly.

There was at the start of the inquiry another objection, viz., that the widow was not in a position to manage the business of the deceased. This has now ceased to be operative, because the petitioner has taken over the business at a valuation.

As regards the first objection, no doubt the fact that the widow has no claim or a very small claim to the estate may be one of the grounds which the District Judge may take into account in considering the question, but I am not satisfied that taken by itself it is a sufficient ground to displace the preference given by law to her claim for letters. As regards the second objection, all that need be said is that, in the present state of the evidence, more particularly in view of the evidence of the Notary, which has not been controverted in this case, there does not at present appear to be any ground for thinking that any genuine dispute can arise about the gift. As regards the third objection, here again on the available evidence there is no reason to think that the money was not drawn for the ordinary purpose of the deceased's business. But in any event, there is nothing to show in this case that the widow either drew or misappropriated these amounts.

I think that the second and third objections amount to nothing more than that the petitioner has a nebulous suspicion as to the conduct of the widow.

In my opinion, there is no ground for holding that the discretion of the District Judge has been wrongly exercised. The District Judge has written a careful judgment.

The cases that have been cited to us do not assist us to arrive at a different decision. *Sethukavalar v. Alvapillai (supra)* was a claim by a widower for letters. The claimant has no interest in his wife's property under the *Thesawalamai*, and had himself suggested in a letter to the District Judge that the proper person to administer the estate was the father or the brother of the deceased. Further, the claimant was himself away in the Federated Malay States, and had applied for administration through his attorney, who lived in a district where the properties were not situated. Under these circumstances, the widower was not given letters.

In the *Goods of Shirley, deceased*<sup>1</sup>, was a case where the widow had by letters through her Solicitor suggested that she would not help the next-of-kin in any way whatever, unless she was well paid for it herself. Besides, she was going abroad, and in such a way as to prevent her properly administering the property. The fact of her hostility to the next-of-kin was taken in account in passing her over, in favour of one of the next-of-kin.

In *The Estate of Alfred John Paine, deceased*<sup>2</sup>, was a case where the widow had previously opposed the intestacy, and put forward a will which was held to be forged. She had also carried that matter to the Court of Appeal. Justice Shearman said that as the widow had opposed the intestacy and had adverse claims to the estate, he would make a grant of administration to the daughter.

The facts in these cases are very different to the facts in the present case.

I hold that the District Judge was right in granting letters of administration to the widow. The appeal is accordingly dismissed with costs.

HEARNE J.—I agree.

*Appeal dismissed.*

