

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE SATHISH NINAN

Tuesday, the 9th day of January 2024 / 19th Pousha, 1945

MFA (SUCCESSION) NO. 3 OF 2023

OP (LA) 3/2022 OF DISTRICT COURT, ALAPPUZHA

APPELLANT(S)/PETITIONER IN O.P.(LA):

LEKSHMI M. NAIR, [REDACTED]

BY ADVS.M/S.P.B.KRISHNAN,P.B.SUBRAMANYAN,SABU GEORGE,B.ANUSREE,MANU
VYASAN PETER AND DEEPA NOBLE

RESPONDENT(S)/RESPONDENTS IN O.P.(LA):

1. SUDHAMONY AMMA [REDACTED]

2. LEKHA NAIR, [REDACTED]

3. REKHA HARIKUMAR, [REDACTED]

BY ADVS.M/S.K.S.HARIHARAPUTHRAN,PINKU MARIAM JOSE AND ANIL KUMAR T.P.
for R2

This MFA (SUCCESSION) having come up for orders on 09.01.2024, the
court on the same day passed the following:

P.T.O.

SATHISH NINAN, J.

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M.F.A (Succession) No. 3 of 2023

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Dated this the 9th day of January, 2024

O R D E R

In *Natarajan T.K. v. T.K.Raman Achari 2023 (2) KHC 652*, a learned Single Judge of this Court interpreting Section 264 of the Indian Succession Act, 1925 (hereinafter referred to as, “the Act”), held that, in the absence of a notification by the Government of Kerala in the official Gazette conferring jurisdiction, no Court in the State has jurisdiction to grant and revoke probates and letters of administration. Bound by the said judgment, the impugned order has been passed by the learned District Judge dismissing the petition for issuance of letters of administration.

2. For the reasons stated hereunder, I am of the opinion that the judgment in *Natarajan's case supra* requires a re-look by a Division Bench. Firstly it would be appropriate to refer to Section 264 which reads thus:-

“264. Jurisdiction of District Judge in granting and revoking, probates, etc.—(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

(2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, shall, where the deceased is Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do.”

While 264(1) empowers the District Judge to grant and revoke probates and letters of administration in all cases within his District, 264(2) appears to bring in a restriction. In terms of Section 264(2) in the case of a Hindu, Muhammadan, Bhuddhist, Sikh or Jaina or an exempted person, no court beyond the limits of the towns of Calcutta, Madras and Bombay can entertain applications for probate or letters of administration without an enabling notification in the said regard by

the State Government. However such notification is not necessary in cases to which Section 57 of the Act applies.

3. Immediately it is to be noticed that, Christians are not included in Section 264(2) and it does not apply to Christians. Therefore, with regard to Christians, there could not be any doubt that Section 264(1) applies and the District Judges within the State of Kerala have jurisdiction to grant and revoke probates and letters of administrations in all cases within his District.

4. The Will in question is one executed by a Hindu within the State of Kerala on 03.09.2021.

5. Now going to Section 57 of the Act, the same reads thus:-

“57. Application of certain provisions of Part to a class of Wills made by Hindus, etc.—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits, and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b);

Provided that marriage shall not revoke any such Will or codicil.”

The Section falls within Part VI of the Act. The main part of the Section provides that, the provisions of Part VI which are specified in Schedule III to the Act shall apply with certain restrictions and modifications as specified in the schedule, to the three categories of cases mentioned in clauses (a), (b) and (c), to the

Section. The Section applies to Hindu, Bhuddhist, Sikh and Jaina.

6. Sub-clause (a) deals with Wills and codicils made on or after 01.09.1870, within the territories which were subject to the Lieutenant Governor of Bengal or which were within the local limits of the ordinary original civil jurisdiction of High Courts of Madras and Bombay as on 01.09.1870.

7. Sub-clause (b) deals with cases where Wills and codicils were made outside the territories referred to in clause(a) above but, in respect of immovable property situated within those territories.

8. Sub-clause (c) refers to Wills and codicils made on or after 01.01.1927 to which clauses (a) and (b) above does not apply.

9. On a reading of Section 57 it is clear that the Section applies throughout the State of Kerala to all Wills and Codicils made on or after 01.01.1927. Section

57 thus being applicable, a notification by the State Government in terms of Section 264(2) of the Act referred to supra is not necessary to confer jurisdiction on the District Judge for the grant and revoke of probates and letters of administration.

10. A similar view was adopted by the Allahabad High Court in *Triloki Nath v. Kanhiya Lal and ors (AIR 1978 ALL 297)*.

11. In the light of the above, I am of the opinion that the decision in Natarajan's case (supra) requires consideration by a Division Bench.

Registry to place the matter before the Honourable the Chief Justice for orders in the said regard.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge