

(1926) 10 BOM CK 0010

Bombay High Court

Case No: None

Morarji Kanji

APPELLANT

Vs

Bai Panbai

RESPONDENT

Date of Decision: Oct. 18, 1926

Acts Referred:

- Succession Act, 1925 - Section 317

Citation: (1927) 29 BOMLR 683

Hon'ble Judges: Mirza, J

Bench: Single Bench

Judgement

Mirza, J.

[His Lordship after setting out the facts continued:] Bai Panbai's application is based on the English practice in the Probate Division. Williams on Executors, Vol. II, p. 1663, (11th Edition), quotes that practice to be as follows:-

An executor or administrator may be compelled to exhibit an inventory, and render an account of his administration of the personal estate of his testator or intestate in the Probate Division at the instance of a legatee or next of kin, or of a creditor; but neither an executor nor administrator can be cited by the Probate Division ex officio to account.

2. According to Tristram & Coote's Probate Practice, p. 324 (latest edition), the proceedings are instituted by means of a summons in Chambers.

3. The Advocate General on behalf of the applicant contends that our Court is bound to follow the English practice under the provisions of Rule 609 of the High Court Rules. That rule provides that:-

In cases not provided for by this chapter, or by the rules of procedure laid down in the Indian Succession Act or by Probate and Administration Act, 1881, or by the Civil Procedure Code, the practice and procedure of the Probate Division of the High

Court of Justice in England shall be followed so far as they are applicable and not inconsistent with this chapter and the said Acts.

4. Section 317 of the Indian Succession Act, 1925, provides that:-

(1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said Court may appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of...

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence u/s 193 of that Code (The Indian Penal Code).

5. The practice of our Court has been to require an inventory and accounts to be filed with the Testamentary Registrar. The executor or administrator is not required to pass his inventory and accounts before the Commissioner for taking Accounts.

6. I am of opinion that the practice followed by our Court so far is correct. The intention of the Legislature u/s 317 of the Indian Succession Act appears to be that the inventory and accounts filed under that section should, so far as the proceedings on the Testamentary Side are concerned, be regarded as final. The protection afforded to parties interested in the will is that if the inventory and the accounts are intentionally false in any particular, the executor or administrator makes himself liable to punishment under the Indian Penal Code. The other remedy open to the interested parties would be to file an action against the executor or administrator, questioning the correctness of the accounts.

7. In *Sarat Sundari Barmani v. Uma Prosad Roy Chowdhry* ILR (1904) Cal. 628 the point before the learned Judges was whether it was open to the District Judge of his own motion to re-open an account which was certified by his predecessor as "accounts checked and reported to be correct" and to compel the executor to pass his accounts before an officer of the Court. The Appeal Court held that all that the District Judge had to do was to see that the inventory and accounts satisfied the requirements of the section, that is, that the inventory appeared on inspection to be a full and true estimate of all the property, credits and debts and that the account on inspection appeared really to be a true one showing the assets and their disposal (p. 636):-

To ascertain this it would be necessary that the inventory and account should be passed under some examinations by the Judge's staff so as to detect manifest mistakes or omissions. If such were discussed, the papers would not satisfy the

section; and the Judge would have power to require the executor or administrator to amend the account in order to comply with the section; and for this purpose the section empowers him to extend the time.

8. The learned Judges at p. 639 mentioned that reference had been made to the English practice and held that English practice was hardly a guide in India because the provisions of the Indian Succession Act differed very materially from the law in England.

9. In my opinion, whatever rights the applicant had, as the legatee under the will, are now merged in. the agreement of December 20, 1923.

10. The learned Advocate General contends that she is entitled to come in under the provisions of the English practice an next of kin. The English practice refers to next of kin in connection with an administrator and not an executor. If the applicant has any rights dehors the will, her proper remedy is to file an action against the executor of her husband's estate to claim an enhanced maintenance or a widow's life estate as she may be advised. The present proceedings, in my opinion, are misconceived. The summons, therefore, will be discharged.

11. Having regard to the fact that this point had not before come up for decision in any case in this Court of which I am aware, and as the applicant appears to have been misled by the English practice on the point, I think the proper order will be that there should be no order as to costs. Counsel certified.