APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Jackson.

1924, September 3.

MARUTHAVANASWAMI ALIAS DESIKA PANDARA-SANNADHI (COUNTER-PETITIONER IN BOTH), PETITIONER,

v.

SUBRAMANIA THAMBIRAN (PETITIONER IN BOTH), RESPONDENT.*

Madras (Administration of Estates) Regulation III of 1802, sec. 16 (7)—Intestate succession to personal property—Claim by more than one person—Duty of Judge to refer claimants to a suit—No jurisdiction to decide under Regulation.

If on a person dying intestate, leaving personal property, more than one person claim the same, under Madras (Administration of Estates) Regulation III of 1802, the duty of the Judge under section 16 (7) of the Regulation is to refer the parties to a regular suit; and he has no jurisdiction in such a case to decide the claim under the Regulation.

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act praying the High Court to revise the orders of S. NARAYANASWAMI AYYAR, Subordinate Judge of Māyavaram, in O.P. No. 60 of 1923 and in I.A. No. 197 of 1924 in O.P. No. 60 of 1923.

The facts are given in the judgment.

K. S. Jayarama Ayyar and *S. Nagaraja Ayyar* for petitioner.

The petitions having been filed as original petitions under the Regulation, they ought to be tried as original suits and the witnesses should be examined *viva voce*; cf. rule 94, Civil Rules of Practice. The Subordinate Judge had therefore no jurisdiction to direct the evidence to be by affidavits only. In any case the Judge ought to have allowed the cross-examination of the

* Civil Revision Petitions Nos. 490 and 491 of 1924.

deponents to the affidavits under Order XIX, rule 1, Civil Procedure Code. Reference was made to the corresponding provisions in the English Supreme Court Rules in Orders 37 and 38 and the decisions thereunder. The refusal to allow cross-examination was also without jurisdiction and materially irregular.

T. R. Ramachandra Ayyar with *S. Muthiah Mudaliyar* and *K. Narasimha Ayyangar* for respondent.

The Regulation in question is self-contained and prescribes its own procedure for the inquiry under it and all that is required is that the Judge should be satisfied. As to by what kind of evidence he has to satisfy himself he is given absolute discretion and he is not controlled to any extent by the Civil Procedure Code or Civil Rules of Practice which were passed long after. Hence he can direct affidavit evidence. Further the scheme of the unrepealed portion is such that where there are contesting claimants in a proceeding under the Regulation they are to be referred to a regular suit, wherein the claims can be gone into fully; which clearly indicates that if proceedings were to go on under the Regulation the inquiry is necessarily of a summary character.

As regards the right to cross-examine the deponents, Order XIX, rule 1, Civil Procedure Code, will not apply and the principle of Order XIX, rule 2, will apply and therein only an option or discretion is given to the Court to summon the deponent for cross-examination. If the Judge exercises his discretion judicially in a particular way the High Court cannot interfere under section 115, Civil Procedure Code. In this case the Judge has found that the application to summon the deponents for cross-examination is *mala fide* and ought not to be allowed. Hence these Revision Petitions should be dismissed.

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JUDGMENT.

These Revision Petitions have been filed in respect of two orders of the Subordinate Judge of Māyavaram, dated 29th March and 2nd May 1924. The proceedings before him were under section 16, clause (7) of Madras Regulation III of 1802 and the learned Judge by his first order directed that affidavit evidence should be adduced and by his second order refused permission to the petitioner before us to cross-examine the deponents to the affidavits.

The facts are shortly these. The Pandara Sannadhi of Dharmapuram Mutt died on or about the 28th October 1923. The Sub-Magistrate having jurisdiction over the locality, locked and sealed the rooms containing some movables belonging to the Mutt and sent up a report to the Collector of Tanjore and he directed the Sub-Magistrate to hand over the keys of the rooms to the Subordinate Judge of Māyavaram, who was requested by the Collector to take proceedings under Regulation III of 1802. The present petitioner who is the Pandara Sannadhi of Swargapuri Mutt put in a petition on the 5th November 1923 stating that as the late Pandara Sannadhi died without appointing a successor he as the head of a dependant Mutt was entitled to succeed. The respondent was a rival claimant who also filed a petition claiming that he was the rightful successor on the ground that he was elected Pandara Sannadhi of the Dharmapuram Mutt by the Thambirans of that Mutt. The petition of the petitioner was O.P. No. 58 of 1923 and the petition of the respondent was O.P. No. 60 of 1923.

The learned vakil for the petitioner has contended that his petition is in the nature of an original petition, and that the procedure applicable is that applicable to suits and that therefore he is entitled to ask that

evidence should be taken *viva voce*. The arguments turned on the question to some extent, whether the proceeding was a regular petition or an interlocutory application, but on the view we take of the scope of the Regulation, we are of the opinion that these questions do not arise.

The Regulation in question deals with rules of Civil Procedure and contains also various other provisions. In the early part of the 19th century, this measure was considered quite adequate, but later on, a more elaborate system was devised and practically the whole Regulation has been repealed, its place being taken by the Code of Civil Procedure and the Civil Courts Act. Curiously enough, a few sections have been left unrepealed, although we are unable to discover any ground for the retention at any rate of a large portion of what has not been repealed.

Now, turning to the Regulation, we find that it contained 29 sections and that all of them have been repealed excepting section 16, clauses (2) to (7). Section 2 referred to the filing of a complaint, that word being the equivalent of a plaint, and procedure was laid down in the succeeding sections in regard to trial of suits. Section 16, clause (2) enacts that when a Hindu or a Mussalman dies leaving a will and appointing an executor, Courts of Justice are not to interfere except upon a regular complaint brought against his executors for a breach of trust or otherwise.

The third clause refers to the case of a Hindu or a Mussalman dying intestate but leaving an heir and the Courts are restricted from interference in such cases except upon a regular complaint. The fourth clause enacts that if there are more heirs than one to a person dying intestate and there is no disagreement, the Courts are not to interfere without a regular complaint. But,

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if there are disputes between the several claimants on a regular suit being filed by the party out of possession, the Judge is required to take security from the party in possession and if the latter is unable to give security, the Judge may give possession to the plaintiff himself on his giving security. But this act of the Judge is merely an act of administration for the benefit of the heir who may eventually succeed in the suit. Then follows the fifth clause. The first part of which is merely a continuation of the fourth clause. If neither party is able to give security, an administrator is to be appointed for the management of the estate until the disposal of the suit.

Pausing here for a moment, we fail to see of what use these provisions are at the present day. Nobody would think of resorting to them because under the Civil Procedure Code parties can obtain interim orders in regard to protection of property which is the subject of a suit.

Now, we come to the second part of clause (5). Where there is no person authorized and willing to take charge of the landed estate of a deceased person, the Judge is authorized to appoint an administrator for its management, until the legal heir to the estate or other person entitled shall attend and claim the same. If the Judge is satisfied that the claim is well founded, the administrator shall deliver over the property to him with an account of the administration. This is the effect of clause (5), part II, but we have seen that when there are several claimants, the Regulation specially enacts in clauses (2), (3), (4), (5) that their rights are to be adjudicated on in a regular suit. But clause (5), part II, does not contemplate a suit and is it intended that under that clause if there are several claimants the Court is to give a decision although there is no suit? It seems to us

that this construction would be contrary to the scheme of the Regulation. What is meant by part II, clause (5) seems to be that if there is a single claimant the Judge, on being *prima facie* satisfied as to his title, is to direct the interim administrator to transfer possession to him. It is not intended that if more than one claimant appears, the rights of the several claimants are to be decided without a suit. Under clause (4) and first part of clause (5), if one of the rival claimants is in possession, the title to the estate can be decided only in a suit. But if neither party is in possession (second part of clause (5), applies then) is there anything to suggest that the Court is to decide without there being a suit?

We are not concerned with clause (5), but with clause (7). We have, however, construed the previous clause, because there can be no doubt that the same interpretation in this respect must be placed both upon clauses (5) and (7).

Clause (7) enacts, that the Judge [on receiving information that any person had died intestate leaving personal property and there is no claimant to such property, shall adopt measures for its care and issue an advertisement

> "requiring the heir of the deceased or any person entitled to receive charge of his effects"

to attend and should any person attend and satisfy the Judge as to his title to the property, the same is to be delivered up to him. Should no claim be preferred within twelve months, a report is to be transmitted to the Governor in Council. The second part of clause (5) refers to real property and clause (7) refers to personal property. But the scope of both the clauses seems more or less identical. In our opinion, clause (7) (as the second part of clause (5) does) contemplates the case only of a single claimant and the words occurring in the

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clause such as "heir of the deceased" and "any person entitled" also to a certain extent confirm our view.

The duty of a Judge, if more than one claimant appears before him, is to refer the parties to a regular suit. He has no jurisdiction, in our opinion, to give any decision acting under this Regulation when more than one claimant appears and claims property under clause (7) of section 16.

As we have held that the Judge cannot decide the dispute at all, it is obvious we cannot direct him to take evidence *viva voce* or to permit the petitioner to cross-examine the deponents to the affidavits.

The Civil Revision Petitions therefore fail and are dismissed, but in the circumstances without costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Venkatasubba Rao.

1924, December 15.

PEDDA RAMI REDDI AND THREE OTHERS (DEFENDANTS), APPELLANTS,

v.

GANGI REDDI (PLAINTIFF), RESPONDENT.*

Hindu Law—Succession—Maternal uncle's son, preferable heir to maternal aunt's son.

Under the Hindu Law, a maternal uncle's son is a preferable heir to a maternal aunt's son; *Ram Charan Lal* v. *Rahim Baksh*, (1916) I.L.R., 38 All., 416, followed. *Appandai Vathiyar* v. *Bagubali Mudaliyar*, (1910) I.L.R., 33 Mad., 439, not followed. *Vedachela Mudaliar* v. *Subramania Mudaliar*, (1921) I.L.R., 44 Mad., 753 (P.C.), applied.

SECOND Appeal against the decree of C. V. SAMPATH AYYANGAR, Temporary Subordinate Judge of Cuddapah, in Appeal Suit No. 40 of 1922 preferred against the

* Second Appeal No. 1555 of 1922.