

A

## SHAZODA KHAN AND OTHERS

v.

## FAIZ MOHAMMED AND ANOTHER

B

## SAIYAD ANWAR SHAH

v.

## FAIZ MOHAMMED

[SUPREME COURT, 1965 (Mills-Owens C.J.), 19th March,  
12th April]

C

## Civil Jurisdiction

*Executors and administrators—District Administrator—right to intervene in proceedings—possibility of intestacy—Administration of Estates Ordinance (Cap. 41) ss.3,3(1)(2)—Statute of Distributions 1670 (Imperial)—Intestates Estates Act 1890—Rules of Supreme Court (1934) 0.12 r.23.*

D

In two actions it was sought to propound two wills of one Shahbaz Khan deceased and a will of Bachwan deceased, who was the widow of Shahbaz Khan and died shortly after him. All three wills were opposed, and among the claimants were four nephews of Shahbaz Khan who resided in Afghanistan.

E

*Held:* To support an application by the District Administrator under the Administration of Estates Ordinance to intervene in the proceedings pursuant to Order 12 rule 23 of the Rules of the Supreme Court, the mere possibility of an interest is sufficient. In circumstances in which there was a possibility of all three wills failing the District Administrator had an interest by statute in the possible intestacies entitling him to intervene.

F

Cases referred to: *Kipping and Barlow v. Ash* (1845) 163 E.R. 1035; (1845) 1 Rob. Eccl. 270; *Crispin v. Doglioni* (1860) 164 E.R. 897; 2 Sw. & Tr. 17; *Dabbs v. Chisman and Jennens v. Lord Beauchamp* (1810) 161 E.R. 946; 1 Phill. Ecc. 155; In the Goods of Ann Chanter (1844) 163 E.R. 1036; 1 Rob Ecc. 273; *Re Ford, Ford v. Ford* [1902] 2 Ch. 605; 87 L.T. 113; *Re Cuffe, Fooks v. Cuffe* [1908] 2 Ch. 500; 99 L.T. 267.

G

Application in Chambers by the District Administrator under the Administration of Estates Ordinance. Reported by direction.

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Order 12 rule 23 (Annual Practice 1934)

Probate  
intervention.

In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

Leave to intervene is applied for on summons before a registrar as heretofore. Cf. Contentious Probate, Rule 6, and 0.16 r.10(n).

*D. M. N. MacFarlane* and *R. D. Mishra* for the District Administrator

*F. M. K. Sherani* for the plaintiffs.

*D. N. Sahay* for the second defendant.

First defendant in person.

MILLS-OWENS C.J. : [12th April, 1965]—

These are applications to intervene in the respective proceedings on the part of the District officer in his capacity as District Administrator under the Administration of Estates Ordinance (Cap. 41). For convenience the applications were heard together as the same question arises in each case, namely whether the District Administrator is a person having an interest entitling him to intervene pursuant to Order XII rule 23 (Rules of the Supreme Court (1934)) in its application to the Colony.

Under section 3 of the Ordinance, Chapter 41, the District Administrator is placed under a duty to take possession of, and to administer, the estate of any person dying intestate and leaving no widow, widower or adult next of kin residing in the Colony.

In the Action No. 3 of 1964 a will of Shahbaz Khan dated the 27th September, 1963 is propounded. The action was commenced by his alleged widow Bachwan, now deceased. Shahbaz Khan died on the 29th May, 1964. The defendant Faiz Mohammed opposes that will and propounds an earlier will dated the 18th November, 1960. The earlier will was opposed by Bachwan. Bachwan died in October, 1964, and the present plaintiffs in Action No. 3 were substituted for Bachwan as the nephews and four of the lawful next of kin of Shahbaz Khan deceased. They seek a grant of letters of administration with the (later) will annexed; they do not claim as on an intestacy. They reside in Afghanistan. It is claimed in the affidavit of the District Administrator that Shahbaz Khan was lawfully married to one Aliman, by whom he had no issue, but it is not clear whether she is alive. So far as is known Shahbaz Khan left no lawful next of kin residing in the Colony. Under the earlier will the defendant Faiz Mohammed is the sole beneficiary of the residuary estate. Under the later will Bachwan was given a life interest in the estate and directed to leave the estate in remainder to such of the testator's relations as she should be advised by the testator's Solicitors. It is claimed that Bachwan died without carrying out or exercising this direction or power of appointment, and that in any event it is of doubtful validity.

In the Action No. 4 of 1964 a will of Bachwan (deceased) dated the 17th September, 1964, is propounded by the executor, the present 2nd defendant in Action No. 3, who with his wife are the sole beneficiaries under the will. It is opposed by the defendant Faiz Mohammed, but it is difficult to perceive the interest of Faiz Mohammed in Action No. 4. If he succeeds in propounding the earlier will of Shahbaz Khan in Action No. 3, in preference to the later will, that is an end of the matter so far as a grant is concerned. If he fails in Action No. 3 he has no interest in opposing the will of Bachwan deceased. He does not claim to be related to either of the deceased.

them will fail. If they do all fail the District Administrator will be obliged to enter upon his functions under the Ordinance, Chapter 41; he will have no choice in the matter. If the later will of Shahbaz Khan is proved, the question will arise whether the direction or power of appointment was validly created; if it was invalid, the estate is presently undisposed of by that will. Further, there is doubt whether the direction or power of appointment was carried out or exercised, which again might lead to a present intestacy in respect of Shahbaz Khan's estate. Bachwan's will, also, is opposed and may possibly fail. In the circumstances the District Administrator is already a potential administrator of both estates. In effect he is a statutory representative of absent persons interested on intestacy. I do not think that cases such as *Kipping and Barlow v. Ash* (supra) contemplate a situation in which the proposed intervener is a statutory officer with functions such as are imposed upon the District Administrator, but they do point to the fact that the mere possibility of an interest is enough. If the wills in question are to fail it is obviously to the advantage of the absent next of kin that the District Administrator should be made aware of the position, immediately and with certainty, so that he may enter upon his duties forthwith. The object of the Ordinance is to ensure that no prejudice occurs to the interests of absent next of kin. If the District Administrator is made a party to the proceedings all this will be secured. It will be no bar to the grant of letters of administration to next of kin, if the Court thinks fit (see section 3(3) of Chapter 41). I hold that the District Administrator has an interest by statute in the possible intestacies and that such interest entitles him to intervene in these proceedings.

*Order*: That the District Administrator be joined as a defendant in both actions and that he enter an appearance within 8 days hereof. Costs in the cause.

*Order for joinder of District Administrator.*