

Present : Shaw J. and Schneider A.J.

1920.

ALAGAKAWANDI v. MUTTUMAL.

35—D. C. Kandy, 27,682.

Civil Procedure Code, s. 547—Action by widow before obtaining letters of administration.

It is open to any one who has an interest in the property of a deceased to institute an action in respect of such property and to proceed to get, at any rate, an interim injunction prior to letters of administration being granted.

The words “no action shall be maintainable” in section 547 of the Civil Procedure Code does not amount to the same thing as “no action shall be instituted.”

A. St. V. Jayawardene, for plaintiff, appellant.—The learned District Judge was wrong in dismissing the action altogether. The plaintiff is suing in her personal capacity. Where a person is devastating an estate it would create great hardship to wait till letters of administration are issued. The issue of an interim injunction would obviate irreparable damage. The proper order should be to suspend the action pending administration. See *Hassen Hadjar v. Levane Marikar*.¹

Cooray, for defendant, respondent.—The plaintiff sues in her capacity as administratrix. She describes herself as such in the caption of the plaint (see section 40 of the Civil Procedure Code). As she has not obtained letters of administration the action is premature and was therefore rightly dismissed. When the action is not rightly instituted an injunction cannot be allowed.

¹ (1912) 15 N. L. R. 275.

1920. July 14, 1920. SHAW J.—

*Alagak-
wandi v.
Mutthumal*

In this case the plaintiff, who is the widow of one Pena Selembram Kangany, deceased, sued the defendant claiming possession of a certain property, and claiming that "the defendant is damaging the land of the deceased, and is cutting down valuable trees on the property and causing damage." The plaint does not make it very clear in what capacity the plaintiff is suing. The caption of the plaint calls her the administratrix of the estate of the deceased, and in the first paragraph of the plaint she alleges, not only that she is the widow of the deceased, but that she is administering the estate in D. C. Kandy, Testamentary No. 3,591. It is admitted that she has not, in fact, obtained letters of administration, although she has applied for them. In the body of the plaint, however, it appears that she is suing, not as administratrix, but in her capacity as widow, who is entitled to rights in the property. The District Judge has ruled that the proceedings are irregular, and that the action must be dismissed, with costs. In my opinion, the real meaning of the plaint is, not that the plaintiff is suing as administratrix, but that she is suing in her capacity of widow, who has an interest in the property and who is intending to take out letters of administration. The reason for dismissing the claim appears to be either that she was suing in representative capacity, and, therefore, did not comply with section 42 of the Code or under section 547. If she is not suing as administratrix, then no action under that section could be maintained for the recovery of any property when the estate amounts to over Rs. 1,000, which it does not in the present case. It has been held that the words "no action shall be maintainable" did not amount to the same thing as "no action shall be instituted." In the case of *Hassen Hadjar v. Levena Marikar*¹ the action was allowed to be held up, whilst the plaintiff was given an opportunity of obtaining letters of administration. But section 547 does not say that no person shall bring an action to prevent damage being done to an estate when it amounts to above the value of Rs. 1,000, and it appears to me that it is open to any one who has an interest in the property to institute an action and proceed to get, at any rate, an interim injunction prior to letters of administration being granted. If that were not so, irreparable damage might very often be done to a deceased man's estate without any one being able to stop it. In my opinion the present action should not be dismissed. The plaintiff should be allowed to proceed in her capacity as widow for the protection of the property, and should be allowed to retain the interim injunction she has obtained for the protection of the property in which she has an interest if the circumstances should justify it when the defendant has shown cause to the contrary. Should administration be

¹ (1912) 15 N. L. R. 275.

taken out with regard to this property before other steps are taken with regard to the recovery of possession, it is possible that the plaintiff may satisfy the Court that she is then in a position to continue the present action for possession. I need not, however, give any definite ruling on that point at the present time.

I would allow the appellant the costs of this appeal.

SCHNEIDER A.J.—I agree.

Appeal allowed.

1920.

SHAW J.

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