LETTERS OF ADMINISTRATION IN HINDU SUCCESSION

1. There had been numerous occasion, where we have filed Letters of Administration without will for intestate succession of the property of the Hindus. We all know that succession takes place under the Hindu Succession Act 1956. The grant of Letters of Administration is normally governed under part IX of the Indian Succession Act. It is interesting to see part V of the Act IN Section 29 reads as follows:

29. Application of Part

This part shall not apply to any intestacy occurring before the first day of January,1866, or the property of any Hindu, Muhammadan, Buddhist, Sikh or Jain.

(1) Save as provided in sub-section (1) or by any other law for the time being in force, the provision of this part shall constitute the law of India in all cases of intestacy.

(2) Therefore the law relating intestate succession under the Indian Succession Act 1925 is not applicable to Hindu, Muhammadan, Buddhist, Sikh or Jain.

2. Section 212 of Indian Succession Act reads as follows:

212. Right to intestate's property.

(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, Indian Christian or Parsi.

This provision is also not applicable to Hindu, Muhammadan, Buddhist, Sikh or Jain.

3. It is interesting to note how we had been advising our client to get Letters of Administration for an intestate death of Hindu when law does not require so. The recent Order of Hon'ble Justice C.V. Karthikayen in O.P.No. 68 of 2022 dated 07/11/2022 reads as follows:

1. The present Petition has been filed seeking Letters of Administration and had been filed under Sections 218 and 278 of the Indian Succession Act, 1925 read with Order XXV Rule 5 of the Original Side Rules.

2. In the schedule, there are bank accounts mentioned and share certificates mentioned. There is also a motor car and motor cycle mentioned. More importantly, there are also three immovable properties which have been mentioned. Letters of Administration without Will annexed with respect to immovable properties, relate to filing of such application by class-II heirs seeking to administer the property. Such an application need not be filed by class-I legal heirs who automatically get a right and share in the property in view of the their birth in the family.

3. In the instant case, the first petitioner is the wife of the deceased and the second petitioner is the mother and the third and fourth petitioners are the son and daughter. All of them are entitled to an undivided 1/4th share in the three immovable properties. That right is inborn to them. If the second, third and fourth petitioners seek to give away their undivided 1/4th share each, then they must do so by way of registered document. By filing an application seeking Letters of Administration and granting consent that the property can devolve on to the first petitioner cannot be a method to give away title of the property. They may give the first petitioner a right to administer the property but even that is not required since of all them are class-I legal heirs and the right to hold the property has ensured to them by their very birth in the family.

4. The learned counsel for the petitioner stated that however the petition may be amended suitably as one under Section 372 of the Indian Succession Act seeking Succession Certificate with respect to the savings Bank Accounts and the share certificates mentioned in the schedule to the Petition .....

The class-I heirs of Hindu need not approach this Hon'ble Court for grant of Letters of Administration. This falls in line with Section 29 and 212.

4. However from reading of Sections 218, 219, 220 will say that it is discretionary for the person to apply for administration to distribute the estate as per rules and reading the Section 221.

Acts not validated by administration.—Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate, will show that any dealing without a Letters of Administration is not valid. Pending the grant of Letters of Administration are not validated and section 217 will state about the grant of administration in accordance with provision of part IX Grant of Administration for intestate succession as well.

5. The following Judgments of various Courts will enlighten you the grants of administration and its effects.

6. *Section 218 of the Act provides that to whom letter of administration be granted where the deceased is a Hindu, Mohammadan, Sikh, Jaina or exempted persons. Section 218 of the Act runs as under:-*

"1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased."

7. *Section 223 of the Act provides that to whom probate cannot be granted. Section 223 of the Act runs as under-*

"223. Persons to whom probate cannot be granted.

Probate cannot be granted to any person who is a minor or is of unsound mind nor to any association of individuals unless it is a company which satisfies the conditions prescribed

by rules to be made by notification in the Official Gazette, by the State Government, in this behalf."

8. *Section 236 provides that to whom letter of administration cannot be granted. The said Section runs as under:-*

"236. To whom administration may not be granted.--

Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by notification in the Official Gazette, by the State Government in this behalf."

9. *Section 236, as originally enacted, prohibited grant of letters of administration to any person who was a minor or of unsound mind. By amending Act of 1983, the following provision was inserted in Section 236:-*

".....nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by notification in the Official Gazette..."

10. *A perusal of Sub-section (2) of Section 218 shows that it grants to the Court ample discretion in the matter of grant of Letter of Administration where a testator dies intestate. The object behind granting discretion to the Court is that where a person dies intestate, the person in whose favour the Letter of Administration is granted, is required to carry out certain functions and duties being responsible to the Court, whereas Sections 223 and 236, on the other hand, provide for disqualification. The Letter of Administration or probate can only be granted to those who are named in those Sections; the object being that the duties and functions of an executor in whose favour Letter of Administration is granted, is required to carry out the direction(s) contained in the Will faithfully, diligently and effectively. The executor can be discharged only as and when such directions given in the Will, are complied with or the desire of testator, as reflected in the Will, is fulfilled. The legislature, in its wisdom, has chosen to disqualify not only a minor or a person of unsound mind, but also an association of individuals, for carrying out the wishes and directions of the testator. The only exception which has been made in the matter of grant of probate or Letter of Administration is a company, which satisfies the conditions prescribed in the Rules and not otherwise.*

Illachi Devi (D) by Lrs. and Ors. vs. Jain Society, Protection of Orphans India and Ors. (26.09.2003 - SC) : MANU/SC/0767/2003 – 2003 INSC 523

28. Section 211 falls in Part VIII which deals with representative title to the property of the deceased on succession. Section 211(1) declares that the executor or the administrator, as the case may be, of a deceased person is his legal representative for all purposes and that all the property of the deceased vests in him, as such. Under section 212, it is inter alia provided that no right to any property of a person who has died intestate can be established in any Court, unless letters of administration are granted by a probate Court. Under section 213, no right as an executor or a legatee can be established in any Court, unless probate of the will is granted, by the Probate Court, under which the right is claimed. Similarly, no right as executor or legatee can be established in any Court unless the competent Court grants letters of administration with the will annexed thereto. Sections 211, 212 and 213 brings out a dichotomy between an executor and an administrator. They indicate that the property shall vest in the executor by virtue of the will whereas the property will vest in the administrator by virtue of the grant of the letters of administration by the Court. These sections indicate that an executor is the creature of the will whereas

an administrator derives all his rights from the grant of letters of administration by the Court. Section 214 states inter alia that no debt owing to a deceased testator can be recovered through the Court except by the holder of probate or letters of administration or succession certificate. Section 216 inter alia lays down that after any grant of probate or letters of administration, no person other than such grantee shall have power to sue or otherwise act as a representative of the deceased, until such probate or letters of administration is recalled or revoked. Part IX of the Act deals with probate, letters of administration and administration of assets of deceased. Under section 218(1), if the deceased is a Hindu, having died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable to such deceased, would be entitled to. Under section 218(2), when several such persons apply for letters of administration, it shall be in the discretion of the Court to grant letters of administration to any one or more of such persons. Section 220 refers to effect of letters of administration. It inter alia states that letters of administration entitles the administrator to all rights belonging to the intestate. Section 221 inter alia states that letters of administration shall not render valid any intermediate acts of the administrator which acts diminish or damage the estate of the intestate. Sections 218, 219, 220 and 221 are relevant in the present case as they indicate that nothing prevented the intestate heirs of Balai Chand to apply for letters of administration, particularly when they alleged that Balai Chand died without making a will. Moreover, section 221 indicates that intermediate acts of the administrator which damage or diminish the estate are not validated. This section brings out the difference between letters of administration and probate. Section 221 expressly states that certain intermediate acts of the administrator are not protected as the authority of the administrator flows from the grant by the competent court unlike vesting of the property in the executor under the will (see: section 211). Section 222 states that probate shall be granted only to an executor appointed by the will. Section 227 deals with effect of probate. It lays down that probate of a will when granted establishes the will from the date of the death of the testator and renders valid all intermediate acts of the executor. Section 227 is, therefore, different from section 221. As stated above, in the case of letters of administration, intermediate acts of the grantee are not protected whereas in the case of probate, all such acts are treated as valid. Further, section 227 states that a probate proves the will right from the date of the death of the testator and consequently all intermediate acts are rendered valid. It indicates that probate operates prospectively. It protects all intermediate acts of the executor as long as they are compatible with the administration of the estate. Therefore, section 221 read with section 227 brings out the distinction between the executor and holder of letters of administration; that the executor is a creature of the will; that he derives his authority from the will whereas the administrator derives his authority only from the date of the grant in his favour by the Court. Section 235 inter alia states that letters of administration with the will annexed shall not be granted to any legatee, other than universal or residuary legatee, until a citation has been issued and published calling on the next-of- kin to accept or refuse letters of administration. Such provision is not there in respect of grant of probate. In the circumstances, the judgment in the case of Debendra Nath Dutt and Anr. v. Administrator-General of Bengal reported in MANU/WB/0037/1906 will not apply to the present case.

Crystal Developers and Ors. vs. Asha Lata Ghosh (Dead) through LRs. and Ors. (05.10.2004

- SC) : MANU/SC/0859/2004 – 2004 INSC 576

5. The grant of succession certificates is dealt with in Part X of the Indian Succession Act, 1925. Under A 373 an application for a succession certificate is to be made to the District Judge, which term, according to the definition given in Clause (bb) of Section 2, means the Judge of a principal Civil Court of original jurisdiction. The application is to set forth the

particulars mentioned in the said Section 372. The important particulars are those mentioned in Clause (f) of Sub-section (1) of Section 372 which are "the debts and securities in respect of which the certificate is applied for." Section 370(1) of the said Act provides that a succession certificate is not to be granted with respect to any debt or security to which a right is required by Section 212 or Section 213 to be established by letters of administration or probate. Thus, the three restrictions on the grant of succession certificates by a Court are:

(1) that the property in respect of which the certificate is asked for must be a debt or a security,

(2) it must not be a debt or security to which a right is required by Section 212 to be established by letters of administration, and

(3) it must not be a debt or security to which a right is required by Section 213 to be established by probate.

As the deceased died intestate, there is no question of Section 213 applying. Section. 212 provides as follows:

Right to intestate's property.-(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, Indian Christian or Parsi.

The deceased was a Hindu and, therefore, letters of administration are not necessary to establish a right to any part of her property.

In Re: Ranchhoddas Govinddas Banatwala (25.08.1975 - BOMHC) : MANU/MH/0197/1975

7. Section 9 of the Act has been referred to by learned counsel for the defendant Bank to reiterate the proposition that where time has begun to run no subsequent disability or inability to institute suit or make an application will stop it. This provision reads as follows:

"9. Continuous running of time – where once time has begun to run, no subsequent disability or inability to institute a suit or make an applications top it;

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues."

18. There is no doubt that the law is well settled that it is not necessary to obtain letters of administration in terms of the provisions of Sections 211 and 212 of the Succession Act, 1925 and cases which are of relevance and as cited above may now be referred.

19. In Jogendra Chunder Dutt and another v. Apurna Dassi and others (supra) it was held that a Hindu widow sufficiently represents the estate of her deceased husband when there is no other person short of obtaining letters of administration to his estate who can be said to represent his estate.

20. In Mt. Kulwanta Bewa and others v. Karam Chand Soni and others (supra) it was held that the whole scheme of Sections 216, 220 and 273 and other provisions of the Act is only

to provide for representation of the deceased's estate for purposes of administration and is not intended to cut down the rights of the beneficiaries. Hence merely because an estate is in the hands of an administrator, the beneficiaries are not thereby rendered incompetent to deal with their interest in the estate.

21. In Bhudeb Chandra Roy and others v. Bhikshakar Pattanaik and others (supra) it has been held by Patna High Court as follows (page 127):

"Of course under Section 213 of the same Act, no right as executor can be established in any Court of Justice, unless a Court of competent jurisdiction has granted probate of the will under which the right is claimed. This only means that no Court shall recognise the right of an executor unless he has obtained probate of the will under which he claims. But the effect of Section 211 is that the estate of the deceased testator vests in the executor by virtue of the will and from the date of his death."

22. In Mrs. Julieta w/o Ciriaco Bernardo Coutinns v. Lila Coutinho and others (supra) it was reiterated that the rights of the minors can be established although no representation has been obtained to the estate of the deceased.

23. No probate is necessary in order to set up a claim regarding property either movable or immovable on the basis of a Will executed in Punjab and not relating to property situated in the territories mentioned in Section 57. The Court held so on interpretation of provisions of Section 213 and 57 of the Succession Act 1925.This was held in Ram Chand Ganesh Das v. Sardara Singh and another (supra).

24. The same High Court in Dr. Mrs. Joginder Kaur Malik and another v. Malik Anup Singh (supra) has held that in the absence of probate or letters of administration the suit simplicities by legatee is not barred. Paragraph 2 of the judgment reads as follows:

"2. Mr. G.S. Vohra, learned counsel for the petitioners has challenged the correctness of the said judgment dated24-7-1965. First, he says that the suit is barred by reason of the provisions of the Indian Succession Act,1925, and the only remedy available to the plaintiff was to obtain letters of administration or probate to the alleged will. He has mainly relied on Ss. 213, 214, 227, 263, 264 and 273. According to him, the scheme of the whole Act shows that the only remedy for a person placed in the position of :he plaintiff could be to obtain a probate and the filing of the suit is excluded. Placing particular emphasis on Ss. 213 and 214, Mr. Vohra says that no right as executor or legatee can be established in any Court, unless a Court of competent jurisdiction has granted probate of the will,which Court, according to Mr. Vohra, is the Court of the District Judge.

It is further said that by virtue of S. 214 no decree can be passed against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof except on production of probate or letters of administration evidencing the grant to him of administration to the estate of the deceased. Reliance has been placed on Ganshamdoss Narayandoss V. Gulab Bi Bai, MANU/TN/0143/1927 : Air 1927 Mad 1054 and Kesar Singh V. Smt. Tej Kaur, MANU/PH/0155/1961. In Ganshamdoss's case, it was held that even a defendant cannot use an unprobated will as a defense.

That decision was based on S. 187 of the Indian Succession Act of 1865, which corresponds to S. 213 of the present Act. That judgment can have no applicability to the present case inasmuch as Sub-s.(2) ofS. 213 excludes the applicability of S. 213(1) in the case of wills made by Muhammadans and wills made by any Hindu, Buddhist, Sikh or Jain where such wills as are of the classes specified in Cls.(a) and (b) of S. 57. Reference to

Cls.(a) and (b) of S. 57 would show that S. 213 will only apply (a) to wills made within the territories which on the first day of September 1870, were subject to Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature of Madras and Bombay,and (b) to all such wills and codicils made out side those territories and limits as relate to immovable property situate within those territories or limits. Section 213 of the said Act being not applicable to the present will,it is no bar to a plaintiff to establish his right as executor or legatee by a regular suit.

25. In the judgment reported as Col. Adarsh Rattan and others v. State Bank of India Jalandhar (supra) the learned Judge took the view that it was not compulsive to apply for letters of administration and suit claiming a declaration that heirs were owners of the box lying with the Bank and entitled to the sealed box with consequential relief of allowing them to operate the said safe deposit was not barred. M.M. Punchhi, J. as his Lordship then held as follows in paragraphs 11 and 13:

"11. To apply the principles to the case in hand, the box in question vested in the heirs under the Hindu Succession Act the moment the deceased died intestate and they there and then derived title thereto. That title could be abrogated or substituted by a representative title if letters of administration were successfully sought for the purpose, IT is otherwise plain from the language, of sections 211 and 212 of the Act that it is not compulsive for heirs to apply for letters of administration in the case of a Hindu and qua other persons of other religious denominations as mentioned in either of sub-section (2) under both the provisions, dying intestate. The argument built on Sub-sections (2) of section 211 that unless there was a joint Hindu family and the heirs had succeeded by means of survivorship, section 211 had not applicability appears to me without any force. The principle of survivorship proceeds on the basis that on death, the existence of the deceased gels subsumed but the existence of the coparcenary continues to exist. A coparcener cannot be said to have any well-defined share in a coparcenary at any moment. So, his death would not have the effect of passing of any estate to his other coparceners. It is in that sense that sub-sections (2) of section 211 of the Act has been studded in the chapter,to remove any doubts in that regard. But when the estate passes on the death of an intestate,then section 212 throws open an enabling avenue to have the letters of administration from the Court of competent jurisdiction and to have the estate]administered under the guidance an protection of the Court. By no means can it be said that the estate of an intestate Hindu cannot be allowed to vest or be claimed by his heirs unless letters of administration have been obtained. Thus I am of the considered view that it was not essential for the plaintiffs to have letters of administration before operating the box lying safe with the bank. This view of mine does not take into account. Section 8 of the Hindu Succession Act, for that is irrelevant here for the present purposes.

13. It is the heir or heirs of the deceased Hindu dying intestate and failing his creditor/s who may apply for the grant of letters of administration. IT is not incumbent, for instance, on the creditor to always apply for letters of administrations in order to recover his debt. Similarly, it is not incumbent on the heir or heirs to apply for letters of administration as a compulsive necessity. The provision is merely enabling. It cannot be said with any effectiveness that the law of succession is put to winds merely because letters of administration can be obtained under the provisions of the Act. The provisions of sections 264, 270, 273, 278 and 283 pressed into service by the learned counsel for the Bank to highlight the role of the District Judge(a higher Court than the Court of the Sub Judge)can mean no substitution as a desirable necessity to the choice of having letters of administration. The additional pleas of the learned counsel that the letters of administration bring about more orderliness are efficacious for the purpose of creditors, ensure realisation of estate duty and make the State earn some revenue are irrelevant

considerations when one is confronted with the choice available to the heirs. Equally fallacious is the argument that in face of the provisions of the Indian Succession Act whereunder letters of administration are obtainable, section 34 of the Specific Relief Act and section 9 of the Civil Procedure Code would debar the maintenance of a suit. It appears to me that there is no such impediment on the rights of the plaintiffs to claims the estate of the deceased wherever it was lying."

26. The Full Bench of Patna High Court in (Tikait)Mahabir Prosad Narayan Deo vs. Bhupal Ram and others (Supra)reiterates the proposition that it is not necessary to invoke a theory of suspension of limitation in case in which suspension is not expressly provided for either in the Limitation Act or in some Special Act. The following paragraph from page 700reads as follows:

Jagdish Chandra Trikha vs. Punjab National Bank and Ors. (24.10.1997 – DELHC) : MANU/DE/1243/1997 – AIR 1998 DELHI 266

17. The provisions of Section 213 deals with the cases of testamentary succession and positively declares that the executor or legatee cannot establish their right over the property unless a probate or letters of administration is granted by competent Court. The Sub-section (2) however exempts the application of Section 213 to Muhammadans. The section applies to Indian Christian, Foreign Christian, Parsi and applies only to Hindu, Buddhist, Sikh or Jain who are residents of the area mentioned in Section 57(a) or if the immovable property is situate in the area mentioned in Section 57(a). In other words, the rigor of Section 213 does not apply to Hindu, Buddhist, Sikh or Jain, who are not the resident of the area mentioned in Section 57(a) and if the property is not situate in the area mentioned in Section 57(a).

18. The need to have probate or letters of administration in the case of intestate succession is dispensed with, for all persons except the foreign Christians by amendment to Section 212. However, insisting probate or letters of administration for Indian Christians, Parsies and for the section of Hindu, Buddhist, Sikh or Jain based on residence or situation of property appears to be archaic and irrational. The distinction maintained during the British Rule between the Presidency towns and provincial areas no longer appears to be relevant in the changed political, social and economic context. The Indian Civil Justice System confers probate jurisdiction on some of the select Civil Courts. The ordinary Civil Court unless empowered with probate jurisdiction cannot grant probate letters of administration, succession certificate etc. It is a settled proposition of law that the Civil Court, while exercising the probate jurisdiction cannot adjudicate the question of title. The findings of the probate Court is not finally binding on the party. The aggrieved party has scope to approach the Civil Court in the second round of litigation leading to multiplicity of proceedings. Therefore, academically it is desirable that in the case of testamentary succession also the insistence of probate or letters of administration should be dispensed with for Indian Christians, Parsees and to all Hindus, Buddhist, Sikh or Jain irrespective of their residential status or property situation. Otherwise, necessary amendment of law to be effected to make the ruling of the probate Court final and binding on the parties without scope for resorting to another round of civil litigation.

19. The academic opinion expressed in the preceding para is of course, is not germane to the present case, since Ms. Robinson is a foreign Christian and has executed a Will, therefore, the provisions of Section 213 apply. The letters of administration granted annexed with a Will at Ex.P.6 is only in respect of Bikasipur Estate. There is no express grant in respect of the school in question.

20. The jurisdiction to make limited grant of letters of administration is dealt in Sections 237 to 260 of the Act. The letters of administration limited in point of time could be granted in the case where the original Will is mis-placed, destroyed or not available. Indeed Section 238 permits grant of letters of administration based on the secondary evidence. The limited letters of administration can be granted to the persons interested in the property when there is no Will and the property of the deceased requires a diligent administration. The persons interested in the property, a creditor are also entitled to invoke the relevant provisions in Sections 237 to 260 for obtaining limited orders of administration. The limited grant contemplated under Sections 237 to 260 basically deal with limited grant from the stand point of time and does not deal with the case of extent of estate, whether to be for the whole of the estate or could be for part of the estate. The grant of probate or letters of administration in respect of whole of the estate or part of the estate is governed by Section 232. The provisions relating to limited grant under Sections 237 to 260 will have no application, if the question pertains to the extent of estate.

21. The provisions of Section 232 declares that the executor appointed under a Will suffers legal incapacity or refuses to act or where no executor is appointed under a Will the universal or residuary legatees can apply for grant of letters of administration. As a general rule they should take letters of administration "for whole of the estate or of so much thereof as may be unadministered." The said words inferentially declare that a letters of administration is not necessary if the part of the estate is already in effective possession and administration. The decision of this Court in AIR 1965 has in fact makes the following observations at para 30:

In cases where a part of the estate has already been administered in such a way that, that part has gone to some of the heirs or legatees both in possession as well as in title, the legal position would be that only the rest of the estate is actually that of the deceased which remains to be administered by an administrator. That would constitute one of the special circumstances in which the Court may make a grant of letters of administration limited to the unadministered portion of the estate.

22. The Sindh High Court in Bhai Khubchand's case, AIR 1936, makes distinction between the administration of the estate under the orders of the Court and de facto administration. While interpreting the word "administration", my Lords' hold that the administration of an estate to mean "under the order of the Court" and not informal de facto administration.

23. The provisions of Sections 57(a), 57(b), 212 and 213, make sectional difference and discrimination insisting probate and letters of administration only to certain class of people. For example: a legatee inheriting modest immovable property by a Will and despite being in possession subjected to rigor of probate or letters of administration would be forced to face duplicated litigation one before the probate jurisdiction and another before the Civil Court in respect of title.

24. With great respect, I differ with the views of the Sindh High Court. The distinction between administration of estate with the formal orders of the Court and the informal de facto administration appears to be superfluous. The ideal proposition would be, as a general rule, the probate or letters of administration to be granted for the whole of the estate. As an exception to the general rule in case of estates in effective possession and de facto administration, the probate or letters of administration should be held as unnecessary under Section 213. The requirement becomes necessary only in case of un-administered portion of the estate. In the present case, the administration of the school is effectively with the Defendant after the demise of Ms. Robinson. Therefore, a specific grant of letters of administration is not necessary for the Respondent to assert her right under the Will.

R. Venkatachalam vs. A.B. Madapa (23.03.2004 - KARHC) : MANU/KA/0630/2004 –

6. Perusal of the provisions of the above section shows that grant of probate and letters of administration as also the administration of estate of the deceased in case of intestate succession is to be made and carried out in accordance with the provisions of this Part. Perusal of this Part shows that it makes provisions in detail as to how an application for probate or letters of administration is to be made. How that application is to be processed and how that application is to be decided. Section 268, which is found in Part- IX lays down that provisions of the Code of Civil Procedure are application. Section 269 is the only provision that I find in Part-IX of the Succession Act giving power to the court to interfere for protection of the property. Section 269 reads as under:

269.When and how District Judge to interfere for protection of property.-(1) Until probate is granted of the Will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property.

(2) This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate.

7. Perusal of this section shows that special power which is conferred on the court by this section to interfere for protection of property till probate is granted is not available in cases where the deceased is Hindu, Muhammadan, Buddhist, Sikh or Jaina or an Indian Christian who has died intestate. There is no doubt that in the present case the deceased was Hindu and therefore Section 269 is not available. In my opinion, the very fact that the Legislature has made a special provision in Section 269 giving power to the court to make orders for protection of property during the pendency of the probate petition or a petition for letters of administration and restricted that power in case of certain category of person indicates two things i) that in order to enable a testamentary court to make interim order in relation to the properties during the pending of probate petition or a petition for letters of administration, the legislature has to enact a provision in that regard and ii) that the legislature did not intend to confer such a power on the testamentary court in relation to the persons who are of the category mentioned in Section 269(2) of the Act.

Rupali Mehta vs. Tina Narinder Sain Mehta (29.08.2006 - BOMHC) : MANU/MH/0507/2006

– AIR 2007 BOM 62

28. The whole scheme of the Act is to provide for a preservation of estate to which there is no one to succeed. Here in this case, there are legal heirs to succeed to the properties of the deceased K.S. Ramasamy. Already first respondent filed a suit for partition, which is in a way a proceeding intended for the protection of estate. When the legal heir is prosecuting with due diligence other proceedings for the protection of the estate and it is not obligatory to obtain letter of administration and there is no apprehension of misappropriation, deterioration or waste of assets the High Court has to drop the proceedings. The interest of next-of-kin is given utmost importance. Only in the absence of next-of-kin of the deceased, proceedings may be taken by the Administrator General. That is not the case here. Class-1 legal heirs of deceased are available to succeed to his estate. The petitioner could very well have sought this relief in partition suit by filing applications under Order 39, 40 and 151 C.P.C.

R. Sivasubramaniyan vs. R. Periasamy and Ors. (22.10.2021 - MADHC) : MANU/TN/7998/2021-

60. It is not mandatory for a proposed administrator to file an application for grant of Letters of Administration in relation to the property of a person who has died intestate, when the same relates to intestacy of a Hindu. Section 212(2) of the Succession Act reads as under:

"212. Right to intestate's property.-

(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, [Indian Christian or Parsi]."

61. When an application for grant of Letters of Administration is not mandatory, it cannot be argued that the right to apply would necessarily accrue within three years from the date of deceased's death. Legal heirs of a deceased, inherit the right to administer the estate of the deceased, according to the rules for the distribution of the estate and the same is not dependent upon the grant of Letters of Administration. However, when such rights are not recognized by any department, the need to file such application arises. In order to avoid any claim to the contrary arising in future, the departments at times insist upon the grant of Probate in case of a Will or Letters of Administration in case a person dies intestate. In the present case, it appears that the DDA insisted upon the production of grant of Letters of Administration, which led to the filing of the Test Case in the year 2015. The respondents had applied for the mutation of the subject property in their name after the same was handed over to them by the police in the month of November, 2014.

Vinod Kumar Aggarwal vs. State and Ors. (22.12.2023 - DELHC) : MANU/DE/8918/2023 - 2023: neutral citation: DHC:9289-DB

6. In fine, I am of opinion, getting Letters of Administration for intestate succession is only discretionary and not compulsory for Hindu, Muhammadan, Buddhist, Sikh or Jain. The only issue that will be faced is the proof as to who are Class-I heirs of deceased for whose intestate succession takes place or how a person know that there was a family which would be the branch of the persons living or deceased. The Legal heirship certificate though is issued by the Taluk office only to Class-I heirs is always seen with suspicion. There can be a system where the Government can issue Family Certificate for living person which would avoid many litigation as to heirship as well as the claim as to spouse of a particular person.

7. Once it is said that Letters of Administration is discretionary, when there is no doubt as to existence of class-I heirs, it would be unfair for us to insist that the heir of the person dying intestate should get a Letters of Administration for selling the property that has fallen on them by succession.

THIS ARTICLE IS WRITTEN BY MR.G.SURYA NARAYANAN, ADVOCATE, MADRAS HIGH COURT AND ASSISTED BY S.ADHITI OF VITSOL, 3RD YEAR STUDENT.