(1913) 08 CAL CK 0016

Calcutta High Court

Case No: None

In Re: In the goods of Harriett Teviot Kerr — APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 27, 1913

Judgement

Mookerjee, J.

This is a reference under sec. 5 of the Court Fees Act, 1870, made by the Taxing Officer on the Original Side of this Court. The circumstances under which the reference has been made are fully set out in the order of reference and need only be recited very briefly. An application has been made by the Administrator-General for probate of the last Will of Harriett Teviot Kerr. As the application has been made by the Administrator-General, no affidavit of valuation such as is required in the case of an ordinary applicant by sec. 19H of the Court Fees Act has been filed, as laid down in In Re Avdall I. L. R. 26 Cal 404 (1899). But in accordance with established practice, the Administrator-General has set out in his petition a list of the estate, and in another list the debts payable out of the estate. The value of the estate in the first list is given at Rs. 2,17,896-13-7, and the amount of the debts in the second list at Rs. 1,99,830-10-1 3/8, leaving a balance of Rs. 18,066-3-5 5/8. The question for consideration is, what is the proper amount of duly payable in respect of the estate left by the deceased. Art. 11 of Sch. I to the Court Fees Act provides that on a Probate of a Will or Letters of Administration with or without Will annexed, when the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees, a fee of 2 per centum has to be paid on such amount or value. When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees, a fee of 2½ per centum on such amount or value has to be paid ; when such amount or value exceeds fifty thousand rupees, a fee of 3 per centum on such amount or value has to be paid. On behalf of the Administrator-General, it has been argued that the fee payable ought to be calculated on the difference between the gross value of the

estate and the amount of the debts, that is, in the present case, at the rate of two and one half per centum on Rs. 18,066. On the other hand, it has been contended on behalf of the Board of Revenue that the fee payable ought to be calculated in the manner following : namely, the fee payable on the gross value of the estate, reduced by the fee payable on the debts. In the case before us, according to this contention the fee payable would be the difference between three per centum on Rs. 217,896 and three per centum on Rs. 199,830. The question raised is of considerable nicety and by no means free from difficulty, which is attributable to the fact that the Court Fees Act has been amended piecemeal from time to time.

2. Sub-sec. 1 of sec. 19, of the Court Fees Act, which was inserted by Act XI of 1899, provides that no order entitling the Petitioner to the grant of Probate or Letters of Administration shall be made upon an application for such grant until the Petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. II of the first schedule has been paid on such valuation. When we turn to the third schedule, we find that the Petitioner is required to state in the form of valuation that he has truly set forth in Annexure B all the items which he is by law allowed to deduct. Annexure A is a statement of the valuation of the moveable and immoveable properties of the deceased. On the face of the form, it is clear that the Petitioner is required to state the value of the properly and is allowed to deduct the amount shown in Annexure B not subject to duty. The Petitioner has thus to state the net total of the valuation of the moveable and immoveable properties of the deceased. When we turn to Annexure B, we find that it is headed "Schedule of Debts etc.;" then follow five different items, as to each of which a statement of value has to be made. These are as follows : (1) amount of debts due and owing from the deceased, payable by law out of the estate ; (2) amount of funeral expenses ; (3) amount of mortgage incumbrances ; (4) property held in trust, not beneficially or with a general power to confer a beneficial interest ; (5) other property not subject to duty. It is plain that each of the first four items constitutes property not subject to duty ; consequently, the principle formulated on behalf of the Board of Revenue, namely, that duty should be calculated upon the gross value of the estate as also upon the debts and the difference taken, is contrary to the legislative provision that the amount of debts due and owing from the deceased and payable out of the estate constitutes property not object to duty. It is further clear from the second paragraph of the form of valuation, read with the last clause of Annexure A, and the first and the last clauses of Annexure B, that the Legislature intended that the fee should be payable, only on the difference between the gross value of the estate and the amount of debt ; in other words, as debts constitute properly not subject to duty, the difference between the gross value of the estate and the amount of debts, alone constitutes property subject to duty. But it has been urged on behalf of the Board of Revenue that Art. II of the first schedule militates against this view, inasmuch as, that article requires the fee to be paid on the amount or value of the property in respect of

which the grant of probate or letters is made, and it cannot be disputed that the grant of probate or letters is made in respect of the entire estate. In my opinion, the true mode of interpretation of a statute like the Court Fees Act, which has been repeatedly amended, is not to consider individual sections, but to take them as a whole and to give effect to the legislative intent upon a particular matter. It is conceivable that in 1899 when by sec. 2 of Act XI of that year, sec. 191 was inserted in the Court Fees Act as originally framed, the language of Art. 11 of the first schedule was not carefully considered ; it is also possible that in 1910 when by sec. 2, cl. (1) of Act VII of that year, a progressive scale of duty was introduced, the effect of the amendment upon questions likely to arise, was not specifically realised by the framers of the amending provisions. Still it is the duty of the Court to give effect, as far as practicable, to all the sections of the statute as it stands, in its amended form, and the Court cannot rightly be invited to place such a construction upon the new sections introduced as would unquestionably destroy their effect. When the Legislature states explicitly in the third schedule, which was inserted in 1899, that debts due and owing from the deceased are not subject to duty, that the Petitioner is by law allowed to deduct the amount of debts from the gross valuation of the estate, and that he is to state in Annexure A the net value of the estate, the Court should not interpret Art. 11 of the first schedule as an isolated provision ; but the Court should give effect to the combined provisions of Art. 11 of the first schedule and the third schedule. From this point of view, it appears to me indisputable that the fee should be calculated upon the net value of the estate obtained by the deduction of the amount of the debts from the gross value of the estate.

3. But it has been argued, on behalf of the Board of Revenue, that the construction for which the Administrator-General contends is opposed to the principle diducible from a long series of judicial decisions. An examination of the cases shows, however, that there is no force in this contention ; there is really no judicial decision in which the precise point now under consideration has been examined. In the case of Collector of Maldah v. Nirode Kamini Dassy 17 C. W. N. 21 (1912), the question for consideration was, whether duty is payable in respect of an estate the gross value whereof exceeds Rs. 1,000, but the net value after deduction of debts falls short of Rs. 1,000. It was ruled upon a construction of sec. 19, cl. 8, that the estate was not exempted from liability to pay duty. It is not necessary to decide on the present occasion whether this view is well-founded ; it is sufficient to say that I reserve nay opinion upon this matter with the remark that when it arises again, it may require re examination and further consideration. But I do not appreciate how, in view of the provisions of cl. 7 of sec. 19H of the Court Fees Act, this Court reversed the decision of the primary Court in the case of Collector of Maldah v. Nirode Kamini Dassy 17 C. W. N. 21 (1912). I further find it difficult to follow how this Court could interfere in the determination of the question of the duty payable by an applicant for Probate or Letters of Administration, upon even the most liberal interpretation of the scope of sec. 115 of the CPC or sec. 15 of the Charter Act.

4. The next case to which my attention has been drawn is that of In the goods of Ram Chandra Das 18 W. R. 153 ; 9 B. L. R. 30 (1872). In this case, Sir Richard Couch, C. J., held, with the concurrence of Mr. Justice Markby, that in estimating the amount of the ad valorem fee chargeable under cl. 11 of the first schedule of the Court Fees Act, the fee must be paid in respect of the property without deducting the amount of the debt to be paid out of it. The learned Chief Justice referred to the provisions of the law on the subject in England (55 Geo. III, c. 184, sec. 51) and observed that the Court had not to make the law but to put a construction upon the language which the Legislature had used. This decision, it will be observed, was given in 1872, long before the amendment of the Court Fees Act in 1899, and the Court was called upon to consider only the question of the construction of Art. 11 as it stood at the time. The Court accepted the contention of the Advocate-General that the duty was payable on the whole amount and overruled the arguments of the applicant for Letters of Administration that the word "value" means "the value of the estate after the debts have been deducted." It is not necessary to examine the grounds of this decision, as in my opinion the law has been materially altered by subsequent legislation. But before I leave this case, I may sate that I don''t appreciate how a reference under sec. 5 of the Court Fees Act by the Taxing Officer of this Court on the Original Side was heard by a Bench of two Judges. Sec. 5 makes it plain that such reference is to be heard by the Chief Justice or by such Judge of the High Court as the Chief Justice may appoint. Khachiera v. Kharag Singh 7 All L. J. R. 842 (1910).

5. The other cases to which my attention has been drawn do not support the contention of the Board of Revenue. In the case of In the goods of Peter Innes 16 W. R. 253 ; 8 B. L. R. App. 43 (1871), it was ruled by Norman, C. J., that when Letters of Administration are granted in respect of property subject to a mortgage, the value of the property, within the meaning of Art. 11 of the first schedule of the Court Fees Act, is the value of the entire property less the amount of the incumbrance because, this is the value of that with which the Administrator is to deal. The same view was accepted in In the goods of Charles Edward Maclean 6 All. H. C. R. 214 (1874), where it was held that the term "value" in Art. 11 means "market value" and that the market value of mortgage property is the value of the equity of redemption and of that only. To the same effect is the decision of Westropp, C. J., in In the goods of Ram Chandra Lakshmanji I. L. R. 1 Bom. 118 (1876). These decisions clearly do not lend any support to the position taken up by the Board of Revenue. On the other hand, if we accept the interpretation of the term "value" as given in these cases, namely, "market value," the view may well be maintained that when probate is taken in respect of an estate out of which debts have to be paid, the value, that is, the market value, of the property is the value of the estate left after deduction of the amount of the debt. In essence, the estate is burdened with the payment of debts, and if the estate were put up to sale with the modification that whoever might purchase it, would have to pay thereout the debts of the deceased, a purchaser would pay for the property a proportionately reduced price. This, I venture to think,

is a reasonable construction of the expression "value of the property" in Art. II, and if this interpretation had been adopted in the case of In the goods of Ram Chandra Das 18 W. R 153 ; 9 B. L. R. 30 (1872), the complications which have followed would have been avoided. Whatever doubts, however, might have been entertained as to the true scope of Art. 11 as it stood in 1870, the effect of the legislation of 1899 is in my opinion obvious and plainly supports the contention of the Administrator-General. I hold accordingly that the duty in this case must be charged at the rate of two and one half per centum on the sum which represents the difference between the gross value of the estate and the amount of the debts.