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(1954) 07 CAL CK 0033

Calcutta High Court

Case No: Appeal from Original Order No. 70 of 1953

Madan Chand Dutt — APPELLANT

Vs

The Collector of Calcutta — RESPONDENT

Date of Decision: July 2, 1954

Acts Referred:

- Court Fees Act, 1870 - Section 19C, 19H, 19H(3), 19H(4), 19I

Citation: (1956) 2 ILR (Cal) 565

Hon'ble Judges: Chakravartti, C.J; Lahiri, J

Bench: Division Bench

Advocate: H.N. Sanyal and R.C. Deb and P.K. Sen, for the Appellant;A.K. Sen, Junior Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Chakravartti, C.J.
This appeal raises a question of some importance under the Court Fees Act. The question has arisen out of the following facts.

2. One Rai Praniatha Nath Mitra Bahadur died on April 9, 1933, leaving a Will, dated March, 22 preceding. On August 7, 1933, probate of the Will was granted to Sreemutty Indu Prova Mitra and Shri Manmatha Nath Sen, two of the Executors named in the Will. Manmatha Nath died on June 22, 1945 and Indu Prova on July 27, 1948, without fully administering the estate. On September 1, 1948, an application for Letters of Administration de bonis non with a copy of the Will annexed was made by one Madan Chand Dutt, who is the Appellant before us. He is the sole sxirviving executor of the estate of one Rai Chandra Nath Mitra who was the sole residuary legatee under the Will of Rai Pramatha Nath. A grant of Letters of Administration in favour of the Appellant was made on September 9, 1948.

3. The property in respect of which probate was granted to Indu Prova and Manmatha Nath was valued by them at Rs. 5,71,970-0-21/2 pies and the proper duty

thereon was paid. The property in respect of which Letters of Administration was asked for by the Appellant was valued by him at Rs. 6,33,391-6-9 pies. He, however, claimed that no further duty was payable by him because, as he said in paragraph 6 of his affidavit filed along with the valuation of assets, such of the assets appearing in his list as might appear to be different from the assets on which duty had been paid by the executor and the executrix were really assets of the estate of Rai Pramatha Nath on which duty had already been paid. He explained his meaning more fully in paragraph 5 of the affidavit. There he said that in the course of the administration of the estate, the executor and the executrix, had dealt with or disposed of most of the movable properties such as the cash in hand and Government Promissory Notes and they had again purchased Government securities or securities of other lature out of the income of the estate and had also opened accounts in different Banks with such income, as a result of which the assets of the estate had been increased. In substance, his case was that the apparent difference between the two valuations was not a real difference, but only represented conversions of or accretions to the original assets of the estate on which full duty had already been paid.

4. The submission of the Appellant was accepted by the Taxing Officer of this Court who, on August 24, 1948, granted him a certificate under Rule 4(1)(a) of Chapter XXXV of the Rules of the Original Side to the effect that no duty was payable in the case, as Section 19C of the Court Fees Act was applicable. A grant was thereafter made without payment of any duty, on, as already stated, September 9, 1948.

5. On July 25, 1951, the probate Deputy Collector of Calcutta addressed a letter to the Solicitor for the Appellant u/s 19H(3) of the Court Fees Act. The letter stated that the Probate Deputy Collector had made enquiries and come to be of opinion that the value of the estaate of Rai Pramatha Nath, as declared by the Appellant in his affidavit of assets, had been under-estimated by Rs. 1,88,788-2-9 pies, "as shown on the "reverse", and it called upon the Appellant to amend the valuation and pay an additional stamp duty of Rs. 13,215-2 as within a certain time. The details given on the reverse of the letter showed that they had been taken from the Appellant''s own affidavit of assets and were merely such items of property as were not to be found in the original affidavit of the executor and the executrix, taken at such valuation as had been given by the Appellant himself. The letter described them as "new properties "and accretions, not covered by the affidavit of assets sworn in "the first grant."

6. The Appellant did not amend the valuation, as required of him. He contended before the Collector that the so-called new properties were either properties into which the original properties had been converted or accretions to those properties and therefore, no additional duty was payable by him.

7. Thereafter, on July 23, 1952, the Collector of Calcutta made an application to this Court u/s 19H(4) of the Court Fees Act for an enquiry into the true value of the assets

of the deceased in respect of which the Letters of Administration de bonus non, had been granted to the Appellant. The ground given in the application was that on enquiries being made, it had transpired that some of the properties included in the Appellant''s affidavit of valuation were accretions and as such had not been included in the original affidavit of valuation filed by flu executor and the executrix, but the Appellant had failed and neglected to amend his valuation and pay duty on the accretions, although required to do so. The application was opposed by the Appellant. It was contended on his behalf that the question of his liability to pay additional stamp duty could not be re-opened, inasmuch as the certificate that no duty was payable, given by the Taxing Officer, was final u/s 5 of the Court Fees Act and, secondly, that by virtue of the provisions of Section 19C of the Act, no duty was payable in Law.

8. The application came to be heard by P.B. Mukharji, J., who over-ruled the contentions of the Appellant. The learned Judge held that the finality of the Taxing Officer''s decision u/s 5 of the Court Fees Act could not defeat the right of the Revenue authorities u/s 19H and, therefore, the application was entitled to be considered on the merits. He held further that Section 190 only barred taxation of "the same property ""belonging to the same estate" and did not lay down that no duty would be payable even on additions and accretions when a second grant in respect of an estate was obtained. Accordingly, he directed an enquiry to be held. It is against that decision that the present appeal has been preferred.

9. On behalf of the Appellant, an interesting and extremely ingenious argument was addressed to us by Mr. Sanyal. On that argument, as it narrowed down in the end, two questions arise for decision: (i) on the facts of this case, must the certificate of the Taxing Officer that no duty was payable be treated as final by reason of the provisions of Section 5 of the Court Fees Act, so that the Collector''s application was liable to be thrown out in liming and (ii), even if the answer be in the negative, is an enquiry u/s 19H of the Act still not called for, because the properties on which the Collector is claiming additional duty are only accretions to the original properties and, therefore, the same properties belonging to the same estate within the meaning of Section 19C on which no further fee is chargeable?

10. As to the first point, Section 5 of the Court Fees Act, so far as is material, provides that if between the officer whose duty it is to see that any fee is "paid under this chapter" and any suitor or attorney, a difference arises in a High Court "as to the necessity "of paying a fee or the amount thereof," the question shall be referred to the Taxing Officer "whose decision thereon shall be "final." The section occurs in Chapter II which, under a Bengal amendment of 1935, comprises Sections 3 to 6 of the Central Act, the last-named section having been transferred by the amendment from Chapter III. In the course of the argument it occurred to us that the words "paid under this Chapter" might exclude probate duty from the ambit of Section 5, because probate duty is really charged by Section 19-I which appears in

Chapter III A of the Act and it is that section which requires the Court to be satisfied, before mating a grant, that the duty prescribed by Item 11 of Sch. I has been paid. The words "any suitor or "attorney" also seemed to suggest that the fees contemplated by the section were only such fees as were payable by a person to the court itself as a litigant before it, such as fees on Plaints, Memoranda of Appeal, Applications and Affidavits. On that view, the fee payable on the application for probate would be within the purview of the section, but not probate duty. I find, however, that decisions of this Court have always treated probate duty as covered by Section 5. In the case of Bhubaneswar Trigunait ILR (1925) Cal. 871, it was observed by Rankin, J., as he then was, Sanderson. C.J., concurring, that "no doubt has at "any time been felt either in this Court or in Bombay that "Section 5 applies to probate duty" and that by the section, probate duty is "put upon the same footing in a High Court as ordinary "court-fees." In the old case of Omda Bibee ILR (1899) Cal. 407, it was observed by Sale, J., that in the High Court probate duty was, u/s 3 of the Court Fees Act, payable to the Registrar and that in the case of a difference as to the fee or the amount thereof, the question was to be referred to the Taxing Officer u/s 5. Section 3, however, only provides that the fees payable to the clerks and officers of Chartered High Courts and certain other fees "chargeable in each of such courts," including therein probate duty, shall be collected in manner thereinafter appearing and the manner of collection appears in Chapter V of the Act which prescribes in what form and at what stages the fees shall be collected. The section does not charge the duty, nor directs the High Courts to realise it, as does Section 4 with respect to the duties covered by that section. All that can be said is that since Section 3 described probate duty as "chargeable in each of such "courts" and since the section appears in Chapter II, it may be regarded as required to be paid in the High Courts under that Chapter. The reasoning would not be very convincing, but since the Court Fees Act is not too well-drafted and is often more elliptical than clear, I would follow the uniform current of decisions and accept the view taken in them.

11. In the present case, Section 5 is attracted, because there is a decision by the Taxing Officer that no duty is payable and that decision is embodied in the certificate given by him. The certificate was given under Rule 4(1)(a) of Chapter XXXV of the Original Side Rules which lays down that every application for probate or for letters of administration shall be accompanied by a certificate of the Registrar as to duty having been paid or a certificate of the Taxing Officer that no duty is payable. It is now well-settled that although Section 5 speaks of a "difference", it is not required that there should be a dispute, but all that is necessary is that the Taxing Officer should bring his mind to bear on the question and should decide it. The certificate given in this case was, therefore, properly taken as a decision u/s 5.

12. It was, however, not contended by Mr. Sanyal that a decision u/s 5 as to the amount of the duty or that no duty was payable was final to the extent of barring an application by the Revenue authorities u/s 19H. Apart from the authorities, the

provisions of Section 19H itself and those of Section 19-I(2) make it abundantly clear that even after a grant has been made, which must be on payment of the duty considered by the Court to be payable or on no payment upon a finding that no duty can be charged, an application u/s 19H can be made or proceeded with. It cannot, therefore, be contended that a decision u/s 5 excludes an application u/s 19H and it was not so contended by Mr. Sanyal. What he contended was-and he said that this had been his contention before the court below as well-that the Collector''s application in the present case was not a proper application u/s 19H at all, but an application outside the contemplation of that section which could not be maintained in view of the Taxing Officer''s decision u/s 5. Mr. Sanyal pointed out that, by its own terms, Section 19H applied only when the Collector came to be of opinion that the applicant for a grant had "under-estimated the value of the "property of the deceased". If, for example, the applicant omitted certain properties of the deceased from his affidavit of assets or put too low a valuation on all or some of the properties included in it, he could be said to have under-estimated the value of the property. In such a case, the Collector could require the applicant to amend the valuation and if he did not do so, the Collector could move the Court u/s 19H(4) "to hold an enquiry into the true value of the property." But in the present case, the Collector was not saying that the Appellant had omitted any of the assets of the estate from his affidavit, nor was he questioning the valuation put by the Appellant on any of the assets. In fact, the Collector had taken the properties included in his list from no other source than the Appellant''s own affidavit and he had also adopted the valuations put upon them there. What he was saying was that the exemption from duty claimed by the Appellant in respect of those properties was not allowable and he was asking for an enquiry as to the admissibility or otherwise of the exemption claimed. Such an enquiry, it was contended, was wholly outside the purview of Section 19H which was limited to cases of under-valuation. As to whether duty was or was not payable on properties included in the affidavit of assets and correctly valued, there could be no question of an application u/s 19H and a decision u/s 5 "as to the necessity of paying "a fee" thereon was final as that section expressly said.

13. Extremely ingenious as that contention was and certainly plausible, I am unable to accept it as correct. It is true that Section 19H is limited to cases of under-valuation. But what Section 19-I requires the applicant for a grant to. file is "a valuation of the "property in the form set forth in the third Schedule." Schedule III begins with a form of an affidavit and then sets out two Annexures to it, described as Annexures A and B. Paragraph 1 of the affidavit states that the applicant has truly set forth in Annexure A "all the property and credits of which "the above named deceased died possessed or was entitled to at "the time of his death and which have come or are likely to "come" to his hands. The Annexure itself contains a list of various kinds of properties with instructions to state their value, where necessary, and towards the end of it, a space is indicated for stating the total valuation. Those

are the gross assets. Paragraph 2 of the affidavit states that the applicant has truly set forth in Annexure B all the items which he is by law entitled to deduct. The Annexure contains a list of various items of property with a space for stating the total valuation at the bottom. Those are the items of exemption. In Annexure A, below the space for giving the total valuation of the assets entered in it, there occurs the direction, "Deduct amount shown "in Annexure B not subject to duty" and below that direction, a space is indicated for giving the "Net Total". It appears to me that the "valuation of the property" which an applicant for probate or letters of administration is required to file u/s 19-I of the Act, is this net total, i.e., the value of the dutiable part of the estate, and not the gross value of all the assets, although the valuation is to be shown as arrived at by subtracting the value of the exempted items from the gross value. That the valuation contemplated by Section 19-I is the valuation of the dutiable part of the estate is indicated clearly by the provision contained in the section that the Court is to be satisfied that the fee prescribed by the First Schedule has been paid "on such "valuation". There can be no question of paying a fee on the gross valuation of the whole estate. The fact that Section 19-I requires the applicant for a grant to file "a valuation of the "property" and requires the court to satisfy itself that the proper fee "on such valuation" has been paid, makes it indisputably clear that the valuation contemplated and required to be given is the valuation of the dutiable properties.

14. The true meaning of "valuation of the property" which appears clearly enough from the terms of Section 19-I itself, is also established by authority. The actual language of the last part of Sub-section (1) of Section 19-I is, "and the Court is satisfied that "the fee mentioned in No. 11 of the first schedule has been paid "on such valuation". Article 11 of the first schedule speaks of "the "amount or value of the property in respect of which the grant "of probate or letters is made" and prescribes a graduated scale of duty according to the amount or value of the property. In view of the language of Article 11 and the fact that a grant of probate or letters of administration is made in respect of the whole estate and not merely in respect of its dutiable part, it used to be contended by the Revenue authorities at one time that the value or valuation contemplated by the Act was the gross value of the estate and that the correct method of computing tie duty was not to compute it on the net value, but to compute first the duty payable on the gross value at the rate applicable thereto, then to compute the duty payable on the value of the exempted properties at the appropriate rate and thereafter to deduct the latter from the former. The matter ultimately came up for decision in the case of Harriett Tevoit Kerr (1913) 18 C.L.J. 308, which was a reference by the Registrar u/s 5 of the Court Fees Act. Mookerjee, J. went elaborately into the provisions of Section 19-I and Article 11 of the first schedule and held that in spite of the wide language of Article 11 which was probably not carefully considered when Section 19-I was introduced in 1899 or when a progressive scale of duty was introduced in 1910, the correct view to take was that the applicant was required to state "the net "total of the valuation"

and the fee was to be calculated on that vaue, i.e., "the net value of the estate", obtained by the deduction of the amount of the debts and other exempted items from the gross value of the estate.

15. If the "valuation of the property" which the applicant for a grant is required to file is the valuation of the dutiable part of the estate, it is clear that where he has shown that valuation as nil, although there are in fact items of property which are dutiable or shown it at a certain figure after deducting the value of certain items which are not exempt from duty, he has "under-estimated the value of the property of the deceased" within the meaning of Section 19H. That section, when it speaks of "the value of the property of the deceased" which has been under-estimated, obviously refers to the- "valuation of the "property" filed u/s 19-I, i.e., the valuation of the dutiable part of the estate, as given by the applicant. If that valuation is given as nil or at a lower than the correct figure by excluding items of property not exempt from duty, the "value of the "property of the deceased" is under-estimated. That was the view taken by Remfry, J. in the case of Tarun Kumar Ghosh ILR (1934) Cal. 114, with which I agree. In that case, a father obtained letters of administration in respect of the estate of a deceased minor son. The only asset shown in the affidavit of assets was a deposit of Rs. 11,000 in a Post Office Savings Bank, but in Annexure B to the form of valuation, the whole of it was claimed as exempt from duty on the ground that it was "property held in trust, not beneficially or "with general power to confer a beneficial interest". The Registrar gave certificate to the effect that no duty was payable. On an application by the Collector u/s 19-H(4) of the Court Fees Act, Remfry, J. held that the certificate of the Registrar, though conclusive for certain purposes, did not preclude the Collector from applying u/s 19H. In explaining how the case came within the purview of the section, the learned Judge observed as follows:
And, in my opinion u/s 19H, the Collector can challenge the validity of a claim of this kind. The valuation of the estate is under-estimated if part of it is wrongly exempted on the ground that it was held in trust. The Valuation is for the purposes of assessing the duty payable and such valuation is under-estimated if assets, which should not have been excluded from that valuation, are excluded.

16. In my view, the learned Judge stated the position correctly. In the present case, the Appellant did not claim the exemptions questioned by the Collector in the Annexures to the form of valuation filed by him, but he did so in the body of his affidavit. The gross valuation of the assets given by him in Annexure A was Rs. 6,34,891-6-9 pies and the exemption claimed in Annexure B was only in respect of a sum of Rs. 1,500 which was said to be an amount of funeral and sradh expenses. The net total given in Annexure A was Rs. 6,33,391-6-9 pies. But the Appellant stated in paragraphs 5 and 6 of the affidavit that such of the properties, included in his affidavit of assets, as did not appear in the original affidavit of the executor and the executrix were only old properties converted into a new form or were accretions to

those properties on which, according to him, no duty was payable. That he claimed the exemptions in that form instead of including the relevant items of property in Annexure B and deducting their value from the gross value of the assets in Annexure A, makes no difference. In effect, the Appellant was saying that the "valuation of the property", that is the dutiable property, was nil or, to put it in another way, that the valuation was still Rs. 5,71,970-0-21/2 pies, the amount shown in the original affidavit of the executor and the executrix on which duty had already been paid. If he arrived at that valuation by, as the Collector contends, excluding properties which were liable to duty, he underestimated the value of the property, i.e., the dutiable property and, therefore Section 19H would apply. It is immaterial that the Collector does not say that he has reason to think that certain properties have been omitted from the affidavit of assets or that he does not question the valuation put by the Appellant either on the whole estate or on the items of property in respect of which he claims exemption; those circumstances would be material and Mr. Sanyal''s contention would be right, if the value of the property of the deceased contemplated by Section 19H, were the gross value of the estate.

17. If the case be one of under-valuation, Mr. Sanyal did not contend, as I have already stated, that the Taxing Officer''s certificate would bar an application u/s 19-H as a final decision u/s 5. It is, therefore, not necessary to consider certain other. interesting questions canvassed in the course of the argument, viz., to what extent a certificate would be final in other cases and the true scope of a decision of the Taxing Officer u/s 5. What I have held is sufficient for over-ruling the first contention of Mr. Sanyal.

18. The next contention of Mr. Sanyal was that on the admitted facts of the case, Section 19C was a complete answer to the Collector''s application and, therefore, there was nothing requiring an enquiry. Section 19C, to quote only the material part, provides as follows:

Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid therein, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

19. The question in the present case is whether, when the second grant was made in favour of the Appellant, he was liable to pay duty on properties which were accretions to the original properties, that is to say, properties acquired with the income from the original properties on which full duty had already been paid at the time of the first grant. It will be remembered that in his affidavit filed along with the form of vaulation, the Appellant had also said that the executor and the executrix had, in the course of administration, dealt with or disposed of most of the cash in hand and Government Promissory Notes and "again purchased" Government securities and securities of other nature. There, it appears to me, he was making a

case that some of the new properties, appearing in his list of assets, were only properties into which old properties had been converted. With regard to the conversions, the Collector does not appear to have made any case in his application to the Court, for, all that he says in paragraph 8 of the application is that some of the properties included in the Appellant''s affidavit of valuation were "accretions" and were not inedited in the original affidavit of valuation filed by the executor and the executrix, on the basis of which duty had been paid by them. It is true that in the list given on the reverse of the Collector''s letter to the Appellant, dated July 25, 1951, all the new properties were included and it is also true that the complaint made to the Court is that the Appellant failed and neglected to pay an additional duty of Rs. 13,215-2 as., which is an amount computed on the value of all the new properties. Still, however, the specific case made in the application relates only to accretions.

20. Section 190 speaks of "the same property belonging to the "same estate". Mr. Sanyal''s contention was that "property," according to the accepted notion of the term, included its potentialities and fruits and, therefore, the properties on which duty had been paid at the time of the first grant, must be taken to be the original properties with a capacity inherent in them of producing income. The income subsequently produced and kept as money or converted into forms like Government and other securities was not in fact a new and different property but was only what lay in the womb of the original properties which had been taken into account at the time of the first grant and charged to duty. The accretions were, therefore, not new and further properties, but "the same property belonging to the same "estate". If so, no duty was payable on them by reason of the provisions of Section 19-C and there having been, on the face of the facts, no under-valuation of the dutiable estate, no enquiry as to the true value of the property was required to be ordered on the Collector''s application u/s 19H.

21. In my view, a taxing statute must be construed in accordance with its plain terms. What Section 190 exempts from payment of duty on the occasion of a second grant is not the same estate, but the same property belonging to the same estate. That distinction between property and estate in the view of the section was not over-looked by Mr. Sanyal and he did not say that even if it was discovered at the time of a second grant that some property, belonging to the estate and. still existing, existed at the time of the first grant as well but no duty had yet been paid on it, no duty would still be chargeable, because the property belonged to the same estate. But although Mr. Sanyal recognised the distinction between property and estate and only advanced a contention that the accretions must be taken to be the same as the original properties for the purposes of Section 19C, I am unable to agree with him. Physically, the accretions are different and additional properties, existing along with the original properties. Section 19C does not merely say that no duty need be paid on the same property belonging to the same estate, but also lays down a condition which is that a previous grant in respect of "the whole of the

property belonging to an "estate" must have been made and the full fee chargeable under the Act must have been paid "thereon". What is obviously contemplated is that "the same property belonging to the same "estate" which will be exempt from duty on the occasion of a second grant must be property included in the original grant and property on which duty was paid on that occasion. No potentialities embedded within the original properties but not existing as separate and concrete items of property can satisfy that test and, therefore, amounts of the subsequent income of the original properties or new properties acquired with such income are, in the very nature of things, excluded. In the case of such accretions, it is impossible to say that they were covered by the first grant or that at the time of that grant, and duty was paid on them. Mr. Sanyal referred to the decisions in Swarnamayee Debi v. Secretary of State for India ILR (1915) Cal. 625, and In the matter of the Estate and Effects of Maung Win Pan ILR (1925) Rang. 90, for the proposition that no new devolution of property takes place when a new representative is appointed for the purpose of completing the administration and therefore, no fresh duty is leviable at the time of such an appointment. That proposition can work only when limited to cases where the properties at the time of the two grants are the same, because if taken literally and as meaning that when the court makes a grant, it sells the right of representation as to the whole estate, whatever the contents of the estate may be, and, therefore, when a fresh grant does not mean to fresh succession, it cannot again demand a price, no fresh duty would be leviable even in cases where some property existing at the time of the original grant but still not included in the valuation, were discovered at the time when a second grant was applied for. That certainly is not the law. Mr. Sanyal pointed out that in the Rangoon case, there was an additional item of property, but the learned Judges do not seem to have applied their minds to that circumstances and given their decision in spite of it. If they did and intended yet to lay down that no further duty was payable, they, with great respect, took a view opposed to the clear terms of Section 19C.

22. In my view, the new properties which are amounts of income derived from the original properties or properties acquired with such income and which have an existence separate from that of the original properties are not the same properties within the meaning of Section 190 and that the decision of S.R. Das Gupta, J. in the case of Jacob Samuel Cohen (Unreported), which the learned trial Judge followed in this case, was correct.

23. But though accretions acquired with the income of the original properties would be chargeable, I should like to make it clear that, in my view, no duty can be levied on properties which are merely original properties converted into new forms. If, for example, Government paper has been sold and shares or securities have been purchased with the sale proceeds, such shares and securities would be the same properties, although the sale may have been at a price higher than the valuation given in the original affidavit of assets. If a property increases in value, it does not cease to be the same property, Swarnamoyee Debi v. Secretary of State (5), just as

when a boy grows into a young man and acquires high qualifications, he does not cease to be the same person. The expression "same property" cannot and ought not be construed as meaning the same property in specie, as that would lead to strange results. For example, if a house was included in the original affidavit of assets and valued at a certain sum and if it was subsequently sold at the same price and the money kept till the time of the second grant, duty, on that view, would be payable on the amount on a literal construction of the expression "same property" when the second grant was made. The section cannot have intended to produce such a result. I do not read the Collector''s application as making any complaint as to the conversions, but if it does, such complaint cannot, in my view, be countenanced.

24. In the result, I hold that the application u/s 19H is maintainable and that the provisions of Section 19C do not make an enquiry unnecessary. If not for anything else, an enquiry is clearly necessary at least for ascertaining which of the new properties are conversions of old properties and which of them are accretions.

25. The appeal is accordingly dismissed, hut in view of the fact that the points involved in the appeal are debatable points of revenue law, there will be no order for costs.

26. On behalf of the Respondent it was contended by Mr. A.K. Sen that no appeal lay from the learned Judge''s Order. That contention cannot be accepted. By holding that the Collector''s application was maintainable and that the Appellant was liable to pay dirty on the accretions, the learned Judge decided questions of right affecting the merits of the dispute between the parties. His order is, therefore, a "judgment" within the meaning of Clause 15 of the Letters Patent and as such appealable. The question, however, is of no practical importance as we have dismissed the appeal on the merits.

Lahiri, J.

27. I agree and I have nothing to add.