(1980) 07 DEL CK 0027

Delhi High Court

Case No: First Appeal No. 82 of 1980

Ashok Bhojwani and Another		APPELLANT
	Vs	
In The Matter of: Estate of Mira Bhojwani		RESPONDENT

Date of Decision: July 21, 1980

Citation: AIR 1981 Delhi 181 : (1980) 18 DLT 390

Hon'ble Judges: Rajinder Sachar, J; O.N. Vohra, J

Bench: Division Bench

Advocate: Vinod Bhagat, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) This is an appeal against the order of the learned single Judge disposing of an application u/s 276 of the Indian Succession Act (hereinafter to be called the Act) for grant of a Probate.

(2) One Mrs. Mira Bhojwani died at Delhi on 11.5.1979. She had executed a Will dated 8.3.1978 by which she had appointed her only two children (sons) Ashok Bhojwani and Subhas Bhojwani as the executors of her Will. Amongst the properties bequeathed by her was one bunglow at 7, Nizamuddin East, which she bequeathed in equal shares to her daughters in law, Kusum, also known as Sonu, wife of her son Ashok and Mira, wife of her other son Subhash. She also bequeathed certain other plot and cash to her sons and grand children. Notice was issued to the husband of the deceased. No objection was raised and the learned Judge has directed Probate . He however, directed that they must furnish and Administration Bond in the sum of Rs. l,00,000.00 with one surety in the like amount to the satisfaction of the Registrar. The learned Judge noticed that the appellant had placed the valuation of the estate at the amount of Rs. 2,72,707.00 and had paid court fee on that. The learned Judge, however, took the view that three items namely-

(f) valuation charges'' for valuation of property and Rs. 695.00 jewellery (g) Court fee payable on probate Rs.ll,000.00 (h) Expenses of obtaining probate and administering the Estate. Rs. 5,000.00 included in the schedule B to the Affidavit filed by the appellant were wrongly sought to be excluded from the valuation of the estate. He, Therefore, held that the appellant should pay court fee on a valuation of Rs. 2,89,402.00 instead of Rs. 2,72,707.00 given by the appellant. He, Therefore, directed that the court fee should be paid by the appellant on this increased value as worked out by the Judge. The appellants are aggrieved against both these directions and have come up in appeal.

(3) Section 19(1) of Court Fees Act 1870 (to be called the Act) provides that no order entitling the petitioner to grant of probate shall be made until the petitioner has filed in the court a valuation of the property in the form set out in the third schedule and the court is satisfied that the fee mentioned at No. 1I of the first schedule has b Jen paid on such valuation. As required by Schedule Iii appellant filed an affidavit and Along with it gave valuation of the assets in the form required by annexure ''A'' to third schedule. Annexure B to the third schedule permits a schedule of debts and other deductions to be mentioned; the valuation of the assets in Annexure ''A'' is arrived at by deducting the amounts shown in annexure ''B'' not subject to duty. The learned Judge has taken the view that entries in f, g & h mentioned above could not fall within the ambit of annexure ''B'' as they cannot be said to be an amount of debts due and owing from the deceased payable by law out of the estate and, Therefore, the total of these items should be added to the valuation given and requiring the appellant to pay additional court fee.

(4) The learned Judge in holding that expenses mentioned in items f, g & h are not amounts of debts due and owing from the deceased relied upon In Re: Mrs. Constance Lubeck, ; a single Judge Judgment of Madras High Court which had held that the Estate Duty cannot be included as an item to be deducted from the value of an estate in ascertaining market value for the purpose of calculation of the Court fee chargeable for grant of probate. Mr. Bhagat, the learned counsel for the appellant, has brought to our notice a Division Bench Judgment of the Mysore High Court reported in 1964 (53) Itr64 Mrs. Blanch" Nathalia Pinto v State of Mysore, which has taken a contrary view and has held that the estate duty so paid or payable should be deducted from the estimate of the market value of the property so and what remains after such deduction is the amount on which court fee is payable. The argument of Mr. Bhagat is that the reasons in not allowing the deductions of items f, h & g are Therefore incorrect. We feel it unnecessary to decide on the correctness or otherwise of this aspect of the judgment of the learned Judge because of the view that we are going to take with regard to the other contention which was also urged by Mr. Bhagat, namely, that in the absence of any objections having been raised by the Collector u/s 19H the valuation placed by the person seeking the probate is correct.

(5) Now Section 19I requires the court to be satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation. Item 11 in first schedule provides for the payment at a certain percentage of court fee on the amount of value of the property. That is why the affidavit is required to give the estimate of valuation of the properties in Annexure A, Along with affidavit in schedule III. It also permits him to make deductions of items included in annexure B so as to arrive at the net total value of the property, which amount is subject to payment of court fee. In order that the person seeking probate may not under-estimate value of the estate Section 19H provides for a notice to be issued to the Chief Controlling Revenue Authority for the local area in which the High Court is situate. The Collector) if he is of the opinion that the property has been under estimated may enquire into the matter and if he thinks that it is under-estimated, require the petitioner to amend the valuation. If the petitioner does not amend the valuation the Collector may move the court before whom the application for probate is pending to hold an enquiry into the true value of the property and in such an enquiry the Collector is deemed to be a party. The court shall then hold an enquiry and record a finding as to the valuation of the property which finding is final as per sub-section (7) of Section 19I, though this finality does not bar the entertainment and disposal by the Chief Controlling Revenue Authority of the application u/s 19E which empowers the Chief Control ling Revenue Authority to have the full payment of court fee put on the stamp which ought to have been originally paid in respect of such value and of the further penalty. The learned Judge though he noticed these provisions however, took the view that the objection as to the inclusion or about the admissibility of certain items in annexure B is not a question of under-estimation of the value of the property but purports to the inclusion of certain items for deduction in annexure B which we take him to mean that the learned Judge was of the view that annexure B is a separate category and has nothing to do with the question of valuation, only found with which the Collector is concerned in terms of Section 19H. It appears to us, with respect, that this view is not correct. When Section 19I provides for an application to be filed by the petitioner giving a valuation of the property in the form set out in the third schedule, the valuation is derived only after taking into account items contained in both annexures A & B. As a matter of fact net total of valuation is arrived at by deducting the amounts mentioned in Annexure B, from the gross total of the valuation included in Annexure A. .If the view of the learned Judge was to be accepted then it would not be open to the Collector to raise any objections to the items mentioned in annexure B in third schedule of the Court Fees Act. This would evidently be against the scheme of the Act because it may happen that if a person has mentioned a particular amount of mortgage encumbrances the Collector may have information that it was incorrect and if he was to be barred from raising in u/s 19H, the said amount may go unchallenged. It is apparent that the court has no machinery of its own to even find out whether certain items in Annexure B are undervalued or wrongly included unless challenge is made by the Collector. That is why in our view the Collector has the power to object to both Annexures A & B. The

court''s acceptance of valuation, unless objected to by Collector, must apply to both annexures A & B. The enquiry that the court has to hold relates to the determination of the true value of the property. In order to determine the true value of the property it is essential for the court to go into each item mentioned in annexure A & B. No limitations can be read in this context and if the court has to examine this aspect it is apparent that the Collector is also entitled to raise objections to each of the said items mentioned in annexure A & B. In this view we are supported, by (33 Calcutta Weekly Notes page 799) which has held that the High Court or a,Civil Court, on a, Civil an application being made to it for probate or letters of administration, has only to be satisfied that appropriate duty has been paid the net valuation of the estate as set forth in the affidavit; of the applicants It is no part of its business to check the correctness of that/valuation which task has, been reserved for the Revenue Authorities to be performed by them, if considered necessary, after receipt of the usual notice of the application from the Court. We feel that this principle has validity and. practical wisdom behind it. The reason is that Section 19H casts a mandatory duty that whenever an application for probate is made a notice shall be issued to the Chief Controlling Revenue Authority who is empowered to raise a dispute, ask more court fee to be paid and if the petitioner refuses raise a dispute and ask the court to decide it in an enquiry. Legislature having given such a vast power to the Revenue Authority, it does not stand to reason that the court should be expected on its own to delve into the incorrectness or otherwise of the valuation and try to arrive at its decision without support from any party raising the matter before it; this would be a very unsatisfactory way of disposing of the matter. If the Collector with" all Its vast resources does not ask for enquiry presumably because it is of the view that there is no under valuation nor is the court in a better position to find out the '' true facts.'' True valuation is a matter of facts and details and somebody has to bring out the various circumstances challenging the valuation put by the applicant. The whole scheme of Chapter Iii of the Act shows that the court will accept the valuation given by the petitioner subject to it being objected to by the Collector in which case the court will give a finding and the valuation naturally then will be the one which will be found after the enquiry by the court, In the present case he has gone into the matter on his own and held that items f, g & h were not admissible for inclusion in Annexure and could not, Therefore, be deducted to arrive at net valuation. ''It , common case that the Collector has not moved this court u/s 19H(5). Till, Therefore, the court is moved u/s 19H,, the valuation placed by the applicant has to be accepted. As such no direction could have been given for including the amount of items f, g & h and thus increasing the valuation given by the appellant. We would, therefore) allow the appeal, set aside the order of '' learned Judge and direct that the valuation given by the appellant originally at Rs. 2,72,707.00 is the one on which he has to pay the court fee. This is of course without any prejudice to any action or steps that may be necessitated because of any action that may be taken by the Collector under the various provisions of Chapter IIIA.

(6) So far as the Administration bond of Rs. 1,00,000.00 is concerned serious objection is taken by the counsel for the appellant to that. Objection is raised that there was no reason to ask for administration bond because the executors are the husbands and the fathers of the various legatees. In the grounds objection seems to have been taken that originally possibly the administration bond was fixed at Rs. 10,000.00 and that later on it has been changed to Rs. 1,00,000.00 . The suggestion being that this was done without the conscious decision having been taken by the learned Judge. We must reject such a contention and we only regret that such a ground unsupportable on any basis have been taken in the grounds of appeal. We have looked into the original order and the figure of Rs 1,00,000.00 has been typed in the usual course and any suggestion of re-typing and by a different type-writer mentioned in the grounds of appeal is strongly rejected.

(7) It is true that the asking for administration bond is in the discretion of the court. Normally we would have refused to interfere with the discretion of the learned single Judge. We, however, find that in this case the executors are the husbands and fathers. The main estate is a house which has been given to their respective wives. This does not seem to be a case in which there is really any occasion for the apprehension that the executors may misuse their authority to the detriment of the legatees. We are told by Mr. Bhagat that even the wives did not want any administration bond to be given as it is felt that this shows lack of faith in their husbands. We Therefore, asked Mr. Bhagat if wives were willing to file the affidavits to the effect that they do not want to ask for any administration bond to be filled by their husbands. He said they would have no objection to do so. In the circumstances subject to the wives filing such affidavits the direction for the administration bond to be furnished by the appellants will be set aside. Of course if no affidavits as above are filed, the direction to furnish the administration bond given to appellants will remain. With these observations the appeal is disposed of as above. No costs.