The State of Gujarat Vs. Shantaben

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Court : Gujarat

Decided On : Jun-14-1971

Reported in : AIR1972Guj108; (1972)0GLR170

Judge : D.P. Desai, J.

Acts : Bombay Court-fees Act, 1959 - Schedule - Articles 10 and 11; Succession Act, 1925 - Sections 217

Appeal No. : Civil Revn. Appln. No. 763 of 1970

Appellant : The State of Gujarat

Respondent : Shantaben

Advocate for Def. : K.C. Bhatt, Adv.

Advocate for Pet/Ap. : K.J. Vaidya, Asst. Govt. Pleader

Judgement :
ORDER

1. This revisional application raises a question as regards the quantum of court-fees payable on a succession certificate in respect of shares in a Limited Company which stood in the name of the deceased as the Karta of a Hindu coparcenary and which would therefore devolve by the rule of survivorship on the remaining coparceners on the death of the Karta subject, of course, to the

provisions contained in the Hindu Succession Act, 1956. The opposite party applied for the certificate in question as the widow of the deceased Acharatlal Asharam alleging that the shares were held by the deceased as the Manager of the Hindu undivided family and that the deceased had only 1/5th share as coparcener in those shares. The deceased died on 15-3-1969 leaving behind him his widow, that is, the petition, (opposite party before this court), three sons and four daughters. The petitioner contended that the deceased had 1/5th share only. The petition for succession certificate was given in the City Civil Court at Ahmedabad and the question of quantum of court-fees was raised by the Registrar of that court. On raising of that question notice was issued to the learned Government Pleader to make his submissions on the question because the State would naturally be interested in the revenue to be collected in the shape of court-fees. The matter was argued on behalf of the petitioner -widow and on behalf of the State before the learned Judge of the City Civil Court. On hearing them the learned Judge came to the conclusion that even in case of a succession certificate the court-fees payable would be on the 1/5th share of the deceased in the shares in question and not on the entire value of the shares. Being aggrieved by this decision the State has come in revision to this Court.

2. The matter has been argued in the trial court on the basis that the shares in question belonged to the joint Hindu family consisting of the deceased husband of the petitioner, the petitioner and their three sons. In the application for revision also this basis which was adopted by the learned trial Judge for the purpose of determining the question of court fees was not challenged on any specific ground. In this court the matter therefore has been argued and is to decided on the basis that it is not in dispute that the shares in question belonged to the joint Hindu family consisting of the husband of the petitioners, the petitioner and their three sons.

3. So far as the Letters of Administration in respect of the shares or other securities of debts belonging to the joint family which are held in the name of its Karta as a trustee or manager, are concerned the view held by the Bombay High Court and which has been settled since long is that the value of the shares so held by the deceased as Karta of the joint family property is exempt from payment of

court-fees on the principle that on the death of the Karta the whole of the beneficial interest in the joint family property passes by survivorship to the remaining members of the joint family. Therefore, what remains is only the legal title to the shares of the deceased and the necessity for letters of administration would arise on account of this legal title remaining in the deceased. This question, however, has not been decided with reference to a succession certificate. However the principle laid down by the Full Bench of the Bombay High Court in Keshavlal Punjalal Sheth v. The collector of Ahmedabad, 25 Bom LR 1240 = (AIR 1924 Bom 228) (FB) has been considered by the learned Judge of the City Civil Court in arriving at his conclusion on this question. Along with that principle he has also considered the phraseology of the relevant Articles of the central Court-fees Act. 1870 as amended by Bombay Act 2 of 1932 and the Bombay Court-fees Act, 1959 as well as S. 19-D of the former Act and Section 24 of the latter. The learned Judge was of the view that 1/5th share in the shares in question would devolve under the provisions of the Hindu Succession Act, 1956, not only upon the widow and her three sons but also on the four daughters. Therefore, having treated this 1/5th share as the property in which the deceased had separate beneficial interest and which upon the provisions of the Hindu Succession Act would devolve upon his widow, her sons and daughters the learned Judge came to the conclusion that court-fee payable in this case would be on this 1/5th share because the remaining 4/5th share would go to the other coparceners by the rule of survivorship. The decision of the learned Judge that the court-fees are payable on 1/5th share of the deceased in this case has not been challenged on behalf of the petitioner-widow by appropriate proceedings. Therefore, we will not go into the question of correctness or otherwise of that part of the decision. The challenge is brought by the State only submitting that court-fees are to be paid on the entire value of the shares mentioned in the petition for succession certificate. Therefore, the only question which arises is whether court-fees are payable in the present case on the succession certificate on the entire value of the shares as mentioned in the petition for succession certificate or as held by the learned trial Judge only on the 1/5th share of the deceased.

4. The matter is governed by the provisions of the Bombay Court-fees Act, 1959 (Bombay Act No.36 of 195). As observed by the learned trial Judge Section 24 of

that Act is in identical terms with Section 19-D of the Central Act of 1870 and Arts. 10 and 11 of the Bombay Act of 1959 are in identical terms with Arts.11 and 12 of the Central Act as amended by Bombay Act II of 1932. It will not be necessary therefore to reproduce the provisions of the Central Act, and its provisions amended by Bombay Act 2 of 1932. It would suffice to reproduce the provisions of the Bombay Act of 1959. Section 24 of that Act reads:--

'24. The probate of the will or the letters of administration of the effects of any person deceased heretobefore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially s a trustee, notwithstanding the amount or value of such property is not included in the amount for value of the estate in respect of which a court-fee was paid on such probate or letters of administration.'

Number.... Proper fee.10. Probate of a will or letters of administration with or without will annexed.When the amount of value of the property in respect of which the grant of probate or letters made exceeds one thousand rupees, on the part of the amount of value in excess of one thousand rupees, upto ten thousand rupees.Two and half per centum.When the amount or value of the property in respect of which the grant of probate or letters of made exceeds ten thousand rupees on the part of the amount or value in excess of ten thousand rupees, upto fifty thousand rupees.Three and three quarters per centum.When the amount of value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, upto one lakh of rupees.Five per centum.When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees, on the part of the amount or value in excess of one lakh of rupees, upto two lakhs of rupees.Five and five-eighth per centum.When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, upto to two lakhs and fifty thousand rupees.Six and quarter per centum.When the amount or value of the property in respect of which the grant

of probate or letters is made exceeds two lakhs and fifty thousand rupees, on the part of the amount or value inexcess of two lakhs and fifty thousand rupees, upto three lakhs of rupees.Six and seven eighth per centum.When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs of rupees, on the part of the amount of value in excess of three lakhs of rupees, upto four lakhs of rupees.Seven and a half per centum.When the amount or value of the property in respect of which the grant of probate or letters is made exceeds four lakhs of rupees, on the part of the amount or value in excess of four lakhs of rupees.Eight and one eighth per centum.When the amount of value of the property in respect of which the grant of probate or letters is made exceeds five lakhs of rupees, on the part of the amount or value in excess of five lakhs of rupees.Eight and three quarters per centum.Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827 or any corresponding law for the time being in force, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the gee paid in respect of the former grant.11. Certificate under part X of the Indian Succession Act, 1925.The fee leviable in the case of a Probate (Article 10) on the amount of value of any debt or security specified in the certificate under section 374 or the Act, and one and a half times this fee or the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.Note: (1) The amount of a debt is its amount including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.(2) Whether or not any power with respect to a security specified in a certified has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for so far as such value can be ascertained.

5. Before examining the content of the phrase 'the fee leviable in the case of probate (Art. 10) .....' occurring in Art. 11 it is desirable to clear scope for one contention which though not raised before me may arise on the terminology of the

aforesaid phrase occurring in the third column of Art. 11. That phrase speaks of fee leviable in case of probate and does not say 'fee leviable in case of a probate or letters of administration.' So far as fee leviable in case of letters of administration in respect of joint family property is concerned it is that settled position since the time of the erstwhile Bombay Province that no fee is payable in respect of the said property in view of Section 19 of the Central Court-fees Act. 1870. In Collector or Kaira V. Chunilal, (1905) ILR 29 Bom 161, decided in 1904 a Division Bench of the Bombay High Court applied the principle underlying Section 19-D (corresponding to Section 24 of the Bombay Act of 1959) and held that the joint family property was property held in trust for the joint family by the deceased. Therefore such property was entitled to exemption from court-fees. In an earlier decision of the same High Court, however, a new approach to the question was sought to be laid down (See Collector or Ahmedabad V. Savchand. (1903) ILR 27 Bom 140). In that case letters of administration in respect of portion of joint family property were obtained and court-fees were paid. Subsequently an application was made for refund invoking the principle underlying Section 19-D. The Division Bench which had to deal with that application laid down two propositions: (i) Section 19-D applies only when probate or letters of administration have been granted in the first instance on which court-fees were paid. In such a case no further duty was payable in respect of the property held by the deceased trustee and (ii) In the cae before the court which was a case of joint family property no letters of administration were necessary, but if they were applied for the applicant must be taken to have adopted the case of the Bank (holding the deposit in the name of the deceased father) that so far as the sons were concerned the deposit was the estate of the deceased. Therefore, having invoked the jurisdiction of the court by means of that statement the applicant for letters could not be allowed to say that the said statement was incorrect and that really speaking no letters were necessary. This decision came up for consideration before the Division Bench in (1905) ILR 29 Bom 161 (supra) and was disapproved observing that the learned Judges who decided the earlier case of (1903) ILR 27 Bom 140 were consulted and agreed with the view taken by the Division Bench in the latter decision. Therefore, said the learned Judges in the latter decision, reference of the question to a Full Bench became unnecessary. It is the second proposition laid down by the

earlier decision to which pointed reference should be made at this stage and with that view reference to this overruled decision has been made in this case.

6. Reverting to the position from which we started the discussion, it may be urged that the Article under consideration of Bombay Act of 1959 speaks of fees leviable in case of probate only and not letters of administration: it may further be urged that a member of a joint Hindu family has no right to devise his undivided coparcenary interest by a will. Still if he does so and the surviving coparceners apply for probate of that will, they can do so only on the basis that the properties devised under the will were the separate properties of the deceased and in that case Section 19-D would not apply and full court-fees would be payable. If therefore full court-fees are payable in such a case, full court-fees are payable in such a case, full court-fees on the same basis will be payable for a succession certificate also on the terminology of the article under consideration. Support for the proposition that full court-fees are payable for probate of a will made by a deceased Hindu coparcener in respect of coparcenary property maybe sought from a third decision (in chronological sequence) of a Division Bench of the Bombay High Court reported as Kashinath Parasram Gadgil v. Gourabai Mallpa Warad. 17 Bom LR 169 = (AIR 1915 Bom 18).

7. We have already noticed by way of a pointed reference the second proposition in (1903) ILR 27 Bom 140 (supra). Advancing a similar proposition in the case of probate of a will made by a Hindu, coparcener Beaman. J. said in Kashinath's case, 17 Bom LR 169 at p.174 = (AIR 1915 Bom 18):

'Although the devise under the will takes but what is his own, if he needs a will to get it we do not see why he should not pay the ordinary duty. He cannot be allowed to blow hot and cold, and say in one breath that a will was and was not necessary.'

At an earlier stage the learned Judge had said: 'Those who propound a will and claim under it can hardly be heard to say that the testator had no powers of beneficial disposition'. At the end the learned Judge referred to (1905) ILR 29 Bom 161 (supra) and dissented from it observing that there was a sufficient ground for distinction inasmuch as the petition in Chunilal's case was for letters of

administration while the learned Judge was dealing with a case of probate. Speaking with very great respect, the learned Judges did not ask himself the question what would be the position if no executor is appointed under a will and the legatee claims letters of administrations with the will annexed? Would the decision in Chunilal's case not govern such a case even though the claimants in the words of the learned Judge 'propound a will and claim under it'? Speaking again with respect, the question whether the grant applied for i.e., probate or letters of administration is not relevant on the question of leviability of fees for the simple reason that Section 19-D of the Central Act as well as Section 24 of the Bombay Act of 1959 enclose within their fold both probate and letters of administration. Speaking with respect again, in substance the Division Bench in Kashinath's case, 17 Bom LR 169 = (AIR 1915 Bom 18) was invoking the second proposition laid down in (1903) ILR 27 Bom 140 which decision was overruled by Chunilal's case, (1905) ILR 29 Bom 161. Chunilal's case, however was again restored to its correct position in holding the field on this vexed question of chargeability to duty by a Full Bench of the Bombay High Court in 25 Bom LR 1240 = (AIR 1924 Bom 228) (FB). Incidentally the Full Bench also disapproved the reasoning of Beaman. J. in Kashinath's case. 17 Bom LR 169 = (AIR 1915 Bom 18). L.A. Shah (Acting, C.J) in the full Bench decision pointed out found that the real point of importance was two fold; firstly whether the deceased in that case did not hold the shares wholly or partially on trust because he was beneficially interested therein in his own right though other member of the family were equally interested and though on his death the whole beneficial interest survived to his sons. Secondly even if the deceased was not wholly interested in the shares at least to the extent of his share he was interested. In such a case whether court-fees ought to be paid in respect of that share which was one-third. In respect of the first phase of the aforesaid point Kashinath's case was relied upon before the Full Bench by the learned Advocate General for the State. The learned. Acting Chief Justice speaking for the Full Bench said that Section 19-D was correctly interpreted in (1905) ILR 29 Bom 161. One of the arguments advanced before the Full Bench was that even after the decision in Chunilal's case the legislature did not consider it right to amend Section 19-D. The learned Judge speaking for the full Bench observed:

'..... and that even if there be a doubt and to the true meaning of the expression 'property whereof or whereto the deceased was possessed or entitled either wholly or partially as a trustee' (which expression occurs both in S. 19-D of the Central Act and Section 24 of the Bombay Act of 1959) or the expression 'property held in trust not beneficially or with a general power to confer a beneficial interest' (which expression occurs in Schedule III of the Central and the Bombay Act) the interpretation accepted in Calcutta so far back as 1896 and in Bombay so far back as 1904 and acquiesced in by the legislature should now be accepted as representing the true scope of the said expression.'

8. The learned Acting chief Justice then pointed out the real principle, which in my opinion rules out scope for any confusion arising from the so called distinction between a probate claimed under a will and letters of administration claimed on intestacy. The learned Judge said with regard to the expression reproduced above as occurring in Section 19-D.

'First as regards the meaning of the expression in its application to joint family property with the incident of survivorship governed by the Mitakshara and the Mayukha in this Presidency it must be remembered that while the holder a member of the family, in one sense is beneficially interested in the whole, the other members of the coparcenary also are beneficially interested in the whole and the beneficial interest of the holder is limited by the extent of the interest of other members. Further that interest disappears altogether on his death, and the survivors become the sole beneficiaries in the estate which stands in the name of deceased person. On his death what is called his estate is no estate of his; and the legal title which still continues in the dead man is really the title of a man. Whose beneficial interest in the property on his death is nothing. As regards the property of this character it could properly be said that the deceased died possessed of it or was entitled to it either wholly or partially as a trustee within the meaning of Section 19-D.'

Thus Kashinath's case, 17 Bom LR 169 = (AIR 1915 Bom 18) which would lend support to the contention that different considerations should prevail interpreting Section 19-Dof the Central Act when probate of will is sought than in the case of

application for letters of administration, no longer holds the field.

9. A fortiorari therefore, we must proceed to decide the question posed in this case on the principle that even in case of probate of a will in respect of co-parcenary property the provisions of Section 24 of the Bombay Act of 1959 which are the same as Section 19-D of the Central Act will apply. This is because the principle underlying the concept of coparcenary property as expounded by the full Bench of Bombay High Court in Keshavlal's case, 25 Bom LR 1240 = (AIR 1924 Bom 228) (FB) applies to both the types of grant viz., probate or letters or administration. Therefore, the use of expression probate alone and the omission of the expression letters of administration while prescribing the levy of fees in case of succession certificate will not make any difference. If this is the position, the answer to the question posed in this case becomes clear.

10. The expression used in the third column of Art. 11, we may recall, is 'the fee leviable in the case of a probate (Art. 10)'. Therefore, in order to determine the fee leviable for a succession certificate, the charging authority has to ask itself, what fee would be leviable in a given case it instead of succession certificate, probate had been applied for in respect of the coparcenary property? The fee which would be leviable in the case of a probate will be the fee which would be leviable in case of a succession certificate also. Article 11 does not purport to prescribe a separate set of fees in case of a succession certificate. Nor does it say that the fees leviable in case of a succession certificate are to be levied at the same rate as in the case of a probate. Thus the article does not seek to prescribe any rate of fees on any percentage basis or otherwise. The legislature contented itself by adopting the same amount of fees which would be leviable in case or probate. It is significant to find that even after the decision of the Full Bench of the Bombay High Court in Keshavlal's case. 25 Bom LR 1240 = (AIR 1924 Bom 228) (FB) the Bombay legislature when it amended Art. 12 of the Central Act by Bombay Act II of 1932 did not prescribe any percentage of fees for succession certificate but said. 'The fees leviable in the case of a probate (Art. 11) on the amount or value of any debt or security specified in the certificate.' It is indeed much more significant to fine that the Bombay legislature used this phraseology while amending Art. 12 of the Central Art which Article itself had provided separately for fees in case of a

certificate by saying in column 3. 'Two percentum on the amount or value of any debt or security specified in the certificate under Section 8 of the Act .....' Thus the Bombay legislature made is intention not to levy fees on percentage basis in case of succession certificate manifest by amending Art. 12 of the Central Act in the aforesaid manner. Again in 1959 while enacting the Bombay Court-fees Act the legislature kept intact the relevant phraseology of Art. 12 of the Central Act as amended in 1932 with a slight difference necessitated by a change in the serial numbers of the articles. Provision for fees in case of probate which were leviable under Art. 11 of the Central Act was made the subject-matter of Art. 10 in the Bombay Act of 1959. Therefore in column three of the Article relating to succession certificate we read the bracketed portion as '(Art 10)', instead of '(Art 11)' which occurred previously. And it must not be overlooked that in the period from 1932 to 1959 several States had amended Article 12 of the Central Act so as to provide for fees on a specified percentage basis in respect of succession certificate. The Bombay legislature did not want any change in the law with regard to levying of fees in cases of succession certificate as it stood since 1932.

11. Therefore, so far as the State to which Bombay Act of 1959 applies, is concerned the court-fees leviable in case of succession certificate will be governed by the principles applicable while determining the court-fees leviable for probate. In that manner, it may be said that the benefit of Section 24 in indirectly made available in case of succession certificate when the debts or securities for which the certificate is required are joint family properties. This observation, however, should not mean that no difference on this question is made by the enactment of the Hindu succession Act. That question does not arise in this case because as observed above the learned trial Judge has ordered to levy fees on the value of 1/5th share of the deceased in the joint family properties which order has not been challenged by the heirs of the deceased by preferring a revisional application.

12. Mr. Vaidya for the State had made two submissions in attacking the correctness of the order of the trial court. In the first place he pointed out that Section 24 of the Bombay Act is by its terms limited to the case of a probate or letters of administration and therefore the exemption granted by that section is not available to a succession certificate. This contention would have been very

appropriate if the provision as to chargeability of fee for a succession certificate on a separate percentage basis under the original Art. 12 of the Central Act has not been subsequently changed by Bombay Act II of 1932 which change was continued (so far as relevant for our purpose) by the Bombay Act of 1959. It appears that under the unamended Article 12 of the Central Act, in case of Shares and securities held on trust the fees were payable on percentage basis if succession certificate was sought irrespective of the considerations governing the grant of probate or letters of administration. This was because S. 19-D of the Central act as submitted by Mr. Vaidya is limited to probate and letters of administration only. However, it appears that the Bombay legislature with a view to give the same benefit to applicants for succession certificate abandoned the separate percentage basis of chargeability of fees and adopted the fees for a probated as the fees for succession certificate. In this context Mr. Vaidya's first contention is not tenable because the conclusion to which I have come is not on the basis of application of S. 24 of the Bombay Act of 1959 to succession certificates. When you compute fee for succession certificate no question of applicability of Section 24 arises. All that you have to do is to work out fees in an identical hypothetical case as if probate instead of succession certificate was sought. And when you proceed to work out fees for a probate you have got to apply Section 24 in cases where it is applicable.

13. The second submission of Mr. Vaidya is that the third column of Art. 11 of the Bombay Act of 1959 was enacted only of the purpose of computing court-fees at the rates in the third column of Art. 10 relating to probate. Mr. Vaidya says that this was done in order to avoid repetition of the same rates in Art. 11 this contention is also misconceived. It already pointed out earlier that Art. 11 does not seek to prescribe any rate of fees on any percentage basis nor does it prescribe a separate set of fees. It adopts the same amount of fees which would be leviable in case of probate. If as urged by Mr. Vaidya repetition of rates mentioned in case of probate was to be avoided there was no need to adopt the phraseology that we find in Art. 11 of the Bombay Act of 1959. In that case the legislature would have stated in the legislature would have stated in the third column. 'The fee leviable at the rate prescribed in case of a probate under Art. 1.' No other submission was made on behalf of the State.

14. It may be mentioned that on the question of chargeability of fees for succession certificate the same view as taken in this decision was taken by the erstwhile Saurashtra High Court in State of Saurashtra v. K. S. Shantikumar, AIR 1956 Sau 93.

15. The application fails and is dismissed. Rule discharged. In view of the question of interpretation involved and the fact that there was no decided case on the point of the Bombay High Court or of this Court, it would be fair to order that each party will bear its own. Costs of this application.

16. Revision dismissed.