

Maragadhammal Vs. Yasodhammal

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Court : Chennai

Decided On : Apr-12-1940

Reported in : AIR1941Mad111; (1940)2MLJ587

Appellant : Maragadhammal

Respondent : Yasodhammal

Judgement :

Venkataramana Rao, J.

1. The question for decision is, what is the Court-fee payable on the Memorandum of Appeal which was presented against the judgment of my learned brother Somayya, J., in T.O.S. No. 11 of 1938 by which he directed the issue of a probate after declaring the will propounded by the respondent to be genuine. The appellant paid a court-fee of Rs. 225. The learned Master is of the opinion that an ad valorem stamp duty is payable under No. 35 of the High Court Fees Rules. The office is of the opinion that under No. 35 the appellant has to pay a stamp duty on Rs. 7,615-12-5 at which the testamentary suit has been valued and the same must be deemed to be the valuation in the appeal. The appellant contends that the subject-matter is incapable of valuation, but he however values it at Rs. 2,000 and states that the stamp duty paid by him is correct. The question is, is the contention of the appellant sound?

2. The rule governing this matter is No. 35 of the Original Side Fees Rules which runs thus:

Memorandum of appeal from a final judgment: When the value of the subject-matter of the appeal does not exceed Rs. 2,500 .. Rs. 225 And for every Rs. 1,000- or part thereof in excess of Rs. 2,500 .. ' 5.

3. There can be no question that the appeal is from a final judgment vide *Perumal Chetty v. Kandasamy Chetty* (1922) 44 M.L.J. 146 : I.L.R. 46 Mad. 592. But the question that has to be decided is, what is the subject-matter of the appeal? In deciding this question the nature of the probate proceedings has to be considered. In a probate proceeding no question of title to property is adjudicated as it is not within the province of a Probate Court to go into it. The only question before it is whether a person died testate or intestate' and who is entitled to the administration of the estate, and if he died testate whether the executor is entitled to the grant of probate. In *Pran Kumar Pal Chaudhury v. Darpahari Pal Chaudhury* I.L.R.(1926)Cal. 126, Sanderson, C.J., described the nature of a probate proceeding thus:

I propose to consider what is the nature of the proceedings in connexion with an application for a grant of probate. There is no doubt that in such proceedings the question of title to property does not arise. The question is whether one or other of the parties to the proceedings is entitled to represent the estate. But, when the proceedings are contested, as in this case, the Court has to try an issue which arises between the parties and which involves the question whether the plaintiff is entitled to have a grant of probate or whether the person, who has entered a caveat and who has become a defendant, has substantiated and proved the defence which he has set up.

4. The learned Chief Justice then, referred to the case of *In the goods of Colonel John Shelton, deceased* (1846) Montriou Reports, 167 at 173 : Sanjeeva Rao's Indian Decisions, Old Series, Volume I, page 590, where the nature of the proceedings is described thus:

A contest for probate is a suit to try the question of testacy or intestacy, and that administration is a matter of civil right.

5. This is the view which has also been taken by a Bench of this Court in *Rodrigues v. Mathias* : (1911)21MLJ481 . In that case the question was what is the stamp duty payable in the High Court on a -memorandum of appeal presented against an order granting probate by a District Court? In dealing with that question *Sankaran Nair and Munro, JJ.*, observed thus:

We also think that on principle an ad valorem stamp should not be levied in such cases. 'The only title which the order appealed against gives to the petitioner is the right to administer the estate and if he has to sue to recover the estate he will have to pay stamp duty on its value. We do not think stamp duty on the value of the estate should be twice exacted.

6. Having regard to the nature of the right that is agitated in a probate proceeding, the subject-matter of the appeal in my opinion must be deemed to be incapable of valuation or the person who is preferring the appeal is entitled to put his own valuation upon it. In *Miss Eva Mount Stephens v. Mr. Hunter Garnett Orme* I.L.R.(1913)All. 448, the view taken was that the subject-matter in dispute in an appeal against an order issuing probate was impossible to be estimated at a money value. There is no provision in the Original Side Rules as to payment of any fixed fee in regard to matters which are incapable of valuation as provided in the Court Fees Act. The only indication that can be gathered from the Fees Rules is a note to Rule No. 1 in regard to a plaint which is that the plaint shall contain a statement of the value of the subject-matter of the suit for purposes of calculating the court-fees payable thereon under this item. The plaintiff shall, in preparing the statement, follow as far as possible the provisions of Section 7 of the Court Fees Act, 1870, as amended by Madras Act V of 1922. Section 7 of the Court Fees Act does not provide for all cases. It seems to me that if the subject-matter of an appeal is 'viewed to be incapable of valuation which in my view is the correct basis, the minimum fee for the memorandum of appeal provided according to the High Court Fees Rules, namely, Rs. 225 is the proper fee leviable. But if the appellant is entitled to put his own valuation - and he has put his valuation here at

Rs. 2,000 - the fee that has been paid is the proper fee. I therefore decide that the appellant need not pay any further court-fee. The Government Solicitor will get his costs Rs. 35 from the Government.

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