

In Re: Bhubaneswar Trigunait

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Court : Kolkata

Decided On : Apr-06-1925

Reported in : (1925)ILR52Cal871

Judge : Sanderson, C.J. and ;Rankin, J.

Appellant : In Re: Bhubaneswar Trigunait

Judgement :

Rankin, J.

1. This is an appeal from an order, dated 2nd February 1925, by which an application for Letters of Administration has been dismissed. The deceased Bhubaneswar Trigunait, a Hindu governed by the Mitakshara School of Hindu Law, died intestate on the 22nd August 1924. The applicants are his younger brother and his two sons. The deceased at the time of his death was a member and the karta of a joint Hindu family consisting of himself and the present applicants. In May 1921 a sum exceeding two lacs of rupees was received in respect of a joint ancestral colliery and the deceased opened a current account in his own individual name with the Calcutta Branch of the Allahabad Bank, Limited, and paid the said sum to the credit of that account. At the date of his death there was a sum of Rs. 39,261 at credit in the said account.

2. The applicants allege that the Bank have refused to pay this sum unless Letters of Administration or a Succession Certificate are obtained, on the ground that the

money is payable to the legal representative of their customer.

3. They accordingly applied for a grant of Letters of Administration limited to this particular asset. They base their claim on the view that the deceased was a sole trustee and they maintain that no sum is payable under Article 11 of the first schedule of the Court Fees Act. The affidavit of assets or valuation of the property in the form set forth by Schedule III of the said Act is made out as follows, viz., the only asset entered in Annexure A is the sum of Rs. 39,261 already mentioned and in Annexure B this sum is entered as an item which the applicants are by law allowed to deduct as being 'property held in trust not beneficially or with general power to confer a beneficial interest'.

4. This affidavit of assets having been sworn on the 19th January 1925, the applicants on the 21st January 1925, obtained a certificate from Mr. Maurice Remfry as Taxing Officer within the meaning of Section 5 of the Court Fees Act, 1870, to the effect that 'the fee prescribed by Article 11 of Schedule I is not payable in this case it appearing from the affidavit that the property mentioned therein was held by the deceased in his life-time not beneficially or with general power to confer a beneficial interest'.

4. When the application for the grant was laid before the Judge in Chambers in the ordinary course of non-contentious business, his attention was very properly drawn by the officer acting as Registrar to the terms of Section 19-I of the Court Fees Act and to the question whether the ad valorem fee is legally payable. The learned Judge dismissed the application for a grant of Letters being of opinion that a fee under Article 11 of Schedule I was chargeable.

5. On this appeal the first question which arises is a question of procedure. For the sake of brevity the ad valorem fee prescribed by Article 11 of Schedule I of the Court Fees Act may be referred to as probate duty. Chapter II of the Court Fees Act consists of three Sections only (3---5) and deals with High Courts and Presidency Small Cause Courts Section 3 provides that in High Courts the fees levied under Section 107, Clause (e), of the Government of India Act and certain other fees are to be collected in a certain manner detailed in Chapter V. Among the other fees express mention is made of probate duty (No. 11 of Schedule I) and

of the fixed fee leviable on caveats (No. 12 of Schedule II). No doubt has at any time been felt either in this Court or in Bombay that Section 5 applies to probate duty [see note (a)]. That section assumes that a Court collecting fees will have some officer or Court clerk whose duty it is to see that the fees in any particular case are paid. It provides that if a difference arises between such officer and any suitor or attorney as to the necessity of paying any fee or the amount thereof the question shall be referred (in a High Court) to the Taxing Officer, i.e., to the officer appointed by the Chief Justice in that behalf. The Taxing Officer is to do one of two things. He is to make up his mind whether the question is one of general importance. If he thinks it is, he is to refer it to the Chief Justice or a Judge appointed by the Chief Justice for final decision. If he does not think it is, he is to decide it himself and his decision is to be final. Bearing in mind that probate duty is thus put upon the same footing in a High Court as ordinary Court-fees (levied in this Court under Chapter XXXVI of Original Side Rules), one may ask what is to happen if no difference arises between the suitor and the Court clerk with the result that Section 5 does not come into play. In the case of ordinary Court-fees Section 28 invalidates the document if not properly stamped but provides for an opportunity to be given in proper cases to remedy the defect. Section 28 however does not apply to probate duty (Section 19-K) since it would be highly impracticable to make the validity of testamentary grants depend on questions as to the sufficiency of the stamp. By Section 19-H notice of every application for Probate or Letters of Administration has to be given to the Chief Controlling Revenue Authority and means are provided whereby the Revenue Authorities may check valuations and recover the proper fees. Section 19-I under which the learned Judge in this case has purported to act, means that an order for a grant shall not be made until payment of the duty. The applicant must have filed what the section calls a 'valuation of the property in the form set forth in the third Schedule'. The Court is not required to satisfy itself that the 'valuation' is correct but only that the fee mentioned in No. 11 of the first Schedule has been paid on such valuation'. The question is (i) whether Section 19-I imposes on the Court a duty to see that deductions entered in Annexure B are rightly so entered. If so, a further question arises in a High Court, namely, (ii) whether this duty is to be discharged, independently of Section 5.

6. Now In the Goods of Omda Bibee (1899) I. L. R. 26 Calc. 407, an application was made to Sale J., for a testamentary grant with a claim to complete exemption from duty. As no certificate from the Taxing Officer was produced, that learned Judge after citing the provision made by Section 5 and the provision for notice to the Chief Controlling Revenue Authority, returned the petition to the applicant in order that it might be re-submitted with a certificate from the Taxing Officer. By rule 4 of Chapter XXXV every application for a grant has now to 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. Now apart from Section 5 of the Court Fees Act, it does not appear that there is such a person as a Taxing Officer nor does it appear that the Taxing Officer has as such any duties save those imposed by Section 5 or duties incidental thereto. It would appear that in a matter so important as a claim to exemption from probate duty the ordinary Court clerk or officer whose duty it is to see that Court-fees are paid is not authorised in this Court to allow such claims on his own responsibility and that all such claims are required to be queried and referred to the Taxing Officer. I think this involves that the Taxing Officer's decision is a final decision under Section 5 and that in this case the learned Judge had no authority to review it under Section 19-I. Having regard to the purpose and subject matter of the section, it would be in the last degree unreasonable to regard the Taxing Officer as a person whose jurisdiction arises solely upon a difference between the Court's officer and the suitor. At this stage there is only one party; the Court's officer is not a party. The section is not intended to confer on suitors or attorneys a right to take first the opinion of the Court clerk as though he were a judicial officer and a right that the matter shall go on further at that stage if that opinion is in their favour. If it did mean this then no doubt rule 4 of Chapter XXXV would conflict with this intention and in testamentary matters would impose upon the Taxing Officer duties which are not imposed upon him by the Act. The rule, however, is quite in harmony with the true meaning of the section and with correct practice thereunder. It appears to have been made in 1912-13, when it crystallized the practice, which may be traced back doubtless to the judgment of Sale J., already cited which called attention to the matter.

7. In the case of Kasturi Chetti v. Deputy Collector, Bellary (1898) I. L. R. 21 Mad. 269 there appears to have been an insufficient stamp and it does not appear that

the matter had at any time, come before the Taxing Officer for his consideration. The judgment in that case contained the following observations. 'In the present case there was no such difference or reference, nor was there any decision by the Taxing Officer, except such as might be implied from the admission, of the appeal. That, in our opinion, is not such a 'decision' as the section requires. We think that, unless the question was raised before the Taxing Officer and unless he brought his mind to bear on the question and decided it, Section 5 of the Court Fees Act had no application'. Speaking for myself, I entirely agree with the test laid down in the last sentence which I have cited from the judgment, but I entirely disagree with the proposition that the jurisdiction of the Taxing Officer arises like the jurisdiction of an arbitrator upon a difference of opinion between a Court clerk and a suitor and upon some sort of formal reference to decide that dispute. For the reasons I have already given I consider that the test ultimately arrived at in that case was correct, and that the intention of Section 5 is merely to ensure, as the learned Judges of the Madras High Court held, that the question should be raised before the Taxing Officer, that he should bring his mind to bear on the question and that he should decide it. He could not decide it finally against a suitor without hearing him.

8. In my opinion the decision of the Taxing Officer under rule 4 of Chapter XXXV is final by virtue of Section 5 of the Act. Probate duty being treated in the same manner as any other Court-fee a suitor who satisfies the Taxing Officer satisfies the Revenue---at least for the time being. It is not necessary to consider here whether his decision hampers the Collector in claiming more money under Section 19-H. On the other hand, if the suitor does not satisfy the Taxing Officer he must either pay or persuade the Taxing Officer that the question is one of general importance, so as to entitle the suitor to the decision of the Chief Justice or other Judge. The object of the Act is to secure payment prior to litigation and to afford as little scope as possible for litigation over the payment. In High Courts Section 19-I which applies to all Courts invested with testamentary jurisdiction, must be applied with reference to Section 5. In this High Court questions as to the necessity of paying probate duty or as to the amount thereof can not arise independently of Section 5.

9. On this appeal we thought it necessary to order notice to the Government Solicitor, and Mr. Advocate-General appeared and argued the matter on its merits. Upon fuller consideration it appears to me that one of the main objects of Section 5 and of other provisions of the Court Fees Act is to obviate the necessity of an appearance by the Revenue Authorities prior to the issue of a grant.

10. Several questions of difficulty and importance arise upon the merits of the present application. Notwithstanding the decision In the Goods of Pokurmull Augurwallah (1896) I. L. R. 23 Calc 980, upon a reference by the Taxing Officer under Section 5 of the Act, it will be for the Taxing Officer in any future case similar to the present to consider whether in view of the difficulties and divergence of opinion disclosed by subsequent decisions of other Courts [(see note (b))] he should refer it to the Chief Justice. There has been and there is likely to be a continuous increase in the number of cases in which shares, Government securities and Bank accounts belonging to Mitakshara joint families stand in the name of one member. It is plain that further provision by the Legislature is imperatively required to solve the difficulties which arise in making title to such property upon the death of the holder. Decisions given upon references made under Section 5 of the Act or in appeals from District Courts acting under Section 19-I cannot be expected to put this important matter on a proper basis.

Note (a).

11. In the Goods of Gladstone (1876) I. L. R. 1 Calc. 169. In the Goods of Rushton (1878) I. L. R. 3 Calc. 736. In the Goods of March (1879) I. L. R. 4 Calc. 725. In the Goods of Froeschman (1893) I. L. R. 20 Calc. 575. In the Goods of Abdul Aziz (1896) I. L. R. 23 Calc. 577. In the Goods of Pokurmull Augurwallah (1896) I. L. R. 23 Calc. 980. In the Goods of Ram Chunder Ghose (7) (1897) I. L. R. 24 Calc. 567. In re Esekiel Joshua Abraham (1896) I. L. R. 24 Bom. 139. In the Goods of A. A. D. Sassoon (1897) I. L. R. 21 Bom. 673. See also In the matter of Desu Manavala Chetty (1909) I. L. R. 33 Mad. 93, 95.

Note (6).

12. Bank of Bombay v. Ambalal Savabhai (1900) I. L. R. 24 Bom. 350. Collector of Ahmedabad v. Savchand (1902) I. L. R. 27 Bom. 140. Collector of Kaira v. Chunilal (1904) I. L. R. 29 Bom. 161. In the matter of Desu Manavala Chetty (1909) I. L. R. 33 Mad. 93, 95. Rashinath Parsharam v. Gouravabai (1914) I. L. R. 39 Bom. 245. Keshavlal Punjalal v. The Collector of Ahmedabad (1923) I. L. R. 49 Bom. 75.

13. Sanderson C. J. I agree. It is to be noted that the case of In the Goods of Pokurmull Augurwallah (6), apparently was not argued before the learned Judges who decided it, and it may be that the points, which were raised on the merits in this case, were not brought to the notice of the Court. In view of the decision at which we have arrived upon the question of procedure, it is not necessary for the Court to express any opinion as to the correctness of the abovementioned decision.

14. I agree with my learned brother that it is eminently desirable that the matter should be dealt with by the Legislature not only because of the various decisions of the Courts with respect thereto, but also because of the importance of the matter to members of joint Mitakshara families.

15. We, therefore, direct that a copy of our judgment be sent to the Government of India.

16. The result of our decision is that the appeal is allowed and, we direct that Letters of Administration do issue as prayed. We make no order as to costs.

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