**(1949) 09 MAD CK 0005**

**In the Madras High Court**

Bhagavathula Venkatachalapathi APPELLANT

Vs

The Province of Madras RESPONDENT

**Date of Decision :** 02-09-1949

**Acts Referred:**

**Citation :** (1949) 2 MLJ 632

**Hon'ble Judges :** Mack, J

**Bench :** Division Bench

# Judgement

Mack, J.—The petitioner who applied for a succession certificate seeks to revise an order by the learned District Judge, Guntur, directing

him to pay stamp duty on the aggregate amount of debts and securities for which the certificate was applied rejecting his contention that he should

pay stamp duty under Schedule I, Article 12 of the Court-Fees Act on the individual debts. Schedule I, Article 12 prescribes a stamp of 2 per

cent, ""on the amount or value of any debt or security specified in the certificate "", if less than Rs. 5,000, and 3 per cent, on the amount or value of

any debt or security to which the certificate is extended.

2. There is no Madras decision on this point. My attention has been drawn to a ruling by the learned Master of the High Court in 1937 in which

following the Bench decision of the Lucknow High Court in Pirthwi Nath Bhargava v. Estate of late Triloknath Bhargava I.L.R.(1934)Luck. 196,

he took the view that stamp duty was payable on the individual debts and securities and not on the aggregate. It is said that this practice continues

on the Original Side of the High Court.

3. Two views have been taken about the interpretation of the words "" on the amount or value of any debt or security specified in the certificate "".

Meredith, J., of the Patna High Court followed the opinion of the learned Bench in the Oudh decision. In a more recent Bench decision of the

Bombay High Court, In Re: Sunderji Laljee Khakhar, Stone, C.J. and Kania, J., as he was then, held that the words "" any debt or security "" in this

context embraced all the debts and securities specified in the certificate and that it must be the aggregate of all which determines the amount of the

stamp to be paid and not each of the items as specified in the application. I have no hesitation in adopting the view of the learned Bombay Bench.

In the first place it is extremely difficult to base the interpretation that individual debts were contemplated by Schedule I, Article 12, on any

recognised fiscal principle. An elementary rule of taxation is to graduate the scale of fees payable in proportion to the relief sought or the benefit to

be reaped. It appears to me quite immaterial from the point of view of the person applying for succession certificate whether he collects Rs.

50,000 from one person, two persons or 50 persons. He still gets Rs. 50,000. It is reasonable on accepted fiscal and equitable considerations that

he should pay stamp duty on Rs. 50,000 whether he seeks to collect from one, two or 50 persons. If we adopt the alternative interpretation of

Which I am bound to say at first sight the words are also capable, viz-, individual debts or securities, I find it difficult to give this article any fiscal

meaning. In Bombay and also in Calcutta (In re Nalinikanta Pal ILR (1933)cal. 1262), learned Benches have taken the view which I prefer to

follow, there being no decision by any Madras Judge on this point that the aggregate of the debts and securities must determine the stamp duty. I

hold that the learned Judge has adopted the correct view as regards the stamp payable, viz., on the aggregate and not on individual debts under

Schedule I, Article 12. The petition is dismissed, but in the circumstances without any order as to the costs.