

(1927) 07 CAL CK 0069
In the Calcutta High Court
In Re : Aratoon Stephen

Date of Decision : 04-07-1927

Acts Referred:

Citation : (1927) 07 CAL CK 0069

Judgement

Costello, J.—This is an application on behalf of the executors named in the Will of Aratoon Stephen deceased for grant of probate of a Will, dated 15th August 1925, with a codicil thereto, dated 25th March 1925. The matter comes before the Court in these circumstances. By the Will to which I have referred the deceased appointed as his executors Alfred Ernest Mitchell, Gregory Avatoom, and two other persons. Of the last two, one renounced his executorship and the other is at present residing outside the jurisdiction of the Court; and accordingly Alfred Ernest Mitchell and Gregory Avatoom applied for probate of the Will. These executors duly made an affidavit in which is purported to set forth all the properties and credits of the deceased so far as the deponents were aware at the time when the affidavit was made. These were set forth in Annexure A, and in Annexure B the executors set forth all the items which they say represent the deductions they are entitled to make for the purpose of arriving at the net assets of the estate. The valuation of the moveable and immoveable property of the deceased amounted to a total sum of Rs. 1,12,93,277-15-7. The amount of debts due and owing from the deceased payable out of the estate amounted according to the affidavit to the sum of Rs. 74,38,568-7-3. This sum deducted from the amount of the gross assets leaves a balance of Rs. 38,54,709-8-4, and that sum is said to be the net total upon which duty has to be paid, and in fact the proper amount of duty (or court-fees) has been paid on that amount. But included in the sums which the executors claim to deduct, and therefore taken into account in arriving at that net total of Rs. 38 lakhs odd, is a sum of Rs. 10,000 stated to be the amount of funeral expenses. The learned Registrar in dealing with this matter has refused to grant a certificate under r. 4, Chap. XXXV of the Rules of this Court upon the ground that that sum of Rs. 10,000 for funeral expenses is not in fact the actual amount which has been paid or will be paid for funeral expenses, but is merely an estimated sum, and is in the opinion

of the Registrar extravagant and excessive. The learned Registrar took the view that the only sum which can properly be deducted and set out in Annexure B for that purpose is the precise amount paid to the undertaker in respect of the funeral expenses actually incurred, and no more; and the learned Registrar apparently took that view because, as he said, otherwise it might be possible for an executor or executors to put into Annexure B some fancy or extravagant sum as the estimated amount of funeral expenses, thereby reducing or even wiping out altogether the final total upon which duty should be paid. The learned Registrar accordingly considered it his duty to investigate the matter in order to ascertain whether as a fact the funeral expenses were of the amount specified or not. It may be or may not be the case, that in this particular instance the funeral expenses will amount to a sum of Rs. 10,000. In my opinion having regard to the size of the estate and the position which the deceased held before his death, the sum does not appear unduly extravagant, but I do not think the Court, upon an application of this kind, is really concerned with that question one way or the other.

2. It is provided in sec. 194 of the Court Fees Act, sub-sec. (i) that " Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector." That sub-section of course does not apply in the present instance. By sub-sec. (2) it is also provided: "Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority for the local area in which the High Court is situated." And sub-sec. (3) provides: "The Collector within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if on such inspection or otherwise, he is of opinion that the Petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the Petitioner (either in person or by agent), and take evidence, and enquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been underestimated, may require the Petitioner to amend the valuation." And sub-sec. (4) provides: "If the Petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court, before which the application for probate or letters of administration was made, to hold an enquiry into the true value of the property." And then there is a proviso applying certain limitations with regard to the time within which such a motion must be made.

3. It seems to me that the learned Registrar has taken an erroneous view as to what are the true functions of the Court upon an application for probate. There is in my judgment nothing whatever in the Court Fees Act of 1870 which requires that upon an application for a grant of probate the Court should conduct an investigation as to whether the valuation put upon the assets of the estate of the

deceased has been properly arrived at by the executors who made the affidavit or whether it has not. That is entirely a matter for the revenue authorities; all that the learned Registrar has to do and indeed all that the Court is concerned with so far as this point goes is to be satisfied that the appropriate duty has in fact been paid upon the basis of the net valuation set forth in the affidavit by the executors. Thereupon (provided that in fact such duty has been paid) it is the function of the Registrar to issue a certificate to that effect.

4. As I have already said in the present case--with regard to the estate of the late Aratoon Stephen with which we are now concerned--it is not disputed that the right amount of duty has in fact been paid upon the basis of the net total of Rs. 38,54,709-8-4: and that being so, I am clearly of opinion that it was not obligatory upon the Registrar to enquire into the question of whether or not the deductions set forth in Annexure B including the deduction of Rs. 10,000 for funeral expenses were properly made or not. Not only was it not obligatory on the Registrar to concern himself with these questions, but on the contrary these matters were really no concern of the Registrar at all. Once the learned Registrar was satisfied that the appropriate duty had been paid on the net amount of the valuation as put forward by the executors, then in my opinion it was his duty to have issued the certificate as provided in r. 4, Chap. XXXV of the Rules of this Court.

5. This case raises, as will be seen from what I have already stated, a very important question with regard to the procedure and practice upon the granting of probate in this Court. Although the Court is in one sense in no way bound by the expression of opinion which is contained in a correspondence between the Home Department of the Government of India and this Court, it is instructive to observe that in a letter from the Deputy Secretary of the Government of India to the Registrar of this Court, dated 20th February 1913--the effect of which is summarised in a note on page 410 of Mr. Hecke's Edition of the Rules and Orders of this Court--it was stated as follows:--"The Government of India agree with the High Court in thinking that it is not the intention of the legislature in enacting Act II of 1899 (which is an amendment of the Court Fees Act of 1870) that the Civil Court should check the valuation put upon the various items of property set out in the affidavit of valuation according to the form prescribed in the third schedule of the Act, but should merely satisfy themselves that the appropriate fee has been paid on the valuation declared by the executors themselves. The duty of checking the correctness of the valuation itself is a matter for the revenue authorities on receipt from the Civil Court of notices of application for probate or administration under sec. 19H of the Act." The learned Registrar in this present instance, and apparently in other cases of a similar character, seems to have taken the view that the word "valuation" in this letter from the Government of India, dated 25th February 1913, referred solely to the schedule set out in Annexure A, and that, therefore, although it was not necessary that he should check that schedule, it was still obligatory upon him to check and investigate the schedule set out in Annexure B. I hold that that is a

too narrow and an altogether wrong interpretation to put upon the word "valuation" as used in this letter even if one is to be guided by this letter and not to act solely upon the strict phraseology of the relevant Acts themselves. In my opinion "valuation" really means the net value of the estate after taking consideration on the one side the assets as set forth in Annexure A and on other the liabilities as set forth in Annexure B. Placing that interpretation upon the word "valuation" I entirely agree with what is contained in the letter of 20th February 1913 and being careful to bear in mind that meaning of the word "valuation" for the present purpose, I adopt the language of this letter for the purpose of my present judgment, and I say that Civil Courts ought not to concern themselves to check the valuation put upon the various items of property set out in the affidavit of valuation according to the form prescribed in the third schedule of the Court Fees Act, but should merely satisfy themselves that the appropriate fee has been paid the valuation declared by the executors themselves. The duty of checking the correctness of the valuation is entirely a matter for the revenue authorities on receipt from this Court of notice of grants of (application for) probate or letters of administration as the case may be. I accordingly say that in my view the proper practice upon an application of this kind is that the learned Registrar should merely satisfy himself that all the proper duty has been paid in accordance with and upon the basis of the figures which the executors themselves put forward in their affidavit of valuation. If that valuation is not correct, it is the business not of this Court but of the revenue authorities to make such investigation as they think fit, and if they are so advised to move the Court under sub-sec. (4) of sec. 19H of the Court fees Act of 1870. That section provides ample machinery for ensuring that sooner or later the proper amount of duty will be paid by the executors. So far as the present case is concerned the executors themselves fully appreciate what their duties and responsibilities in the matter are and they have undertaken that in case it shall hereafter be found that there are assets belonging to the estate of the deceased which have not been discovered or ascertained at present, they will make the necessary adjustments and in due course pay the appropriate duty.

6. I have been referred to the case, *In the goods of Omda Bibee I. L. B. 26 Cal. 407: S.C. 3 C. W. N. 392 (1899)*. There Mr. Justice Sale referring to the Court Fees Amendment Act (XI of 1899) said: "By that Act the High Court when an application is made to it for probate or letters of administration is required to cause notice to be given to the Chief Controlling Revenue Authority, that is, to the Board of Revenue. The object is not to delay the grant, which may be made as soon as the Court is satisfied that the advalorem fee payable on the valuation of the assets furnished on the prescribed form has been paid. The fee is required to be prepaid to the satisfaction of the Court." It seems to me to be clear from that judgment of Mr. Justice Sale that he was holding the view which I am now expressing, namely, that it is not the duty of the Court in any way to go into the question of whether the "valuation of the assets furnished in the prescribed form" is in fact an accurate and true valuation or not. The sole function of the

Court as a condition precedent to the grant of probate or letters of administration as the case may be touching the valuation is to be satisfied that duty has in fact been paid upon the valuation put forward by the applicants for probate or letters of administration. Anything beyond that is entirely a matter for the revenue authorities. All that the Court is required to do in order to safeguard the requirements of the Exchequer is that it should cause a notice to be given to the revenue authorities that the grant has been made. After that the matter comes within the purview and the jurisdiction of the revenue authorities at any rate up to the point where they have any difficulty in the way of collecting such revenue as they think ought to be paid. As soon as any real difficulty arises there is, as I have already pointed out, the appropriate machinery for dealing with the matters as provided in the sub-sections of sec. 19H of the Act of 1870. It follows from what I have said that as in fact the right amount of duty has in the present instance been paid on the net total valuation prepared by the executors, I have to direct that the Registrar do issue the necessary certificate to that effect and I accordingly grant probate of the Will of Aratoon Stephen who died on the 14th May 1927 which Will is dated 15th August 1925, and also of the codicil annexed thereto, dated 25th March of the same year. Upon the granting of the certificate by the Registrar probate of the said Will and codicil will issue.