(1916) 06 CAL CK 0009

In the Calcutta High Court

In Re: Sarajbashini Debi

Date of Decision : 30-06-1916

Acts Referred:
Succession Certificate Act, 1889 — Section 14

Citation : 36 Ind. Cas. 125

Hon'ble Judges : Teunon, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is a Rule calling on the Collector of Alipore and the Government Pleader to show cause why in the circumstances set out in the petition, the order of the District Judge of the 24-Parganas demanding stamp duty on the certificate ordered to be granted to the petitioner should not be set aside. The applicant applied to the learned District Judge for a certificate under the Succession Certificate Act in succession to her mother with respect to some Government promissory notes. The mother acquired those promissory notes from the father of the applicant and had taken out a certificate and paid the stamp duty under the terms of the Succession Certificate Act. The argument that has been addressed to us in this case does not turn upon the wording of the Statute imposing a duty in favour of the Crown, but on a comparison of the duties payable under the Succession Certificate Act and the duties payable on grants of Probate or Letters of Administration under the Court Fees Act. It is said that because in this case a grant de bonne grace to the daughter could have been made in respect of the property remaining un-administered by the mother if she had obtained Letters of Administration to the estate of her deceased husband, the Court should issue to the daughter a certificate under the Succession Certificate Act free of duty. The short answer to that is that one fiscal Act cannot be construed by another fiscal Act. The second answer to that is that under the Court Fees Act, in cases of grant of Probate or Letters of Administration the Government receives from the applicant a tax ''upon the whole of the value of the estate passing on the death of the deceased and, therefore, the full tax having once been paid on the value of the estate, the issue of a further grant in respect of the same property, or a portion thereof is made without charging any further duty, in the case of a certificate under the Succession Certificate Act, the duty is paid to the Crown only in respect of such debts as the applicant requires the certificate to enforce or collect; no duty is payable to the Crown on the whole value of the estate but usually on the value of a small portion that cannot be got in without the assistance of the Court or without the production of a Succession Certificate: such as Government promissory notes, stocks in shares in Joint Stock Companies and similar things. Under the terms of Section 14 of the Succession Certificate Act, "every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the First Schedule to the Court-Fees Act, 1870, in respect of the certificate or extension applied for." It cannot be doubted that the present application comes under those words exactly. It is an application for a certificate and, therefore, a further Court-fee has to be paid. It may be, as the learned Judge pointed out, that the Legislature recognizing that, in cases coming under the Succession Certificate Act, the Crown becomes entitled to a duty on a very small portion of the estate, deliberately drew a distinction between the duties payable on grants of Probate or Letters of Administration and on grants under the Succession Certificate Act. I agree with the view adopted by the learned District Judge. The present Rule must, therefore, be discharged with costs. We assess the hearing-fee at two gold mohurs.

Teunon, J.

2. I agree.

