(1944) 11 PAT CK 0011

In the Patna High Court

In Re: Srimati Debirani Debi

Date of Decision : 24-11-1944

Acts Referred:

Court Fees Act, 1870 — Section 5
Succession Act, 1925 — Section 370(2)

Citation : AIR 1945 Patna 318

Hon'ble Judges : Meredith, J

Bench : Division Bench

Judgement

Meredith, J.—This is a reference u/s 5, Court-fees Act. The learned Taxing Officer has posed two questions for me with regard to the court-fees payable on an application for a succession certificate.

2. Under the Bihar and Orissa Amendment of Article 12 of Schedule 1, Court-fees Act, it is provided inter alia that a certain court-fee shall be payable

when the amount of value of any debt or security specified in the certificate u/s 8 of the Act exceeds one thousand rupees, on such amount or value up to ten thousand rupees.

3. The first question is whether in the case of shares in a company the individual share is to be regarded as the security under this provision, or rather the share certificate or scrip which includes all the shares held in the company by the individual in question. The second question is, if the scrip is to be regarded as the individual security, should shares acquired by the same party on the same date by the same transaction by different scrips be assessed according to those scrips, or can the artificial division be ignored ?

4. No rulings can be found on the Bihar and Orissa Amendment, and indeed I have been unable to find any rulings at all that help towards a solution of these questions. There is a ruling of the Oudh Court with regard to Article 12, Schedule I, in that province, where the amendment appears to be in similar terms. This case is Pirthwi Nath Bhargawa v. Trilok Nath Bhargawa A. I. R. 1934 oudh 414. The learned Judges said:

We are satisfied that the phraseology of Article 12, Schedule I, admits only of one construction.... If it was intended that the amount payable in respect of an application for a certificate under the Succession Act should be calculated on the total amount of the debt or securities in the application, that intention, in our opinion, should and could have been made clear in the phraseology of the article. The article however, makes reference to ''the amount or value of any debt or security,'' and we think that it is impossible to interpret these words as referring to anything except individual debts and individual securities.

5. This ruling has been followed by a learned Judge of the Nagpur High Court in AIR 1940 400 (Nagpur) . The wording of the Central Provinces Amendment appears to be similar. The learned Judge says:

In the Bengal Amendment Act, the Legislature has... succeeded in making its meaning clear. It imposes a fee when the amount or value of any debt or security exceeds Rs. 1000 and also when the aggregate amount or value of any debts or securities, exceeds Rs. 1000.'' If it was the intention of the legislative authorities of the Central Provinces to arrive at this result they have certainly failed to express their intention in language capable of that interpretation ....

In A. I. R. 1934 Oudh 414, the words to be interpreted were the same as here, and I agree with the learned Judges in that case that it is impossible to interpret these words as referring to anything except individual debts and individual securities. Even if the phraseology gave rise to doubt, the benefit of that doubt would have to be given to the subject rather than to the State in dealing with a fiscal Act.

6. The reasoning in those cases appears to me sound, and I consider that the fee is payable on each individual security and not on the total. But the question is, what is the individual security? It is to be regretted that in a fiscal provision the Legislature has used words which do not make its meaning clear. It seems to me, however, that in the case of shares in a company, the intention must have been to refer to the share certificate or scrip composing the block of shares and not to each individual share. It is so unusual for an individual share to be of a value of more than Rs. 1000 that the Legislature could hardly have contemplated making a provision only for such extremely rare cases. That would practically mean that no duty would ever be payable on securities composed of shares in a company, and that could hardly have been the intention. A certificate under the common seal of a company specifying any shares or stock held by any member of the company is prima facie evidence of the title of the member to the shares or stock, and I think, therefore, that the member''s security can fairly be said to be his share certificate. The share certificate

is a declaration by the company to all the world that the person in whose name the certificate is made out, and to whom it is given, is a share holder in the company, and it is given by the oompany with the intention that it shall be so used by the person to whom it is given, and acted upon in the sale and transfer of shares (per Cookburn C. J. In re Bahia and San Francisco Railway Co. (1868) 3 Q. B. 5843.

7. This being so, it can, I consider, fairly be regarded as the membefr''s individual security. It is quite true that in Section 370 (2), Succession Act (39 of 192S) "security" is defined inter alia as "(c) any stock or debenture of, or share in a company or other incorporated institution." But I think the word "share" is here used in reference to the holding in the company and not to each individual share. The holding in a company can as well be regarded as the member''s share in that company as can the individual share. My answer to the first question is, therefore, that the share certificate or scrip is to be regarded as the individual security.

8. I now turn to the second question. Assuming, as I think one must, that the word "security" in Article 12)'' Schedule I, is used with reference to the definition of security in Section 370 (2), Succession Act (Section 8, Succession Certificate Act) it is clear that the word is used not in the narrow English sense, but in a very wide sense. It means inter alia as I have just stated, a share in a company. "A share", as I have said, means, in my judgment the actual share or holding of a member in the company, and does not refer to individual company''s shares in the technical sense. It follows that the entire holding of an individual in a company must be regarded as his security, and, therefore, it makes no difference whether that share is covered by one share certificate or more than one share certificate. The answer to the second question must, therefore, be that an artificial division into different scrips or share certificates makes no difference for the purpose of assessing court-fees. The entire holding in the company must be taken to be one unit and oSne security.