

(1945) 06 CAL CK 0007
In the Calcutta High Court

In the Goods of Raja Prabhat Chandra Barua, deceased

Date of Decision : 06-06-1945

Acts Referred:

Citation : (1945) 06 CAL CK 0007

Judgement

Das, J.—This is an application made by the Collector of Calcutta under sec. 19H of the Indian Court Fees Act for an enquiry as to the true value of the property of Raja Prabhat Chandra Barua, deceased. The facts are as follows: Raja Prabhat Chandra Barua was the owner of a zemindary commonly known as Gouripur Raj Estate in the Province of Assam. He died on September 25th, 1942 at Gouripur after having made and published his last Will and testament whereby he appointed his three sons and two daughters the executors and executrices. The executors and executrices named in the Will applied for probate on April 5th, 1943. In the affidavit of assets the estate of the deceased was valued at Rs. 28,78,099-3-10 out of which a deduction of Rs. 26,49,485-14-9 was claimed on account of debts and the net value of the estate was shown as Rs. 2,28,613-5-1. From the affidavit of assets it appears that the deceased left properties situate in the provinces of Assam, Bengal and in the United Provinces of Agra and Oudh. The bulk of the properties were, however, situate in the province of Assam. The executors and executrices claimed that the ad valorem fee should be calculated according to the rates prevailing in Assam. As it was necessary, for purposes of administration, that the grant of probate should be obtained as early as possible the executors and executrices paid ad valorem fee at the rates prevailing in Bengal under the Court Fees Act as amended by Bengal Act. The, however, reserved their right to claim a refund. Probate was granted to the executors and executrices on April 13th, 1943. The Collector of Calcutta being of opinion that the estate has been under-estimated caused an enquiry to be made by the Probate Deputy Collector on notice to the executors and executrices and as a result of such enquiry came to the conclusion that the estate had been under-estimated by Rs. 9,74,759-8-7. By a notice dated August 7th, 1944, the Collector of Calcutta required the executors and executrices to amend the valuation and to pay the deficit fee of Rs. 65,556-1-0 assessed at Bengal rate on

the sum of Rs. 9,74,759-8-7. The executors and executrices refused to comply with the demand, first because they did not accept the correctness of the Collector's valuation and secondly as they were not prepared to pay duty at the rate prevailing in Bengal. Hence the present application by the Collector of Calcutta under sec. 19H of the Indian Court Fees Act.

2. The questions that have arisen relate to fees payable under the Court Fees Act in connection with the grant of probate by this Court in its Testamentary and Intestate Jurisdiction. It seems to me that in point of form this application should have been more appropriately and logically made to this Court in that Jurisdiction. The application in *In the Goods of James Raley Augustus Stevenson deceased* 6 C.W.N. 898 (1902) was made to this Court in its Testamentary and Intestate Jurisdiction. The petition in the present case is wrongly made to this Court in its Ordinary Original Civil Jurisdiction. The petition should be amended.

3. Under the proviso to sub-section 4 of section 19H no application under that section can be made after the expiration of 6 months from the date of the exhibition of the inventory required by section 317 of the Indian Succession Act 1925. It appears that the statutory inventory was filed on March 6th, 1944. The period of six months thereafter expired on September 6, 1944 when this Court was closed on account of annual vacation. The present application was noted as made on November 13th, 1944, when this Court re-opened. As no point has been taken as to this application being out of time I need say nothing more about it.

4. The executors and executrices who have appeared on this application have taken exception to the Collector's valuation in two particulars only. The first exception relates to his valuation of the zemindary known as Gouripore Raj Estate at Rs. 25,48,035 and the second exception to his valuation of the trust estate at Rs. 2,16,000.

5. I must observe that the petition of the Collector is extremely vague and meagre. As pointed out in *In the Goods of James Raley Augustus Stevenson deceased* 6 C.W.N. 898 (1902) it is not enough for the Collector simply to make an application for enquiry; he should place before the Court materials showing that an enquiry was needed, i.e., he should make a case for enquiry upon definite facts. The petition is defective in this respect. The lacunae in the petition, however, are supplied in the affidavit in opposition and it will be a useless waste of time and money to require the Collector to amend his petition or file a further affidavit. I, therefore, proceed to deal with the points in controversy between the parties.

6. In the affidavit of assets the executors and executrices valued the zamindary estate at Rs. 17,50,000 on the basis of 10 times the annual net profit of Rs. 1,75,000. In arriving at the annual net profit of Rs. 1,75,000 the executors and executrices deducted 15 per cent. of the gross annual rent demand for meeting the management and collection charges. The Collector has valued this zamindary

at Rs. 25,48,035. It appears that in arriving at the annual net profit the Collector, amongst other things, has allowed for management and collection charges only 10 per cent of the gross annual rent demand. No evidence was taken and nothing has been placed before me as to the actual charges on this head either in this zemindary or in the neighbouring zemindaries. In the affidavit in reply the Probate Deputy Collector submits that 10 per cent is the maximum rate that can be allowed by "practice and rule". No particulars have been given of the alleged practice. The learned Standing Counsel, however, referred me to the Bengal Court of Wards Manual, Chapter IV r. 127 at p. 176-177 which enjoins that in preparing the scheme of management care should be taken that the cost of management under certain heads of the budget does not ordinarily exceed 10 per cent. of the current rent and cess demand of the estate. The learned Standing Counsel submitted that if the cost of management by the Court of Wards is only 10 per cent. the cost of management by the zemindar must be less. There is no evidence before me whether in actual practice the cost of management by the Court of Wards does or does not exceed the 10 per cent recommended in the Manual. On the other hand it appears that Section 7 of the Assam Agricultural income tax Act, 1939, allows a deduction of 15 per cent. on this head. Even under sec. 6 of the Bengal Agricultural Income Tax Act, 1944, a deduction of 15 per cent is allowed. I do not accept the contention that the allowance of 15 per cent. under those two Acts was intended to give relief to the subject. Those two Acts impose liability in respect of agricultural income. In assessing such income allowance has to be made for cost of management. Both these Acts allow 15 per cent. on this head. Therefore this 15 per cent. allowance may be accepted as what both the Legislatures consider to be a reasonable and proper charge. I hold that the Collector has failed to support his valuation in respect of this item and this exception must be allowed.

7. The second item of exception relates to the valuation of the trust estate. It appears that the father of the deceased Raja had by his Will directed payment of Rs. 18,000 per annum out of the income of his estate to various charities. The deceased Raja, therefore, got the estate subject to this annual charge. In assessing the net value of the estate in the hands of the deceased Raja for the purpose of ascertaining the ad valorem fee payable under the Court Fees Act the value of this charge must be deducted. In the affidavit of assets the executors and executrices claimed a deduction of Rs. 2,70,000 on the basis of 15 times the amount of the annual charge of Rs. 18,000. The Collector has valued the trust estate at Rs. 2,16,000 on the basis of 12 times that amount. It seems to me that neither of the modes of calculation is based on any logical foundation. What is necessary is to fix and set apart a sum which would produce an annual income of Rs. 18,000 per annum in perpetuity. If the executors and executrices purchase 3 per cent. Government Securities to produce that income, they will have to invest 6 lacs of rupees for the purpose. Instead of that they have deducted only Rs. 2,70,000 which appears to me to be much below what they would have strictly been entitled to. As, however, they have themselves valued the trust at Rs.

2,70,000, I accept the same. This exception must also be allowed.

8. The result, therefore, is that the true value of the estate left by the deceased Raja must be taken at the valuation fixed by the Collector less the amount that must be deducted therefrom as a result of the aforesaid two exceptions being allowed. The exact amount must be worked out on this basis.

9. The executors and executrices have raised the question of the rate at which the ad valorem fee should be calculated. Their contention is that it should be calculated at the rate prevailing in Assam and not according to the rate prevailing in Bengal. The Bengal Legislature has amended the Court Fees Act and according to such amendment the maximum rate is 7 per cent. The Assam Legislature also amended the Court Fees Act in 1936 and provided for a maximum of 7 per cent. That Act, however, was a temporary measure which remained in force for a period of three years only. I am told by Learned Counsel that the maximum rate in Assam is now only 3 per cent.

10. In the affidavit in reply it has been contended that this question cannot be determined on the present application which is one under sec. 19H of the Court Fees Act. At the hearing before me, however, the learned Standing Counsel did not object to my going into and deciding this question. Further the point having been raised by the executors and executrices in their attorneys' letter to the Registrar who is the Taxing Officer, the latter referred the matter to the Chief Justice under sec. 5 of the Court Fees Act. The learned Chief Justice has appointed me under that section to decide the question. I am, therefore, bound to do so. It will be a useless waste of time and money to relegate the Respondents to a substantive application.

11. The argument of the learned Standing Counsel was this: The deceased left properties in the provinces of Assam and Bengal and in the United Provinces. The executors could, therefore, make their application for probate to any of the appropriate Courts in any of these three provinces. They have chosen to make their application to this Court which is situated in Bengal and therefore must pay ad valorem fees at Bengal rates. In support of this argument he relied on the case of *In the Goods of George Thomas Williams deceased* ILR 50 Cal. 597 : S.C. 27 C.W.N. 812 (1923). In that case Greaves J., held that the sum charged upon a grant of probate or Letters of Administration is not a tax or duty levied on the property upon which the Probate or Administration operates but is merely a fee levied by the Court issuing the Probate or Letters of Administration for the work done in that connection. The fees payable being thus in the nature of Court Fees, the scale fixed for the particular Court to which the application is made must apply. In that case the deceased died leaving properties in the presidencies of Bengal and Bombay and also in Central India. The executor elected to apply to this Court and, therefore, the court-fees prescribed for this Court was held to be payable. There was no question of competition between the Bengal and the Assam rates in that case such as has arisen in the case now before me. The testamentary and intestate jurisdiction of this Court is regulated by the Charter.

Clause 22 of the Charter establishing the Supreme Court conferred ecclesiastical jurisdiction on that Court upon British subjects residing within and throughout the provinces of Bengal, Behar and Orissa, and authorised the said Court to grant probates of the last Wills and testaments of all British subjects dying within the said three provinces. The Supreme Court does not appear to have had ecclesiastical jurisdiction over the province of Assam. The Sudder Dewany Adawlat, however, had appellate jurisdiction over the Courts in Assam. Statute 24 and 25 Vic. C. 104 section 1 authorised Her Majesty by Letters Patent to establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William. Section 8 of that Statute abolished the Supreme Court and the Sudder Courts. By Section 9 the High Court was to have all such jurisdiction, original and appellate, as Her Majesty might grant by Letters Patent and subject thereto all such jurisdiction and powers as were vested in the Courts abolished by that Statute. The High Court was constituted by the Letters Patent of 1862. These Letters Patent were replaced by the Letters Patent of 1865 which are still in force. These Letters Patent confer divers jurisdiction and powers on this Court under different clauses. It will be noticed that some of these jurisdictions are limited within the Bengal Division of the Presidency and some extend beyond those limits. By clause 34 of these Letters Patent it has been ordained that this High Court shall have the like power and authority as that which may now be lawfully exercised by the said High Court, except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent, in relation to the granting of probates of last wills and testaments and letters of administration of the goods, chattels etc., of persons dying intestate whether within or without the said Bengal Division, subject to the orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established. Thus by these Letters Patent this High Court's testamentary and intestate jurisdiction was made to extend beyond the presidency proper in respect of the wills of any person (and not merely of British subjects meaning British-born subjects) dying within or without the Bengal Division. (See paragraph 21 of the Despatch from the Secretary of State to the Governor-General of India, dated 14th May, 1862). The jurisdiction of this High Court over Behar and Orissa was taken away by the establishment of the Patna High Court. this Court still has testamentary and intestate jurisdiction over Assam. Under sec. 300 of the Indian Succession Act 1925 this Court has concurrent jurisdiction with all district Courts, in Bengal and Assam. This High Court, therefore, is the High Court alike for Bengal as well as for Assam in respect of some of the jurisdictions specifically mentioned in the Letters Patent including the testamentary and intestate jurisdiction. Now if a person dies in Assam leaving properties in Assam and the United Provinces exceeding Rs. 30,000 in each case but none in Bengal, the application for probate or letters of administration having effect throughout British India will have to be made to this High Court or the High Court of the United Provinces, for the district Court of

Assam has no power u/s 273 of the Succession Act to make a grant with effect throughout British India as he cannot certify that the value of the assets in the United Provinces does not exceed Rs. 10,000. It cannot for a moment be suggested that in such a case the ad valorem fees are to be calculated at the Bengal rate. The application must be treated as having been made to this Court as the Court having jurisdiction in Assam. I do not see how or why the position should be different if the deceased left property also in the province of Bengal. Further in this case the deceased had his fixed place of residence in Gouripur, his Will was made in Gouripur, he died in Gouripur and the greater part of his properties valued at several lacs of rupees are situate in the Province of Assam. He had also properties in Bengal as well as in the United Provinces. The executors and executrices desired to have a grant with effect throughout British India. The Assam District Court could not make such a grant. They did not apply to the Court in the United Provinces. They preferred to apply to this High Court. Why should it be assumed that they applied to this Court as the High Court having jurisdiction in Bengal so as to attract the Bengal rate? If there had been a separate High Court for Assam they certainly would have applied there to get the benefit of the lower Court Fees. There is no separate High Court for Assam and this High Court is the High Court of Assam for this purpose. They had no option but to apply to this High Court as the High Court for Assam. When they presented their petition to this Court they expressly said so and reserved their right to claim a refund of fees paid in excess of the Assam rate. The point that has arisen before me did not arise in the case before Greaves J. to which I have referred. The Court Fees Act is a fiscal enactment and must, in cases of doubt, be interpreted strictly in favour of the subject. In the facts and circumstances of this case I think the Assam rate should be adopted in assessing the ad valorem Court Fees.