
(1950) 02 CAL CK 0032

In the Calcutta High Court

Case No : F.A. No's. 31 and 32 of 1950 and F.A.T. No's. 1614 and 1615 of 1949

Krishna Chandra Das

APPELLANT

Vs

Lakshmi Narayan Das and Others

RESPONDENT

Date of Decision : 09-02-1950

Acts Referred:

Court fees Act, 1870 — Article 17, 8

Citation : AIR 1950 Cal 434 : 54 CWN 496

Hon'ble Judges : Roxburgh, J

Bench : Single Bench

Advocate : Sudhir Kumar Acharya, for the Appellant; Jogneswar Majumdar, for the Respondent

Judgement

Roxburgh, J.—This is a reference u/s 5, Court-fees Act, arising out of an appeal against an order in land acquisition proceedings. The property acquired was debottar property. The Collector awarded compensation of Rs. 32,175-9 in favour of the appellant Krishna Chandra Das as representing the deity in his capacity as executor to the estate of Madhusudan Das. There were three apportionment cases before the Special Land Acquisition Judge of Alipur. They were tried together and the learned Judge has directed that the entire compensation should be awarded to Lakhinarain Das representing the deity in his character as shebait. Against this Krishna Chandra Das has preferred an appeal paying the court-fee stamp of Rs. 15 on the ground that the Subject matter of the appeal cannot be possibly estimated at a money value. The stamp reporter has objected to this and has claimed an ad valorem court-fee of Rs. 1590 on the amount of compensation awarded by the Collector.

2. The cases Trinayani Dassi v. Krishnalal De 17 C. W. N 933 : (39 Cal. 905) and Rash Behari Sanyal Vs. Gosto Behari Goswami, deal with a somewhat similar question to that arising in the present case. Sir George Rankin in the case of In Re: Ananda Lal Chakrabutty and Others, has discussed the nature of the provisions of Section 8, Court-fees Act. The decision in the case appears to me to

be quite simple. Krishna Chandra Das was awarded the money by the Collector as executor and in this appeal he claims the money as executor to the will of Mudhusudan Das who created the debottar. As executor he will have to deal with the property in the terms of the will. In passing I may say that I find it a little difficult to understand why in a matter under the Land-Acquisition Act the question of the rights of person claiming as shebait against the executor had to be decided, neither side disputing that the property acquired was debottar. Further, it is not easy to understand why the amount of compensation is proposed to be paid in cash either to the executor or to the persons now found to be the shebait and why the cash was not invested u/s 32, Land Acquisition Act. However that may be, so far as the appeal here is concerned, the matter is clearly to be governed by Section 8, Court-fees Act which, as pointed out by Sir George Rankin, is not itself a charging section but assumes that the fee payable in respect of any appeal relating to an award of compensation will be ad valorem and lays down the method by which the valuation is to be made on which the fee is to be calculated. It is for the party, in the first place, to say, in my opinion, what that value is and the Registrar may investigate as far as he thinks necessary. If Krishna Chandra Das is purely an executor with no personal interest in the money, the difference in the amount awarded so far as he is concerned, namely, nil and the amount claimed so far as he is concerned would appear to be also nil. If it can be shown that he has some personal interest in the matter in any way, it may be that some value should be placed on that and that he should pay court-fee accordingly. This view, although it may not appear so at first sight, is, I think, entirely consistent with the view taken in the case in *Trinayani Dassi v. Krishnalal De* 17 C. W. N. 933 : (39 Cal. 906) where the facts indeed are somewhat similar. The appellant there was an executrix to her husband's will. The money had been invested u/s 32, Land Acquisition Act, as a result of an objection by the grandsons of her husband who claimed to be shebait. According to the will, the lady and Lal Gopal Da, the father of the opposite parties, had been appointed to be shebait. The lady apparently objected to the order of investment and appealed claiming that the amount should be paid wholly to her. The difficulty in appreciating the exact decision in the case, I think, arises from the fact that precisely what was the lady's case is a little obscure. The learned Judges themselves, in fact, it seems to me, really decided her appeal for her on the matter of the application as to the court-fee payable, because they pointed out that as executrix she was in no better position than as a shebait and that she would not be able to dispose of the property other than as under the will and that hence obviously the order for investment was really a proper one. I note that after the decision of the court-fee matter the court-fees were, in fact, not paid. However that may be, the learned Judge pointed out that the fee payable was governed by Section 8 and not by Schedule 2, Article 17, Clause 6. They remarked:

"In the present case, even supposing that the exact estimate cannot be given, it is, in our opinion, certainly possible to state approximately the money value of

the relief claimed..."

The learned Judges expressed no opinion as to what the value should be and the case, though relied on by the stamp reporter, is really no authority for a contention that in the present case court-fee on the full amount Rs. 32,175-9, ad valorem must be paid.

3. The case of Rash Behari Sanyal Vs. Gosto Behari Goswami, is of no real assistance here. There the appeal was by the reversioners against an order of payment of compensation to a purchaser from a Hindu widow. In order to protect their interest they wanted an order u/s 32, Land Acquisition Act, for investment of the money. They were not claiming any amount to be paid to them. The case was held to come not u/s 8 but Schedule 2, Articles 7 (iii), Court-fees Act.

4. My decision therefore is that the fee payable is ad valorem on the amount determined u/s 8, Court-fees Act, in the manner I have indicated. The estimated amount of the value to the executor Krishna Chandra Das of the order he seeks to obtain, whatever that may be, cannot be the full amount of the compensation awarded for the property.