

(1955) 01 PAT CK 0008

In the Patna High Court

Case No : Civil Revision No"s. 546 and 547 of 1953

Mundrika Prasad Singh

APPELLANT

Vs

Mst. Kachnar Kuer and Others

RESPONDENT

Date of Decision : 24-01-1955

Acts Referred:

Citation : AIR 1955 Patna 362 : (1955) 3 BLJR 193

Hon'ble Judges : Rai, J;Banerji, J

Bench : Division Bench

Advocate : G.P. Das and Kedar Nath Varma, for the Appellant; R.S. Chatterji and Gorakhnath Singh, for the Respondent

Final Decision : Dismissed

Judgement

Banerji, J.—These two applications will be dealt with together although they arise from two different orders passed by the learned Additional District Judge of Gaya with reference to a probate proceeding brought by the petitioner.

2. On 22-6-1948, the petitioner filed an application for probate of the will of late Babu Triloki Prasad Singh of village Barauli and valued the assets contained in the list attached to the application at Rs. 15,000/-. A copy of the list with the valuation was sent to the Collector of Gaya who submitted a report that the assets had been undervalued and that their actual value was Rupees 1,82,246/8/-. On objection by the petitioner, the Court below appointed a pleader-Commissioner to investigate into the question of valuation & submit his report. The pleader-commissioner estimated the value of the properties at Rs. 1,22,606 to which the petitioner, the Collector and also the opposite party filed objections. All the objections were disposed of by the learned Additional District Judge who fixed the value of the properties at Rs. 1,69,834/-.

3. After fixing the valuation, the Court below directed the petitioner to deposit Rs. 10,350, being the probate duty, in cash before the application could be taken up for hearing.

4. The valuation was fixed by the order dated 8-5-1953, and this has given rise to Civil Revision No. 547 of 1953. The order directing the petitioner to deposit the requisite probate duty in cash before the hearing was passed on 11-5-1953, and Civil Revision No. 546 of 1953 arises out of this order.

5. It need not detain me long to dispose of Civil Revision No. 547 of 1953. The ground taken by the petitioner is that the Collector had not complied with the provisions of Section 19H, Court-fees Act (Act 7 of 1870), his grievance being that the Additional District Judge had no jurisdiction in proceeding to fix the valuation without being moved for the same by the Collector after he had complied with the provision of Section 19H, Court-fees Act. According to Section 19H of the Act, the Court shall cause notice of the application for probate or letters of administration to be given to the Collector and, in the case of the High Court, such notice has to be given to the Chief Controlling Revenue Authority. In this case the notice was to be served on the Collector and it, actually, was served as a result of which he reported that the valuation given by the petitioner was much below that found by him. According to Sub-section (3) of Section 19H, the Collector may require the attendance of the petitioner and enquire into the matter in case he suspects that the value of the property of the deceased has been under-estimated and ask the petitioner to amend the valuation. If, then, the petitioner does not amend the valuation to his satisfaction, the Collector, according to Sub-section (4) of the same section, 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.

In this case the matter was not enquired into in presence of the petitioner or his agent and the Collector did not ask the petitioner to amend the valuation and, on his denial, -move the Court below to hold an enquiry into the true value of the property, but these duties were not obligatory on him and the procedure adopted, by him cannot be said to be illegal. What he has done is that he held an enquiry and submitted his own valuation to the Court below in which the petitioner took objection, whereupon the Court directed a Pleader-Commissioner to enquire into the matter and report. When the report was submitted, all the parties including the Collector, who is to be deemed to be a party to the enquiry according to Sub-section (5), filed objections and in their presence the Court disposed of the objections raised by each and arrived at its own finding. The petitioner, therefore, had ample opportunity to lay his grievances before the Court after a thorough enquiry had been made by the Pleader-Commissioner authorised to hold the enquiry. In these circumstances there was no substantive departure from the procedure provided in Section 19H, Court-fees Act and the jurisdiction of the Court below was in no way affected. Civil Revision No. 547 of 1953 is, accordingly, dismissed.

6. Civil Revision No. 546 of 1953, -however, raises a point which is not free from difficulties which have been accentuated by some apparent inconsistent decisions of this Court and by different decisions of other High Courts. The crucial question

to be decided is as to the time when that probate duty has to be paid. The learned Additional District Judge has directed the petitioner to pay it before the hearing of the application and to this he has taken exception alleging that time has not arrived yet to demand court-fee from him and that the actual time when he should be asked to pay is when, after the hearing, the Court passes an order that he is entitled to the grant of probate. The provisions of Section 19I are invoked on behalf of the petitioner to support this argument. Sub-section (1) of this section, with which we are concerned, prescribes as follows :

"No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the First Schedule has been paid on such valuation."

If this sub-section of Section 19I is merely glanced through without critical examination, it would appear as if the proper time to pay the court-fee is just before the probate is issued and actually handed over to the petitioner, but this is not so when the sub-section is divided into parts and scrutinised carefully in relation to the different stages in a proceeding for grant of probate or letters of administration. Broadly, there are four stages in a proceeding for grant of probate or letters of administration. The first stage is when an application is made for probate or letters of administration u/s 276, Indian Succession Act (Act 39 of 1925). At that time the court-fee to be paid on the application is according to Article 1, Schedule 2, Court-fees Act. The second stage is the fixing of the valuation of the assets of the deceased. The third stage is reached when the hearing takes place and an order is made either granting or refusing to grant probate or letters of administration. The fourth, and the last stage, is the issue of the probate or letters of administration which is done by the office and is, more or less, a ministerial act. The meaning of Section 19I, Sub-section (1), can be brought out of the haze of uncertainty of framing it in the form which I do below without replacing any word of it:

"Until the petitioner has filed in the court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been, paid on such valuation, no order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant."

If the Sub-section is now viewed, as framed, it would appear that the court-fee payable upon an application for grant which is governed by Article 1 of Schedule 2 is quite distinct from that what has to be paid by the petitioner for the probate or letters of administration "prayed for. The sub-section prescribes that, quite independent from the application, the petitioner has to file in the court a valuation of the property in a particular form and the Court has to fix the valuation and is to be satisfied that the fee mentioned in No. 11 of the first schedule has been paid before it passes an order entitling the petitioner to the

grant. This order is not possible to be passed by the Court without hearing the parties. The probate or the letters are then issued as a matter of course. The Subsection, therefore, envisages the four stages which I have alluded to just now. The order which has to be passed by the Court entitling the petitioner to the grant is a part of the hearing itself, and not divorced from it. An order necessarily follows the hearing in a case either immediately or very soon afterwards. It is fundamental that, ordinarily, an order should be deemed to be inclusive of the hearing, as, otherwise, a state of affairs, most undesirable is likely to arise. No court can stay its hand after recording evidence of both sides and declare that it would not pass any order until a particular contingency is fulfilled. A "hearing" does not mean only the recording of the depositions of the witnesses, the marking of documents as exhibited and listening to the arguments advanced by or on behalf of the parties; it includes a decision of the Court on such evidence and argument, and, to my mind, the judgment embodying the order of the Court in such circumstances is nothing but a part of the hearing itself. It cannot be treated in this context as a separate state from the hearing. In legal phraseology, "hear" a cause means, to hear and determine it and

"unless there be something which by natural intendment, or otherwise, would cut down the meaning, there can be no doubt that the legislature, when they direct a particular cause to be heard in a particular Court, mean that it is to be heard and finally disposed of there.." (per Lord Blackburn, *Re Green* (1881) 51 LJ QB 25 (A)).

Therefore, if Sub-section (1) of Section 19I is viewed from this aspect, then it is suggestive of the one and the only construction that the court-fee payable on the valuation fixed by the Court is before the hearing of the proceeding,

7. The question whether court-fee under No. 11 of the first schedule has to be paid on the date of the application or subsequently before the issue of a probate or letters of administration came to be examined by different High Courts on account of the alteration of law between the time when an application was made and the time when an order was passed entitling the petitioner to the grant. The alteration was with respect to enhancement of the court fee at that time.

In -- *Thaddens S. Nahapiet v. Secy, of State* AIR 1924 Gal 987 (B), it was held that the court-fee payable is on the value as on the date of the application and subsequent alteration of law, enhancing the court-fee, does not affect the petitioner's right. This decision can hardly be of any assistance for a solution in the present case as Section 17, Bengal Court-fees Act of 1922, contained a provision which clearly specified that nothing in that Act, "should apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force had been paid prior to the commencement of that Act but which had not issued. This distinction was pointed out by Meredith J. (as he then was) in the case of -- *Suraj Narain Gupta Vs. Sarosi Bala Devi and Others*, , to which I shall advert presently. There is a single Judge (decision of the Calcutta High Court in -- *In Re: Goods of Mrs. Lilian*

Singh (otherwise known as Mrs. Lila Singh), where Sen J. observed, on being pointed out that no fee had been paid, as follows :

"In my opinion the provisions of Section 19I, Court-fees Act, say that the Court shall not grant probate until the fees are paid. It does not say that the Court shall not try an application for probate or letters of administration until the fees are paid or that the payment of the fees is a condition precedent to the making of the application. The section nowhere specifies that an application becomes competent only by payment of the court-fee under No, 11 of the first schedule but, at the same time, does not, in my opinion, empower the court to try the application which is the same as to hold the hearing before such duty on the ascertained valuation has been paid."

In -- Gangaram Tillockchand Vs. The Chief Controlling Revenue Authority, , the Judge (Crump J.), specially designated to decide the dispute about the court-fee u/s 5, Court-fees Act, dissenting from the view taken by Calcutta High Court in Thaddens S. Nahapiet and Others Vs. Secretary of State, , observed:

"It seems to me clear that the law in force at the date of the grant is the law which must be applied in deciding the matter."

According to him, the fee was payable upon the grant of probate and not upon the application for probate. The point at issue between the parties in that case was whether the duty was to be calculated at the rate in force under the law as it stood at the date of the petition for probate or whether it should be calculated at the higher rate of duty which came into operation before any grant of probate was made. The stage when an order entitling the petitioner to the grant of probate is made was neither specified nor indicated in this Bombay decision.

8. In -- Ghandhrap Singh and Others Vs. Chameli Devi and Another, , a difference arose between their Lordships Wali Ullah and Mathur, JJ. in an appeal against an order passed by a District Judge to this effect that the probate fee had to be paid before the judgment, that is, before the date fixed for final hearing. Wali Ullah, J. after pointing out the difference in the provisions relating to applications for probate and letters of administration and applications for succession certificates according to Section 379, Indian Succession Act, which specifically provided for the deposit of the amount of court-fee payable at the time when the application is made, was of the opinion that under Sub-section (1) of Section 19I, Court-fees Act the Court should adopt one of two alternative courses: (1) After it has decided that the applicant should succeed it may stay its hands at that stage and call upon the applicant to pay the necessary court-fee on the probate and then, after the applicant has complied with the direction of the Court, it may pass the order granting the probate, or, (2) the Court may pass a conditional order in this form, "Let probate issue as prayed for on court-fee being first paid" according to a long-standing practice of the Allahabad High Court. Mathur J. having differed from the opinion expressed by Wali Ullah J., the matter came before Harish Chandra, J. to whom the alternative suggestions given by

Wali Ullah J. did not commend. The view that found favour with him was that a Court had ample inherent powers in a matter of this kind and it is open to it to require the payment of the requisite court-fee to be made by the petitioner at any stage, before it makes an order entitling him to the grant of probate that may appear to it to be just and proper.

It is difficult to accept the views embodied in the suggestions of Wali Ullah J. as the first suggestion divides the hearing and the finding in favour of the petitioner to obtain a grant into two distinct stages which, to my mind, is undesirable, and there is no provision anywhere in Section 19I for making any conditional order. At the same time, it is hardly desirable, and, indeed, not necessary at all, to put the controversy in the realm of uncertainty by allowing it to be decided according to the discretion of the Court which, invariably, will give rise to different practices in the same type of proceedings. It would hardly be fair to demand the court-fee payable along or soon after the application or after the finding but before the issue of the probate or letters of administration according to the discretion of the Court which can never be expected to be uniform in practice. This difficulty is only resolved by the interpretation which I have put to Section 19I, Court-fees Act.

9. There are two cases of our Court touching upon this subject. The first one is *Suraj Narain Gupta Vs. Sarosi Bala Devi and Others*, , and the next is -- *Jagat Kishore Prasad Narain Singh Vs. Smt. Girja Kishori Devi*, . Both , the cases were decided by Meredith J. (as he then was) on reference being made to him as Taxing Judge u/s 5, Court-fees Act. Rule 4(a), Chapter 11, Patna High Court Rules, has laid down that every application for probate or for letters of administration with or without the will annexed shall be accompanied by (a) a certificate of the Registrar as to duty having been paid or a certificate of the Taxing Officer that no duty is payable. In "*Surajharain's case (C)*", duty in accordance with the Court-fees Act, as it stood at the time of filing of the application, was paid and the certificate of the Registrar was given thereon. On a subsequent date, before probate had been granted, the Bihar Court-foos (War Surcharge Amendment) Act, 1943 (Bihar Act 9 of 1943) came into force and the office raised the question whether additional fee was due by reason of the amending Act. In determining what was the crucial date for the payment of the fee, that is to say, to ascertain when was the fee leviable, his Lordship, in construing Section 19I, Court-fees Act along with S. 4 of the same Act, observed:

"The effect of these provisions seems to me to make the fee payable not upon the application but as a condition precedent to the grant of probate, and consequently the crucial time would be the time probate is granted. In this view the fee payable must be determined upon the law. as it stands at the time of the order granting probate, and, therefore, the enhanced fee in the present case is payable. The High Court rule to which I have referred is only an administrative rule made for convenience, and does not, in my judgment, affect the position."

From the order of reference by the Taxing Officer it appears that the petitioner

had applied for probate and had deposited the required duty in July 1943 and the order for grant of probate was passed in March 1944 after the Bihar Court-fees (War Surcharge Amendment) Act of 1943 came into force. The probate was not actually issued by the office on 22-3-1944, and it raised the question whether additional fee was leviable. In the other case the petitioner applied for probate in November, 1942 and in April 1943 he was called upon to pay the court-fee payable under the law as if then stood and this was duly paid in November, 1943. The Bihar Court-fees (War Surcharge Amendment) Act of 1943 came into force from December, 1943 prior to the hearing of the application of the petitioner and, when called upon to deposit a further sum, the petitioner in that case claimed that he was not liable to pay any. surcharge on account of the new amending Act as it was held in the case of Surajnarain that the crucial date for the payment of the court-fee was at the time of the issue of probate. His Lordship felt the difficulty raised by his own views expressed in "Surajnarain's case (C)", but at the same time, found it hard to override Rule 4(a) of Chapter 11, Patna High Court Rules observing as follows :

"In my judgment, as long as this rule stands it must be enforced, and the surcharge must, therefore, be paid. It is quite true that in the decision referred to I held that this was only a rule of procedure, and could not affect the question of the amount of duty actually payable. All this means, however, is that despite having to pay under this rule the applicant may possibly eventually be entitled to a refund. It does not mean that the rule can be ignored, or that it does not have to be complied with."

The position arising out of these two decisions becomes a little irreconcilable. Rule 4(a), Chapter 11, Patna High Court Rules became obligatory according to the second decision, whereas, according to the first decision, it was treated merely as an administrative rule made for convenience which had no compelling force. At the same time, according to the second decision, the petitioner had to pay further court-fee, under No. 11 of Schedule 1 before the hearing of the proceeding, whereas, according to the direction given in the first decision, the petitioner had to pay further court-fee after the conclusion of the hearing in which an order for grant of probate had already been made but the probate, itself, was not issued by the office. The date in one case became crucial before and in the other case after the hearing which tend to create some confusion. This can only be avoided by the interpretation of Section 19I that the duty payable is before the hearing which, in the very nature of things, includes the order of the Court entitling the petitioner to the grant of a probate or letters of administration. The stage at which the probate or letters of administration is actually issued by the office is one which is not contemplated in Section 19I and is, as already stated, a ministerial act which has nothing to do with the judicial function of the Court.

10. In this view of the matter, the order of the learned Additional District Judge cannot be disturbed inasmuch as he has demanded the court-fee payable on the

application after fixing the valuation and before the final hearing of the application. There is no error in exercise of his jurisdiction in directing this court-fee to be paid and, accordingly, Civil Revision No. 546 is also dismissed. In the circumstances of the case, there will be one set of costs for both the applications; hearing fee Rs. 32/-.

Rai, J.

11. I agree.