
(2012) 03 OHC CK 0021
In the Orissa High Court
Case No : WP (C) . No. 33734 of 2011

Srimati Banani Pattanaik

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Court Fees Act, 1870 — Section 19A, 19E, 19H, 35
Succession Act, 1925 — Section 276, 372, 379

Citation : AIR 2013 Ori 6 : (2012) 113 CLT 1092

Hon'ble Judges : B.K. Misra, J

Bench : Single Bench

Advocate : Sanatan Das, M.K. Sahu and S.K. Mohapatra, for the Appellant;

Final Decision : Allowed

Judgement

B.K. Misra, J.—The Petitioner while presenting an application u/s 276 of the Indian Succession Act seeking probate of the will prayed in Test Case No. 10 of 2011 in the Court of Learned District Judge, Cuttack for exemption from payment of Court fees as duty money contending that she being a woman is exempted from payment of Court fees on the basis of the Government of Orissa Notification vide S.R.O. No 575 of 1994 dated 7.6.1994. When such prayer was disallowed by the Learned District Judge, Cuttack by the impugned order at Annexure-3, being aggrieved, the Petitioner has approached this Court with a prayer to quash the impugned order at Annexure-3 and to exempt her from payment of Court fees. Mr. Sanatan Das, Learned Counsel appearing for the Petitioner while assailing the impugned order at Annexure-3 contended that the Learned District Judge, Cuttack should have allowed the prayer of the Petitioner for exemption of payment of Court fees. It was also contended that the ratio of the Division Bench decision relied upon by the Learned District Judge, Cuttack i.e. in the case of Hasina Bibi v. Amurat bibi and others, 2003 (II) OLR-215 has no application to the case of the Petitioner as that decision relates to the point as to whether a person would be exempted from payment of Court fees while applying for grant

of Succession Certificate under Sections 372 and 379 of the Indian Succession Act, Pursuant to the Government Notification No. S.RO. 575 of 1994 dated 7.6.1994.

2. The Learned Addl. Government Advocate opposed the contention of the Learned Counsel for the Petitioner and contended that in view of the ratio propounded in Hasina Bibi's case (supra), the earlier decision of this Court i.e. Smt. Sarojini Mishra v. State of Orissa, 92 (2001) CLT- 622 has no application to this case and the Court is bound by the judicial discipline in view of the Division Bench decision i.e. Hasina Bibi's Case (supra).

3. Since the controversy in the case centers around an interesting question as to whether a woman is entitled to exemption of Court fees by virtue of the Law Department Notification No. S.RO. 575 of 1994 dated 7.6.1994 while applying for grant of probate, the Learned Members of the Bar including Learned Counsel for the respective parties were heard at length.

4. The law Department Notification No. S.RO. 575 of 1994 dated 7.6.1994 reads as follows:-

SRO No. 575/94- In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (VII of 1870) the State Government do hereby remit in the whole of the State of Orissa all fees mentioned in Schedules-I and II to the said Act payable for filing or instituting cases or proceedings in any Court in Orissa by the following categories of persons, namely:

(i)....(ii)....

(iii) Women

(iv).... (v).... (vi)....(vii)....

5. Article 11 of the Schedule-I of the Court Fees Act prescribes quantum of fees payable on an application for probate of a will or letter of administration. The quantity of Court fee depends on the amount or value of property in respect of which grant of probate or letters of administration is applied for.

Section 19-1 of the Court Fees Act reads as follows:-

19-1, Payment of Court fees in respect of probates and letters of administration. No order entitling the Petitioner to the grant of probate or letter 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.

6. Section 19A of the Court Fees Act makes provision for refund of any excess Court fees where too high a Court fee has been paid on the basis of estimated value of the property involved upon an application to be filed by the concerned party.

7. Similarly, Section 19E of the Court Fees Act speaks about the realization of appropriate Court fee with penalty, where too low a Court fee has been paid on an application for probate of will. The detailed procedures have been laid down in Section 19H of the Court Fees Act which deals with procedure in respect of an application for probate or letters of administration.

As per the said Section, when an application for probate or letters of administration is made to any Court (other than the High Court), it shall cause notice of the application to be given to the Collector who is required to examine if the applicant has underestimated the value of the property in question. On examination, if the Collector finds that the value of the property has been underestimated, he may require the applicant to amend the valuation. If no amendment of the valuation to the satisfaction of the Collector is made, he may move the Court to hold an enquiry into the true value of the property. The Court when so moved shall hold an enquiry and shall record a finding as to the true value at which the property in question should have been estimated.

8. Admittedly, no such provision is there with regard to grant of Succession Certificate. The Division Bench decision which was relied upon by the Learned District Judge, Cuttack in negating the prayer of the Petitioner and also which is being heavily relied upon by the State as trump card relates to determining the question whether the Government Notification No. S.R.O. 575 of 1994 dated 7.6.1994 is applicable to grant of Succession Certificate under Sections 372 and 372 of the Indian Succession Act. With great respect and humility, I am to hold that the ratio of Hasina Bibi's case (supra) is completely on a different point and is distinguishable with the facts scenario of the case at hand. The said decision does not relate to the question of exemption of Court fees when a woman applies for probate of a will.

9. Admittedly, the Petitioner is a lady and had applied for grant of probate of a will and prayed for exemption of Court fees on the basis of the Government Notification No. S.R.O. 575 of 1994 dated 7.6.1994. Section 35 of Court Fees Act empowers the Government to reduce or remit all or any of the fees mentioned in the first and second schedules of the Court Fees Act by issuing notification in the Official Gazette. There is no dispute about the Government of Orissa Notification No. S.R.O. 575 of 1994 dated 7.6.1994 which was published in the Orissa Gazette (Extra-ordinary) No. 670 dated 10.06.1994.

10. On analyzing the different citations relied upon by the Learned Counsel for the respective parties and after going through the various provisions of the Court Fees Act and provisions of the Indian Succession Act, the irresistible conclusion would be unlike an application for a Succession Certificate and in absence of any provision like Section 379 of Indian Succession Act, the Court fee required to be paid under Entry No. II of the First Schedule of Orissa Court Fees Act (Amendment Act), 1958 is a Court fee payable for filing an application for probate to grant of letters of administration. Thus, the Notification dated 7.6.1994 vide S.R.O. 575 of 1994 is attracted to the Court Fees payable for filing

an application for grant of probate or letters of administration and the decision relied upon by the Learned Court below i.e. Hasina Bibi's case has no application with regard to the case for grant of exemption from payment of Court Fees by the deserving person in a Probate Proceeding as per S.R.O. No. 575 of 1004. The decision of this Court in Smt. Sarojini Mishra's case (supra) is squarely applicable to this case as it is directly on the point. Thus, for the aforesaid reasons, I do not agree with the views expressed by the Learned Trial Court and hold that the Petitioner is entitled to derive the benefits of the Notification i.e. S.R.O. No. 575 of 1994 issued by the State Government in exercise of its power u/s 35 of the Court Fees Act. The impugned order at Annexure-3 is accordingly set aside.

The Writ Petition is accordingly allowed.