(1955) 12 GUJ CK 0001

In the Gujarat High Court

Case No : Civil Revision Application No. 59 of 1954

State of Saurashtra APPELLANT

Vs

K. Shaktikumar Kalikakumar RESPONDENT

Date of Decision : 05-12-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 13, 115
Court Fees Act, 1870 — Article 11 , 12
Stamp Act, 1899 — Section 61
Succession Act, 1925 — Section 308(2)

Citation : (1955) 12 GUJ CK 0001

Hon'ble Judges : Shah, C.J;Baxi, J

Bench : Division Bench

Advocate : B.R. Sompura, Govt. Pleader, for the Appellant; M.O. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Shah, C.J.—This revision application is preferred against an order of the Aesfect. Judge, Morvi passed in proceedings for a succession certificate under Part 10 Indian Succession Act. Kumar Shri Kalikukumar Lakhdhirji died at Morvi on 17-12-1952, leaving a minor son Kumar Shri Shaktikumar, and a widow Ba Shri Kunmdkunverba. The widow applied, as the guar-dian of her minor son, for a succession certificate in respect of shares in Joint Stock companies, bank deposits, dividends and interest, property which the deceased held in jointness with the minor and as manager of the joint Hindu family, The application was not opposed by any of the relatives, but as the question regarding court-fees was likely to affect in some measure the public revenue, the learned Judge issued a notice to the Assistant Govt. Pleader, and after hearing him and the Advocate of the applicant he held that the property in question being joint family property it was exempt from payment of court-fees, and he therefore granted the succession certificate without levying any court-fees. The State now seeks to have his order revised.

2. Mr. Shah for the opponent (original applicant) has taken a two-fold preliminary objection, first'' that no revision application against a decision exempting payment of court-fee lies, and secondly that in any event the Government not lacing a party to the proceedings for the succession certificate, it has no right to come in revision.

As for the first part the objection, Mr. Shah argues that the Court having held that no court-fee was payable and the order being in favour of ''he original applicant,, it cannot be said that the Court has exercised its jurisdiction not vested in it or has failed to exercise a jurisdiction vested in it, and in support of this proposition he has relied on Secy. of State v. Raghunathan AIR 1933 Mad 593 (A). In that case the Subordinate Judge had held that the Court fee paid on the plain was sufficient and the Government went in revision against that, order. ;It was held relying upon an earlier decision of tithe same High Court in A. Muhamad Ellaiyas Vs. Rahima Bee, late a minor by her husband and guardian K.M. Abdul Lateef Sahib, since declared a major, , that where a favourable decision has been given as regards court-fee to the Plaintiff, the High Court has no power of revision u/s 115, Code of Civil Procedure. It was pointed out in Muhamad Ellaiyas'' case (B) that where the order is unfavourable to the pluInUil'' it may result in great hardship to him and the interests of juntlco may demand that the "High Court should at once rectify the error without waiting till the suit is finally decided and an appeal is then filed; but if blower Court''s order which is favorable to the Plaintiff happens to be wrong, there is Anr. remedy open, which is quite adequate, as the mistake can be corrected by the appellate Court u/s 121 Court Fees Act.

Reliance was also placed on Kattiya Pillai alias Sernthaya Pillai and Another Vs. Ramaswamia Pillai (insane) by wife and next friend and Others, and on Pniknor v, Miraa Moluunnli AW, ADI)2l Cul 814 (D). The decisions in Kulandl l''undiohl Ramaswami Pandia, AIR m8 Mad 410 (E), Sudalaimuthu Pillai and Others Vs. Peria Somasundaram Pillai, , were explained and distinguished. The fact that the applicant before the High Court was the Government was also considered and it was held that the distinction sought to be made on that ground did not alter the position if the decision of the lower Court was otherwise correct and further that it was immaterial that the party applying in revision was ''the Government, with respect, we agree with the reasoning of the learned Judges in AIR 1933 Mad 50; kAand hold trance revision lies against the order in the present case.

3. Mr. Shah next disputed the right of jovoinniont to apply in revision because, according to him, the Government was not a party to the proceedings in the Assistant Judge''s Court and it cannot be treated as a party simply because a notice was issued by the learned Judge to the Ashistittil, Government Pleader to hear him on the question of Court-fees.

In the above cited Madras case The Secretary of State for India in Council Vs. Raghunathan and Others, it was also held that the Government can, in no sense, be regarded as a party to the suit, although it is true that in that case no notice was issued to the Government Pleader in the trial Court. The position was again examined in S.L. Lakshmana aiyar Vs. T.S.P.L.P. Palaniappa Chettiar and Others, and the view taken in AIR 1933 Mad 500 (A) was approved. Their lordships said:

In Order 33, CPC dealing with suits by paupers R. 13 specially provides that all matters arising between the Government and any party to the suit under certain provisions of that order, shall be deemed to be question arising between the parties to the action within the meaning of Section 47. This is a statutory right expressly conferred on the Government, but where such a special provision does not exist, there is no warrant for holding that the Government has a right to be heard before an order is made as regards the proper court-fee payable. As tersely observed in Collector of Tricbino-poly v. Slvarama Krishna Sastriga 23 Mad 73 (H) court-fees though as between the Plaintiff and the Defendant they are costs, are not costs as between the Plaintiff and the Government, but revenue.

There is no specific provision in the Court-fees Act 1870, as applied to the State of Bombay (which plies to Saurashtra) by which a question as to court-fees is made a question between tap Government and the party to the action, on the whereof the Government can claim a right hi heard before an order is made as regards the proper court-fee payable.

Reference may be made in this connection to Section 61, Indian Stamp Act under which the appellate Court, may. revise certain decisions of the lower Courts regarding the sufficiency of stamps sue mouth or on the application by the Collector, in the absence of any similar provision in the Court- fees Act, the Government has no right to be heard to either the original or the appellate or revisicmwi Court; and the fact that in the present case the Assistant Judge had issued, a notice to the Assistant Government Pleader and heard him before making the order does not alter the position.

The function of the Assistant Government Picador was merely to assist the Court in coming to a proper decision as to court-fees, and the fact that he was heard by the Court does not make the State a party to the proceedings and does not enable It to come in revision against the decision of ''the tower Court. We, therefore, uphold the preliminary objection on both the grounds and hold that this revision by the State is incompetent.

4. Ail the same, we propose to consider the question on its merits. Article 12 of Such, Court-fees Act, as it applies here, prescribes the court-fees payable on a Succession Certificate under Part 10, Indian Succession Act, and the third column there-that, the; proper fee is the fee livable in the C(K) of a probate (Article 11) on the amount or value or any security specified in the certificate Section 372of the Act, etc.

The Government pleader has argued that the woos "livable in the case of probate (Article 11)" only mean that the scale of fee prescribed In Article 11 is to be adopted for the purpose of calculating the amount of the court-fee that become payable en a succession certificate and not that the fee Is to be levied in the same manner and with the same incidence as of Article 11. This construction is, however, against the plain meaning of the language of Article That Article speaks of the fee leviable and says that it will be the same as in the case of a probate under Article 11 In other word what Art 12 says is that, the same incidence which applies In the case of levying the court-fee under Article 11 will apply in the matter of levying court-fen on n certificate. The actual amount becoming payable depends upon the amount or value of the debt or security specified in the certificate and this basis is the name us in the cuie of a, probate viz. the-amount or value of the property in respect of which the grant of probate if made.

If what was intended by Article 12 was merely an application of the scale prescribed by Article 11 for the purpose of calculating the amount, then that would have been said by employing appropriate words as for instance "same scale as in Article 11". Instead the word use J. is ''livable'', which obviously implies that the fee to be levied will be the same as in the case of a probate under Article 11. Therefore all the provisions which relate to the levying of court-fee on a probate will apply in the matter of levying court-fees on a succession certificate.

5. Chapter 3-A Court-fees Act relates to pro-hates, letters of administration and certiorates or administration, and S. 19D thereof'' provides that probates will be declared valid as to trust property, though they may not be covered by court-lee. The action is in the following words''.

The probate of the will or the letters of Mnlatrultnn of the effect,-; of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable cimmovable property whereof or where to the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount by or value of such property is not in clouded the mount or value of the estate in respect of which a court-foe was paid on such probate or letters of administration.

Section 191 says that no order for the cant probate shall be made until the Petitioner has lilted in ,he Court a valuation of the property in the corm set forth in Sch. 3 and the Court is satisfied ''that the fee mentioned in Article 11 of Sch. 1 has been paid on such valuation. Schedule 3 proscribes the form and annextures A and B thereto.

In Annsxturo A the valuation of the moveable and immovable property of the deceased is to be, set forth and the last clause thereof permits deduction of items specified in Annexture B which are not subject to duty. One of the items of Annexture B is property held in trust not beneficially or with general power to confer a beneficial interest. Trust property is thus to be deducted from the valuation and is exempt from the payment of court-fee, and the question arising here therefore is whether the joint family property standing in the name of the deceased Kumar Shri Kalikakumar as manager of the family is trust property or not.

This question has been considered in Birdibai v. Chunilal AIR 1946 Born 163 (I), and it has been there held following an earlier Pull Bench ruling in Keshavlal Punjalal Sheth Vs. The Collector of Ahmedabad, , that where in a joint Hindu family governed by the Mitakshara, on the death of the father the son applies for letters of administration to the family property standing. in the father''s name, the grant of letters is exempt from payment of court-fees. In that case the letters of administration were applied for in respect of the moveable property of the deceased father which consisted mainly of shares in Joint Stock Companies .and certain deposits.

One of the applicants in that case was the widow of the deceased and the ruling in Keshavlal v. Collector of Ahmedabad (J) was sought to be distinguished on the ground that she was not an heir and therefore not legally a coparcener. The contention was rejected by the learned Judges on the ground that the relevant factor was the nature of the property in the hands of the deceased and not what rights come into being after hit death. That factor docs not obtain in the present case.

The same view was taken by a Full Bench of the Lahore High Court in Sri Hum v. Collector Lahore, AIR 1942 Lal 173 (FB) (K) and the decisions of the Pull Bench of the Bombay High Court in Keshavlal Punjalal Sheth Vs. The Collector of Ahmedabad, and the Calcutta High Court in In re Pokurmull Augurwallah, 23 Cal 980 (L) were there relied upon. The question as to the amount of court-fee payable on the grant of letters of administration was raised in the goods of In the goods of Sew Prasad Saraf, but was not answered and the learned Judges proceeded on the footing that the decision of the Taxing Master on this question was final. However, the earlier ruling In 23 Cal 980 (L) is in line with the decisions of the Bombay and the Lahore High Courts.

The Allahabad High Court has, on the contrary, held that full court-fees are payable in such a case (See In the goods of Lai Madho Prasad, AIR 193 All 44.9 (N) The Patna High Court too holds the same view, and according to it the Karta or a member interested in an undivided share in the whole'' of the joint family property ''cannot be called a trustee for the other members (See Rama Prasad Gupta and Others Vs. Collector of Shahabad, and In the goods of Ram Kumar Prashad, AIR 1920 Pat 113 (P) The Madras High Court has taken a middle view and. has held that court-fees are payable on the valuation of the share which the deceased would have got if the property would have been divided just before his death, the reason given being that the deceased does not hold his share in the undivided property as trust property (See la re Dasu Man-avala Chetty 33 Maa 93 (PB(Q) and (Mulukutla) Annapuramma Vs. (Mulukutla) Atchutharamayya Garu, .

With respect, we are of the opinion that the Bombay view is correct and we therefore agree with It. The principle laid down in AIR 1948 Bom 163 (I) will apply pari passu to the present case in view of the interpretation we put on the language of Article 12 of Sen. 1, Court-fees Act. It follows that no court-fee was leviable on the property held by the deceased Kumar Shri Kalikakumar as manager of the joint Hindu family and therefore in trust.

6. The order of the Assistant Judge, Morvi, is correct and accordingly this revision application is dismissed with costs.

Baku, J.

7. I agree.