

**CIVIL RULE.**

*Before Chatterjra and Cuming JJ.*

HRIDAY MOHINI DASÍ

*v.*

SECRETARY OF STATE FOR INDIA.\*

1922

Nov. 28.

*Probate Duty—Enquiry by Court at instance of Collector, costs of—  
Court Fees Act (VII of 1870), ss. 19 H(4) and (6), 19 I, 19 J.*

A Probate Court has no power to award costs in a proceeding under section 19 H of the Court Fees Act.

CIVIL RULE obtained by Hriday Mohini Dasi, the petitioner, applicant.

On the 15th March 1920 one Hriday Mohini Dasi applied for grant of probate of the will of her deceased husband, this application being registered as Probate case No. 38 of 1920 in the Court of the District Judge of Faridpur. The said testator stated, *inter alia*, in his will: "The house at Deoghar has been built by me and is owned by me, only the right to the soil was conferred upon my son Sriman Sarasilal by his maternal uncle by a written document. On my death both of my sons shall share it equally." The said legatee, Sarasilal, however, appeared and contested the grant on the ground that the house referred to above belonged exclusively to him and the testator ought not to have included it in the will. Thereafter the applicant, Hriday Mohini Dasi, as also the objector, Sarasilal, and the other legatee filed an application before the learned District Judge of Faridpur stating that they were all agreed that

\* Civil Rule No. 614 of 1922, against the order of A. J. Dash, Additional District Judge of Faridpur, dated May 26, 1922.

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the house in question belonged to the objector, Sarasialal, and not to the testator, and that probate might be granted in respect of the remaining properties. On the 28th May 1921 the learned District Judge accepted this application and ordered the grant of letters of administration with copy of the will annexed and directed the applicant to furnish security to the extent of the value of the properties excluding the disputed property at Deoghar. But in July 1921 the applicant, Hriday Mohini Dasi, received a notice from the Collector to the effect that according to the valuation of the properties made by him, the applicant was to put in additional court-fees amounting to Rs. 250-12 as by the 4th August 1921. Upon the applicant's objection to the Collector regarding his valuation of the properties in question, the Collector referred the matter to the District Judge for enquiry as to the value of these properties under the provisions of section 19H of the Court Fees Act. The applicant, Hriday Mohini Dasi, also applied to the learned District Judge of Faridpur for amendment of her application for probate by expunging the said property at Deoghar from the list of properties. On the 5th May 1922 the learned District Judge disposed of the reference made by the Collector and of the applicant's petition for amendment of the list of properties given in the application for probate, by refusing to exclude the property referred to above from the list of properties in respect of which valuation was made, and on the 26th May 1922 the applicant, Hriday Mohini Dasi, was ordered to pay the sum of Rs. 191-6 to the Collector as his costs. Being aggrieved by these orders, dated the 5th May 1922 and the 26th May 1922, the applicant, Hriday Mohini Dasi, moved the High Court and obtained this Rule.

*Babu Sarat Chandra Roy Chowdhury, Babu Dinesh Chandra Roy, Babu Phanindra Lal Moitra and Babu Bansori Lal Sarkar, for the petitioner.*

*Babu Dwarka Nath Chakravarti and Babu Surendra Nath Guha, for the opposite party.*

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CHATTERJEA AND CUMING JJ. This Rule arises out of a reference under section 19 of the Court Fees Act, 1870.

It appears that after letters of administration had been granted to the petitioner, a question arose as to the valuation of the properties in respect of which they were granted. The Collector made a valuation, which was not accepted by the petitioner. The Collector thereupon moved the District Judge to hold an inquiry into the true value of the properties under sub-section (4) of section 19 H of the Court Fees Act. The District Judge modified the Collector's valuation and directed the petitioner to pay Rs. 191, annas 6, pies 6 as costs of the inquiry into the question of valuation.

It is contended on behalf of the petitioner that the Court had no power to award costs in a proceeding under section 19 H of the Court Fees Act.

There does not appear to be any provision in the Act for awarding costs in such a proceeding. Section 19 J provides that any excess *fee* found to be payable on an inquiry held under section 19H, sub-section (6), may be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of British India. There is no provision for the realisation of any *costs* which may be incurred in connection with an inquiry under section 19H, and this indicates that the Act does not contemplate the awarding of costs in such a proceeding. Only the *excess fee* is to be realised as an arrear of

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land revenue under the statute. The costs cannot be so recovered as there is no provision for it, and we do not see how the Collector, who is no party to the probate proceeding, can recover the costs from the executor or administrator as an ordinary suitor, in the absence of any provision to that effect in the statute.

Reliance is placed on behalf of the opposite party on section 53 of the Probate and Administration Act which lays down that the District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration and all matters connected therewith as are by law vested in him in relation to any civil suit or proceeding depending in his Court. But the granting of probate is not affected by the valuation proceedings under section 19H of the Court Fees Act, as section 19I, sub-section (2), lays down that the grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).

It is contended, however, that the words "and all matters connected therewith" include proceedings under section 19H of the Court Fees Act. We do not think that they do. We think that those words have reference to matters such as the revocation of probate, the production of accounts, and similar other matters. A proceeding under section 19H merely decides a revenue dispute between the Collector and the holder of probate.

We are of opinion that the Court has no power to award costs in a proceeding under section 19H of the Court Fees Act. The order of the Court below is accordingly set aside and the Rule is made absolute.

We make no order as to costs.

G. S.

*Rule absolute.*