

KASTURI  
PILLAI  
v.  
MUNICIPAL  
COUNCIL,  
ERODE,  
—————  
BAKEWELL, J.

does not acquire jurisdiction until notice of his proceedings has been given to the party interested. The Collector in making his award is not acting judicially. In any case, the award must be regarded as passing title to the property under section 16 until it has been set aside, and we think that it cannot be treated as void in a suit in ejectment.

The case in *Ganga Ram Marwari v. Secretary of State for India*(1) is precisely in point and we respectfully agree with that decision.

The Second Appeal is dismissed with costs.

N.R.

---

## APPELLATE CIVIL.

*Before Mr. Justice Seshagiri Ayyar and Mr. Justice Moore.*

KONDA SIDHIA CHETTY (PETITIONER),

v.

M. VENKATAROYA CHETTY AND ANOTHER (RESPONDENTS).\*

*Practice—Probate and Administration proceedings—Appeals—Rules of the High Court, 35, 36, 38—Fees payable to Legal Practitioners.*

In appeals from orders granting or refusing Probate or Letters of Administration, the fee allowable to a legal practitioner is regulated by Rule 38 and not by Rules 35 and 36 of the Appellate Side Rules of the High Court.

CIVIL MISCELLANEOUS PETITION in Civil Miscellaneous Appeal No. 125 of 1918 on the file of the High Court.

*N. Chandrasekhara Ayyar* for petitioner.

*N. C. Vijayaraghava Acharya* for respondents.

The ORDER of the Court was delivered by

SESHAGIRI  
AYYAR, J.

SESHAGIRI AYYAR, J.—Mr. Chandrasekhara Ayyar has raised an interesting question as to the fee payable to practitioners, in appeals from orders granting or refusing Probate or Letters of Administration. The Taxing Officer has informed us that there is no settled practice in this Court on the subject. Sometimes, he fixes a reasonable fee. Sometimes ad valorem fee as in a regular appeal is fixed. In Bombay, according to a long standing

---

(1) (1903) I.L.R., 30 Calc., 578.

\* Civil Miscellaneous Petition No. 832 of 1919 in Civil Miscellaneous Appeal No. 125 of 1918.

practice, only a fee of Rs. 30 is decreed; see *Sundrabai v. Collector of Belgaum*(1). In Calcutta, sometimes, the Judges fix the fee at the hearing. If that is not done, the Taxing Officer fixes Rs. 80 as the fee. See *Bajinath Prosad Singh v. Sham Sundar Kuar*(2). It is not denied that in the mufassal the pleader's fee is on the ad valorem scale as in a suit. In the original side of our High Court also, the same practice is alleged to exist. In this state of the authorities we have been asked to settle the rule of practice. Mr. Chandrasekhara Ayyar contended that Rule 36 of the Appellate Side Rules read with Rule 35 should govern these matters. Although in section 19-A and E and in the Table to the Court Fees Act, the duty payable on a grant of Probate or Letters is referred to as court-fee, that expression has reference to the machinery which collects the fee and to nothing else. In essence, it is a duty which the Crown levies on the party who benefits by the testator's property. Therefore in our opinion, the graduated scale of fee paid on the amount for which probate is granted cannot come under the expression ad valorem fee used in Rules 85 and 36. It was pointed out in *Rodrigues v. Mathias*(3) that the right in dispute in Probate proceedings is not so much a right to property as it is a right to manage and administer the estate by the person applying. It is that right that the Court adjudicates on before granting probate. That right may refer to any extent of property, large or small. But that is not what the Court has to consider. It is only the personal right. Consequently it seems to us that the subject-matter of a Probate Appeal is not capable of valuation and the proper rule applicable is Rule 38. In this view, the order of the Taxing Officer is right.

SIDHIA  
CHETTY  
v.  
VENKATA-  
ROYA  
CHETTY.  
—  
SESHAGIRI  
AYYAR, J.

N.R.

(1) (1909) I.L.R., 33 Bom., 256.

(2) (1914) I.L.R., 41 Calc., 687.

(3) (1911) 21 M.L.J., 481.