TESTAMENTARY JURISDICTION

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Ganga Nath

IN THE GOODS OF MADHO PRASAD* 1935 *January*, 24

Court Fees Act (VII of 1870), sections 6, 19D ; schedule I, article 11—Letters of administration—Joint Hindu family—Bank shares held in name of the father—Application by son, after the father's death, for letters of administration respecting those shares—Liability to pay court fees.

In a joint Hindu family certain Bank shares were held in the name of the father. After the father's death the shares, which were in deposit in the Bank, were refused to be handed over to the son without the production of letters of administration or a succession certificate. The son applied for letters of administration: *Held* that where a person chooses to apply for letters of administration, whether absolutely necessary or not, and they are granted, he must pay the proper court fee according to section 6 and article 11 of schedule I of the Court Fees Act. Section 19D of that Act does not in any way exempt from payment of court fee letters of administration obtained by a member of a joint Hindu family in respect of property which he gets by survivorship and not by inheritance as an heir.

Dr. *K. N. Katju*, for the applicant.

SULAIMAN, C.J., and GANGA NATH, J.:—Lala Manmohan Das applied for the grant of letters of administration in respect of the assets of his deceased father, Lala Madho Prasad, who held some shares of the Imperial Bank which are in deposit in the Imperial Bank at Calcutta. On the 25th of October, 1934, his application was granted and letters of administration were ordered to be issued to him. The office naturally demanded the payment of court fee before furnishing the letters of administration. To this the applicant objects.

Learned counsel for the applicant relies on a Full Bench ruling of the Bombay High Court in *Keshavlal Punjalal* v. *Collector of Ahmedabad* (1). No doubt this ruling supports the applicant to a great extent but the

*Testamentary Case No. 10 of 1934.

(1) (1923) I.L.R., 48 Bom., 75.

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learned Judges overruled a previous decision of their own court in *Kashinath Parsharam* v. *Gouravabai* (1). The view expressed by BEAMAN and HAYWARD, JJ., in the last mentioned case was that if an applicant who is a member of a joint Hindu family applies for probate of a will of his deceased father bequeathing the joint family property to him, probate can be granted only on the assumption that the will was genuine and valid and that the testator had authority to make the bequest; and that probate cannot be granted on the supposition that the property being joint family property the will itself was invalid; and that if the applicant wants probate he must pay the duty. We are not able to see how this point is met in the judgment delivered in the Full Bench case. That judgment proceeds principally on an interpretation of section 19D of the Court Fees Act and on the view that the provisions of that section would not apply strictly to a joint family. That may be quite correct but what, with great respect, we would say has been overlooked is that the duty is not payable under section 19D but under section 6 of the Court Fees Act and under article 11 of the first schedule. Section 19D merely provides that where letters of administration of the effects of a deceased person have been granted they shall be deemed to be valid and available by the administrator even notwithstanding the amount or value of such property is not included in the amount or value of the estate. That is to say, the holder of the letters of administration is entitled to recover the amount or property, and the opposite party cannot resist his claim on the ground that full court fee had not been paid on the letters of administration. That section has no application to the point which arises in this case. Section 19D implies that letters of administration have been issued and court fee already paid thereon, though not sufficient.

(1) (1914) I.L.R., 39 Bom., 245.

Section 6 requires that no document of any kind specified in the schedules shall be furnished by any public officer unless in respect of such document there be paid a fee of an amount not less than that indicated by the relevant schedule. The office of this Court cannot issue letters of administration to the applicant until the duty required by article 11 has been fully paid. Article 11 does not say that there would be an exemption from the payment of duty where letters of administration are not absolutely necessary and they are only applied for either by way of precaution or for the sake of convenience. If a person chooses to apply for letters of administration, whether absolutely necessary or not, he has got to pay the duty.

In the case of *Banwari Lal* v. *Maksudan Lal* (1) it was laid down that there was no legal bar to the granting of a succession certificate to a member of a joint Hindu family who gets the right by survivorship and not as heir, and that if he chooses to apply for succession certificate or letters of administration as legal representative of the deceased person such certificate may be granted, of course on payment of full fee.

The learned counsel for the applicant contends before us that the necessity for the application has arisen because the Imperial Bank refuses to hand over the shares without the production of letters of administration or a succession certificate. We are not concerned with the question whether the Imperial Bank is rightly or wrongly refusing to do so. It may be that under some rule under which shares are issued it is necessary that the shareholder should profess to own it on his own behalf exclusively; but if the Imperial Bank is wrongly refusing to hand over property belonging to the plaintiff the remedy of the plaintiff lies by suit. If he prefers to apply for letters of administration in order to comply with the wishes of the Imperial Bank there is no option but to pay the full court fee.

(1) (1929) I.L.R., 52 All., 252.

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Dissenting from the view expressed by the Full Bench in *Keshavlal's* case (1), and adopting the principle of the decision of BEAMAN and HAYWARD, JJ., in *Kashinath Parsharam* v. *Gouravabai* (2), we hold that the applicant must pay court fee. If the court fee is not paid, letters of administration shall not be issued. We allow two months for payment of the court fee.

MATRIMONIAL JURISDICTION

Before Mr. Justice Thom

1935
January, 25

DOROTHY E. STUART (PETITIONER) *v.* VERNON R. STUART (RESPONDENT)*

Divorce—Wife's petition—Parties—Intervention—Person named in plaint as having committed adultery with the respondent but not impleaded—Application by such person to be added as a party—Civil Procedure Code, order I, rule 10—Divorce Act (IV of 1869), sections 7, 45.

Where a wife's petition for divorce names a particular woman as a person with whom the husband has committed adultery, it is doubtful whether the person so named has the right under the law as it stands, namely the Indian Divorce Act and the Civil Procedure Code, to claim to be added as a party to the divorce proceedings in order to defend her character against the aspersions made by the petitioner.

The English Divorce Act contains a section which specifically gives the court power to permit such a subsequent intervention. Without pronouncing a definite opinion on the question, it would appear that by virtue of section 7 of the Indian Divorce Act a similar rule or principle could be acted upon by divorce courts in India, and there was no reason to think that the section referred only to matters of substantive law and not to matters of procedure.

It may be that under order I, rule 10(2) of the Civil Procedure Code the court can of its own motion direct such named person to be added as a party.

Quaere, whether under section 45 of the Indian Divorce Act the Civil Procedure Code would regulate proceedings in the matter of adding parties also, or would only regulate proceed-

*Matrimonial Suit No. 7 of 1934.

(1) (1923) I.L.R., 48 Bom., 75. (2) (1914) I.L.R., 39 Bom., 245.