

REVISIONAL CIVIL

Before Mr. Justice Allsop and Mr. Justice Ganga Nath

1935
December, 5

GURCHARAN PRASAD (APPLICANT) v. SECRETARY OF
STATE FOR INDIA (OPPOSITE-PARTY)*

Succession Certificate—Court Fees—Rates enhanced by Amending Act after application for succession certificate—Court fee payable according to provisions in force at the date of issue of the certificate—Court Fees Act (VII of 1870), section 6—Succession Act (XXXIX of 1925), section 379.

Under section 6 of the Court Fees Act the court fee prescribed for a succession certificate is payable on the certificate itself and not in respect of the application for the issue of a certificate. The succession certificate is to be stamped with the proper court fee at the time when it comes into existence as a succession certificate, that is at the time when it is executed by the court, and the amount of fee payable must be calculated according to the Act in force on that date.

No doubt, under section 379 of the Succession Act a deposit has to be made, along with the application for a succession certificate, of a sum equal to the court fee payable on the certificate and the court examines whether the deposit is sufficient according to the Act then in force, but that is only for the purpose of deciding whether it should proceed to consider the application or should refuse to consider it. But the relevant date for the calculation of the correct amount of court fee to be affixed is not the date when the application is made; it is certainly either the date when the certificate is drawn up or perhaps the date when the court passes an order that such certificate should be drawn up.

Messrs. *K. N. Gupta* and *J. R. Bhatt*, for the applicants.

Mr. Muhammad Ismail (Government Advocate), for the opposite party.

ALLSOP, J.:—This is an application in which Babu Gur Charan Prasad and another seek a relief in the following terms, namely "That this Hon'ble Court may be pleased to set aside the order of the court below

and to grant the succession certificate to the applicants without any further payment of any additional court fee or grant such other and further relief as it may deem fit." The order of the lower court to which reference is made is an order passed by the District Judge of Benares on the 14th of April, 1934. It appears that the applicants on the 15th of December, 1931, made an application for the issue of a succession certificate to them. They made a deposit of Rs.5,541-8-0, estimating that that was the amount of court fee which would have to be paid on the certificate if it was issued to them. It is not denied that this was the correct amount according to the application and to the law which was in force at that time. The proceedings were stayed for some time and then on the 25th of February, 1933, the court made an order that the certificate be granted. By that date the Court Fees Act prevailing in this province had been amended and the office reported on the 6th of March, 1933, that the sum paid in as the court fee due on the certificate would be insufficient by a sum of Rs.4,191. On the same date an objection made by the applicants to this report was considered and the court passed an order saying that the objection was valid and that the court fees were sufficient. It appears that the stamps were then purchased and the certificate was issued to the applicants. About a year later, on the 16th of March, 1934, the Chief Inspector of Stamps inspected the office of the District Judge and made a report to him that the view previously taken was incorrect and that the certificate was insufficiently stamped. The learned Judge considered the matter and eventually on the 14th of April, 1934, passed an order that the deficiency should be made good. The money, that is a sum of Rs.4,191, was paid in but the applicants asked that the sum should not be expended on the purchase of a stamp as they were depositing the amount under protest and proposed to

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obtain an order from this Court. Proceedings were stayed for some time but eventually the certificate which by that time was filed in some proceedings in this Court was summoned by the court below from this Court and a stamp was purchased and that stamp was affixed to the certificate. The result is that the certificate now bears the stamp which should have been affixed to it under the provisions of the amended Court Fees Act, provided that the amount to be paid was to be calculated legally under that Act and not under the Act that was in force when the application for the grant of the certificate was filed in the court of the District Judge. It seems to me that the present application really amounts to this that the applicants desire us to direct the Government to restore to them a sum of Rs.4,191 which has been wrongly expended to the purchase of a stamp now affixed to the succession certificate. It has been argued that the order of the 14th of April, 1934, to which objection has been taken was an order that was made without jurisdiction. In the view that I take of this matter it seems to me that this question of jurisdiction is of no importance at all and is quite irrelevant. The only questions are whether the succession certificate is properly stamped or not and whether if the stamp upon it represents an amount greater than that which was due we can direct the Government to return the money to the applicants. The first important question is whether the document is or is not properly stamped. The reply to this question depends upon the further question whether the court fees which should be paid upon this certificate are those which would be due according to the Act which was in force when the certificate was issued or according to the Act which was in force when the order was passed that a certificate should issue or according to the Act which was in force at the date when the application for the issue of certificate was made. Personally it seems to me

that there is no real difficulty in deciding these questions. Under section 6 of the Court Fees Act it is laid down that "no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in any court of justice, or shall be received or 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 either of the said schedules as the proper fee for such document." The important point to notice is that the fee is payable on the document itself and there is no question of paying court fees on a proceeding or on a suit or anything of that kind. We find in schedule I of the Court Fees Act under No. 12 a certificate under the Succession Certificate Act VII of 1889 and we find that a certain fee is to be paid on such certificate in accordance with the amount or the value of any debt or security specified in the certificate. I cannot see that there is really any difficulty about the matter. It seems to me that the succession certificate was to be stamped with the proper court fee at the time when it came into existence as a succession certificate, that is at the time when it was executed by the court and that the amount of fee payable must be calculated according to the Act which was in force on that date. The applicants have relied upon the provisions of section 379 of the Indian Succession Act. The first sub-section of that section says that every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court Fees Act of 1870 in respect of the certificate or extension applied for. It is argued that the implication is that the amount payable as court fees shall be calculated at the date when the application is made and once a court decides that the amount deposited is sufficient, the matter is settled once for all. It seems to me that this argument is based upon a

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confusion of thought. The court fee is not to be paid on the application for the issue of a certificate but on the certificate itself. If the court fee was to be paid on the application, no doubt it would be calculated at the time when the application was filed, because that would be the document to which reference would be made under section 6 of the Court Fees Act. No doubt a court when it receives an application will go into the question whether the deposit is sufficient or not but it will go into that question for a different purpose, namely for the purpose of deciding whether it should proceed to consider the application or should refuse to consider it. That has nothing to do with the further question after the order for the issue of a certificate has been passed, whether the certificate can be drawn up and furnished to the applicants. It may perhaps be argued that the date when the certificate may be said to come into force is the date when the order is passed that the certificate should issue. I doubt the validity of the argument but I express no definite opinion upon the point. I am quite certain that the relevant date for calculating the amount of court fees is not the date when the application for the issue of the certificate is made. It is certainly either the date when the certificate is drawn up or perhaps the date when the court passes an order that such certificate should be drawn up. In either of those events the amount of court fee due on the certificate was a larger amount, Rs.9,732-8-0, with which the document is now stamped. I may mention that the view I have expressed is supported by the remarks made by the learned Judge who decided the case of *Gangaram Tillockchand v. Chief Controlling Revenue Authority* (1). The applicants have brought to our notice the case of *Thaddeus S. Nahapiet v. Secretary of State* (2). That was a case in which the question of court fees on the issue of

(1) (1927) I.L.R., 52 Bom., 61.

(2) A.I.R., 1924 Cal., 987.

probate was considered. There are certainly some dicta in the judgment which appear to support the applicants but those dicta are based on the special terms of section 19-I of the Court Fees Act and it would be unsafe to rely upon them in deciding this other question which depends upon the interpretation of other sections of the Court Fees Act and of the Succession Act. In that case the court might well have relied on a special provision in the Bengal Court Fees Act of 1922 which raised this scale of fees. The section to which I refer is mentioned in the judgment and it lays down that the higher court fees shall not be payable on probates or letters of administration in which the lower fee had already been paid in, although the actual probate or certificate had not issued. The position then is that I am satisfied that this succession certificate is properly stamped, and, whether the court had jurisdiction or not to call upon the applicants to pay in the amount by which the court fees were deficient, it would be quite improper for this Court in the exercise of its revisional powers to direct a refund which is not properly due. To pass such an order would in any case be of little avail because as soon as the succession certificate is filed in any court, it will be the duty of that court to impound it upon the ground that it is insufficiently stamped and to compel the applicants again to pay in the money which we would have directed the Government to refund. There is no justification for any interference in this matter and I would reject the application.

GANGA NATH, J.:—I agree with the order proposed by my learned brother.

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