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Lastly, it was faintly contended that the suit was barred by article 91 of the Indian Limitation Act. We are in entire agreement with the decision of the lower appellate Court on this point, and are of opinion that the plea has no substance.

The result therefore is that the appeal fails, and is dismissed with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge and
Mr. Justice E. M. Nanavutty*

DEPUTY COMMISSIONER, LUCKNOW (APPLICANT) v.
MRS. M. D. AIKMAN (OPPOSITE PARTY)*

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December, 6

Court Fees Act (VII of 1870), section 19-I and Schedule I, article 11—Shares in joint names of husband and wife—Gift by husband to his wife—Death of husband—Application for probate of husband's will—Wife liable to pay court-fee on the value of shares—Value of property in section 19-I, meaning of.

Where the shares held in the joint names of husband and wife are gifted in their entirety by the husband to his wife and the husband dies, the shares are the absolute property of the wife and not the property of her deceased husband and, therefore, when she applies for probate of her husband's will, she is not liable to pay court-fee on the value of those shares.

The expression "valuation of the property" in section 19-I of the Court Fees Act must mean valuation of the property of the deceased. *Bhubaneshwari Kumar v. Collector of Gaya* (1), *Dummer v. Pitcher* (2), *Low v. Carter* (3), *Coates v. Stevens* (4), and *In re Eykyn's Trust* (5), referred to.

The case was originally heard by SMITH, J., but as an important question of law was involved in it he referred it to a Bench for decision. The referring order is as follows:

*Civil Miscellaneous Application No. 210 of 1933, under section 19(F), sub-section (4) of the Court Fees Act.

(1) (1913) I.L.R., 41 Cal., 556.

(2) (1833) 39 E.R., 944.

(3) (1839) 48 E.R., 1005.

(4) (1834) 160 E.R., 28.

(5) (1877) L.R., 6 Ch.D., 115.

SMITH, J.:—This is an application under section 19(H), sub-section (4) of the Court Fees Act, by the Deputy Commissioner of Lucknow, with reference to the assets of Mr. D. W. Aikman, who died on the 21st of August, 1931, at a hospital in London. His widow, Mrs. M. D. Aikman, applied to this Court for probate of his will on the 17th of December, 1931, and probate was granted to her by a learned Judge of this Court on the 18th of December, 1931, subject to the condition that if the estate turned out to be of greater value than was set out in the annexure to the application for probate, additional court-fee would be paid. Mrs. Aikman submitted an inventory, as required by section 317(1) of the Indian Succession Act, on the 17th of March, 1932. Correspondence took place thereafter between her and the Registrar of this Court with a view to the removal of various defects in the inventory, and there was also correspondence with the Board of Revenue. A revised inventory was put in by Mrs. Aikman on the 14th of March, 1933.

It appears from the present application that Mrs. Aikman objects to the payment of Court-fee on the properties that were held in the joint names of herself and her deceased husband, and that her counsel requested the Board of Revenue to refer the matter to this Court. The Deputy Commissioner's contention is that Mrs. Aikman is liable to pay Court-fees on half the value of the shares that stood in the joint names of her and her husband, and there is also a contention as to the value of certain shares held by the late Mr. Aikman in the Ryam Sugar Company.

The shares that were held in the joint names are set out in paragraph 5 of the present application. The application sets forth in separate columns the number of the shares and their value as estimated by the Collector of Stamps at Calcutta, and by the executrix (Mrs. Aikman). Paragraph 6 of the application shows the value of the Ryam Sugar Company shares according to

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the "Collector of Calcutta", and according to Mrs. Aikman.

On the application coming up for hearing, some question arose as to whether it is maintainable, having regard to the proviso to sub-section (4) of section 19(H) of the Court Fees Act. According to that proviso, no such motion as is now before me shall be made after the expiration of six months from the date of the exhibition of the inventory required by the Indian Succession Act, the section of that Act now applicable is section 317. The first inventory, as has been mentioned already, was put in by Mrs. Aikman on the 17th of March, 1932, that is to say, over a year before the making of this present application. It is contended, however, by the learned Government Advocate that the period of six months prescribed in the proviso to sub-section (4) of section 19(H) of the Court Fees Act must be taken to run from the time of the presentation of the revised inventory, that is, from the 14th of March, 1933. That contention may be supported by the principles laid down in a ruling of their Lordships of the Privy Council reported in *Bhubaneshwari Kumar v. Collector of Gaya* (1). Furthermore, as has been said already, Mrs. Aikman's counsel himself desired that the matter should be referred to this Court, and he has not pressed the objection that the application has been made by the Deputy Commissioner beyond time. It is therefore not necessary to say anything more on that point.

The number of the shares that were jointly held by Mrs. Aikman and her late husband is in two cases differently shown by the Collector of Stamps at Calcutta and by Mrs. Aikman herself, and the total valuation given by the Collector of Stamps is Rs.2,06,807-6, as against Rs.1,90,873-8 given by Mrs. Aikman. The difference in the numbers of the shares was explained to me by Mrs. Aikman's counsel as being due to the fact that the numbers given by the Collector of Stamps at Calcutta include the shares that stood in the name of

(1) (1913) I.L.R., 41 Cal., 556 (566).

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Mrs. Aikman alone, whereas she has given those that stood in the joint names of her and her late husband. This explanation is accepted by the learned Government Advocate, and he also accepts the total valuation of those jointly-held shares given by Mrs. Aikman. The only question remaining in regard to those shares is whether half their value must be regarded as the property of the deceased for the purpose of probate-duty. For Mrs. Aikman it is contended that she became entitled to the whole of those shares by right of survivorship, and that no duty is payable in respect of her late husband's share in them. As regards the Ryam Sugar Company shares, the valuation given by Mrs. Aikman was based upon the Weekly Share Market Report of Messrs. Place, Siddons and Gough, dated the 11th December, 1931, whereas the valuation given by the "Collector of Calcutta" is based upon the price of those shares given in the issue of "Capital", dated the 23rd December, 1931.

The question whether probate-duty is payable in respect of a half share of the value of property (in this case shares) held jointly in the names of two persons, in the event of the death of either of them, is an important one, and is not free from difficulty. No authority, English or Indian, has been shown me on the subject. In these circumstances, I think it best that this application should be referred for the decision of the matters still at issue between the parties to a Bench of two Judges of this Court, as allowed by section 14(2) of the Oudh Courts Act, 1925. It is ordered accordingly.

Messrs. *G. H. Thomas* and *H. K. Ghosh* for the applicant.

Mr. *John Jackson* for the opposite party.

HASAN, C.J. and NANAVUTTY, J.:—The facts of this case are stated at length in the order of reference of our brother, Smith, J. and for the purpose of the decision of the points, which we are called upon to decide, it is not necessary to repeat them in full here.

The first and the main question for decision is as to whether Mrs. Aikman is liable to pay Court-fee duty

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on the probate in respect of certain shares which stood in the life-time of her husband in the joint names of herself and Mr. Aikman. The learned Government Advocate on behalf of the Deputy Commissioner asked us to hold that she is liable to pay Court-fee on half of the value of the shares. Mr. Jackson on behalf of Mrs. Aikman on the other hand contends that she is not liable to pay any duty at all in respect of these shares. His contention is that Mr. Aikman in his life-time made a gift of these shares in favour of Mrs. Aikman and the gift was effected by holding those shares in the joint names of both. In support of this contention Mr. Jackson produced Mrs. Aikman as a witness in the case. She has stated on oath as follows:

“There are certain shares in certain companies which were held jointly in the name of my deceased husband and myself. Previous to this they were held in the name of my husband alone and he was the full owner of those shares, but about twelve years ago he got the shares entered in our joint names saying to me that it was a gift of the whole in my favour in case I survived him. There were other shares which he bought originally in our joint names with the same intention.”

There is no evidence in the case rebutting the sworn statement of Mrs. Aikman in the matter of the gift of the shares in question. We hold therefore that it is proved that the shares held in the joint names of the late Mr. Aikman and Mrs. Aikman were gifted in their entirety by the husband to his wife.

The amount of Court-fee duty on the probate of a will is prescribed by Article 11 of the First Schedule of the Court Fees Act, 1870, and varies according to the “value of the property in respect of which the grant of probate is made.” Under section 19-I of the same Act an applicant for the grant of a probate is required to “file in the Court a valuation of the property in the form set forth in the third schedule”. The form as prescribed in that schedule deals with the “property of

the deceased". If therefore the shares in question are the property of Mrs. Aikman by virtue of the gift, as according to our opinion they are, then it follows that they are not the property of the deceased and consequently they are not required by law to be set forth in the annexure of the form referred to in section 19-I of the Court Fees Act. The expression "valuation of the property" in section 19-I must mean valuation of the property of the deceased. On this reasoning the inevitable conclusion is that Mrs. Aikman is not liable to pay Court-fee duty either on the whole or the half of the value of these shares.

Mr. Aikman was a Scotchman and was a member of the Imperial Service of Engineers of India. He was presumably aware of the view held in England that holding property in the joint names of husband and wife has always been interpreted as a gift of the whole in favour of the wife. Mrs. Aikman states in her evidence that her husband "used to tell me over and over again that the effect of holding shares in our joint names would also be to exempt me from payment of duty thereon after his death".

The view referred to above is stated in paragraph 793 of Halsbury's Laws of England, Vol. 16, in the following words:

"Where a husband purchases property or makes an investment in his wife's name, a gift to her is presumed in the absence of evidence of an intention to the contrary, and there is a similar presumption where the property is purchased or the investment made by the husband in their joint names, the wife in the latter case being entitled in the event of her surviving the husband. Where the purchase or investment is made by the husband in the joint names of husband and wife and third persons with regard to whom no presumption of gift arises, the third persons will presumably be trustees for the husband and wife and the survivor

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A gift is also presumed where money is deposited at a bank in the name of the wife, or shares or stock are transferred into her name, or where any such deposit or transfer is made in or into the joint names of both husband and wife, or where a mortgage or other security for money lent by the husband is taken in their joint names."

In *Dummer v. Pitcher* (1) it was held that certain stocks transferred by a husband into the joint names of himself and his wife and also further purchases of similar stocks by the husband in the joint names of himself and his wife became by survivorship the absolute property of the wife.

On similar facts the same interpretation was adopted in *Low v. Carter* (2).

In the case of *Coates v. Stevens* (3) the facts were that a certain stock stood in the joint names of the husband and his wife. The husband made certain dispositions of this stock by his will. The Court held that the stock was the absolute property of the wife surviving, and that she must elect between this and the other benefits bequeathed to her by the testator's will.

In the case of *In re Eykyn's Trust* (4) Malins, V. C. said as follows:

"The law of this Court is perfectly settled that when a husband transfers money or other property into the name of his wife only, then the presumption is, that it is intended as a gift or advancement to the wife absolutely at once, subject to such marital control as he may exercise. And if a husband invests money, stock, or otherwise, in the names of himself and his wife, then also it is an advancement for the benefit of the wife absolutely if she survives her husband, but if he survives her, then it reverts to him as joint tenant with his wife. This principle is established by the authority of

(1) (1833) 39 E.R., 944.

(3) (1834) 160 E.R., 28.

(2) (1839) 48 E.R., 1005.

(4) (1877) L.R., 6 Ch.D., 115 (118)

Dummer v. Pitcher (1) and cannot now be disputed."

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These cases support the view which we have expressed above that Mrs. Aikman having survived her husband the shares in question are her absolute property and not the property of her deceased husband.

In the course of arguments reference was also made to the provisions of 57 and 58 Vic. Chapter 30. Those provisions also in our opinion support the same view which we are taking in this case. Section 2(1) of that statute is as follows:

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"Property passing on the death of the deceased shall be deemed to include the property following, that is to say:

(a) Property of which the deceased was at the time of his death competent to dispose;

(b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(c) * * *

(d) * * *

Clearly if the shares in question are held, as we have held them, to be the absolute property of Mrs. Aikman, then they do not fall either under clause (a) or clause (b) quoted above.

Accordingly we hold that Mrs. Aikman is not liable to pay Court-fee on the value of the shares in question.

Another question to be decided is the determination of the value of certain shares held in the name of late Mr. Aikman alone in the Ryam Sugar Company. As regards this there was an agreement between the

(1) 2 My and K., 262.

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Counsel for the Deputy Commissioner and Counsel for Mrs. Aikman that the value of these shares may be taken at Rs.26 per share. We accordingly hold that the value of these shares is at Rs.26 per share.

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APPELLATE CIVIL

Before Sir Syed Wazir Hasan, Knight, Chief Judge and
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December 4

BABU SURENDRA NARAIN SINGH AND ANOTHER (OBJECTORS-APPELLANTS) v. RAJA LAL BAHADUR SINGH (DECREE-HOLDER-RESPONDENT)*

Oudh Rent Act (XXII of 1886), section 151—Execution of decree—Decree for arrears of rent—Decretal amount not realizable from movable property—Immovable property, whether can be sold—Suit for possession of immovable property between two brothers compromised—Compromise providing that property be held for life by one brother and then to go to second brother, if he survived—Second brother, if got a vested or contingent interest—Second brother's interest, whether could be sold in execution of a decree for arrears of rent.

Held, that under section 151 of the Oudh Rent Act, the executing court cannot sell the immovable property of the judgment-debtor unless it is proved to its satisfaction that the decretal amount cannot be realized from the movable property of the judgment-debtor.

Where under a compromise arrived at in a suit for possession of certain immovable properties between two brothers a life interest was granted in favour of one brother and the remainderman's estate in its entirety and absolutely was conferred on the other brother, if he survived the first, *held*, that the second brother took a vested and not a contingent interest in the property so settled and it was therefore liable to attachment and sale in execution of a decree obtained against him subsequent to the compromise. *K. T. Ganapathy Pillay v. Alamaloo* (1), distinguished. *Rai Sundar Bibi v. Lal Indar Narain Singh* (2).

*Execution of Decree Appeal No. 65 of 1932, against the order of Pandit Raghubar Dayal Shukla, District Judge of Rae Bareilly, dated the 30th of August, 1932, upholding the order of Mirza Sharfuddin Ahmad, Assistant Collector, 1st class, Partabgarh, dated the 21st of March, 1932.

(1) (1929) A.L.J., 1075.

(2) (1925) I.L.R., 47 All., 496.