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MOTIRAM ROSAN LAL COAL COMPANY, LIMITED v. COMMISSIONER OF INCOME-TAX.

COURTNEY TERRELL, C.J. AND FAZL ALI, J.—The question which has been formulated for our decision is

"Whether the 'original cost' appearing in sub-clause '(*vi*) of clause (*2*) to section 10 of the Act means the original cost paid by the assessee or that paid by the predecessor in business of the assessee."

Our attention has been called to the decision of the Madras High Court in the case of *Massey and Company* v. *Commissioner of Income-tax, Madras*(1) and to the decision of the Bombay High Court in the case of *Commissioner of Income-tax, Bombay* v. *The Saraspur Mills Company, Ahmedabad*(2). In our opinion the decision in the latter case is right and we are unable to agree with the decision of the Madras High Court. The words in section 10(*2*) (*vi*) "original cost thereof to the assessee" must be strictly construed and refer of course to the genuine original cost to the assessee and not necessarily to anything which the assessee may have stated to be the original cost. No question of fact, however, arises in the particular case before us and we merely make this latter observation with a view to preventing possible frauds on the Department by reason of a fictitious price being placed in the purchase of a business upon the portion of the purchase price to be allocated to business machinery or plant. The answer to the question propounded should be in the affirmative. The assessee is entitled to his costs which we fix at two hundred rupees.

Order accordingly.

APPELLATE CIVIL.

Before Courtney Terrell, C.J. and Fazl Ali, J.

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May 4, 5, 6.
July 28.

BASHIST NARAIN SAHI

v.

SIA RAMCHANDRA SAHI.*

Succession Act, 1925 (*Act XXXIX of* 1925), *section* 124, *meaning of—specified uncertain event must happen before the testator's death when the fund or property is distributable.*

* First Appeals nos. 237 and 243 of 1928, against a decision of F. F. Madan, Esq., I.C.S., District Judge of Muzaffarpur, dated the 23rd August, 1928.

(1) (1928) 115 Ind. Cas. 814, F. B.

(2) (1931) I. L. R. 56 Bom. 129.

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Section 124, Succession Act, 1925 (corresponding to section 111 of Act X of 1865), provides :—

"Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable".

Held, that the word "period" referred to in the section does not mean an indefinite period after the testator's death during which the specified uncertain event may happen but the lawful period for distribution by the executors and that the words "before the period" mean "before the commencement of such period".

Where, therefore, the testator bequeathed a part of his estate to *S* and, in the event of his death without issue, to certain deities and *S* survived the testator, having died issueless after the testator's death.

Held, that the specified uncertain event having happened after the death of the testator, the legacy to the deities could not take effect, and, therefore that *S* took an absolute and indefeasible estate.

Norendra Nath Sirkar v. *Kamalbasini Dasi*(1), followed.

Appeals by the objectors.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C.J.

S. Dayal and *B. B. Sahai*, for appellants in Appeal no. 237.

S. M. Mullick (with him *Rai T. N. Sahai* and *R. Prasad*), for appellants in Appeal no. 243.

Sir Sultan Ahmad (with him *Rai T. N. Sahai*, *R. Prasad*, *B. P. Sinha*, in Appeal no. 237, *A. K. Mitra* and *A. N. Lall*, in Appeal nos. 237 and 243), for the respondents.

COURTNEY TERRELL, C.J.—One Chengan Sahi of Muzaffarpur died on March 18th, 1904. He left a

(1) (1896) I. L. R. 23 Cal. 563, P. C.

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widow Musammat Rajo Kuer and a son Sheoratan. Some years before his death he had built a temple to house certain deities and maintained it at his own cost. Under his will executed on the day before his death he bequeathed three properties to be dedicated to the deities and to be managed by his widow as shebait and after her death (which has not yet occurred) by his son Sheoratan (who however died in 1908). The residue of his property he bequeathed to Sheoratan but in the event of Sheoratan's death without issue then absolutely to the deities aforesaid and in such circumstances the entire income of the estate was to be applied to various charitable, educational and religious purposes and the administration of the estate was directed to lie

> " in the hands of five respectable persons of mauzas Chandrapati and Kamtaul, but in case of difference of opinion amongst them and in case of mismanagement or irregular expenses the direction of the Collector of the district shall prevail."

After his death the widow obtained a limited grant of probate in common form in so far as the three dedicated properties were concerned and Sheoratan came into possession of the residue of the property under the terms of the will and, as stated above, died in 1908. In 1910 one Musammat Rama Kuer claiming to be a daughter of the testator lodged an objection to the widow's probate alleging that the will was a forgery and the widow surrendered the probate in court and it was revoked without contest. In 1924 the widow executed a surrender of her interest in the properties in favour of Musammat Rama Kuer.

The present case arises out of a joint application for probate of the will as to the whole estate by six persons. No. 6 claims to be the Pujari of the temple. The others claim to be inhabitants of mauzas Chandrapati and Kamtaul and to be qualified under the terms of the will as quoted above. There are caveats by Musammat Rajo Kuer who has not appeared, by Musammat Shampati Kuer, the widow of a cousin of the testator who supports the will but herself asks

for probate by a group of reversioners and gotias of Sheoratan, by Musammat Rama Kuer and her son who deny the genuineness of the will, by creditors of Musammat Rajo Kuer and by others.

The learned District Judge has held upon the evidence, and we are not asked to disturb that finding, that the will is genuine. The Judge has also decided in favour of the joint application for probate. Two sets of objectors have appealed. The only points for our decision are (*a*) whether or not the legacy of the entire estate to the deities had failed owing to the fact that Sheoratan had survived the testator, and (*b*) as to the locus standi of the applicants. It is contended by Sir Sultan Ahmad on behalf of the applicants that the will must first be construed and that having regard to the fact that the will was made by the testator on the day before his death, that he was sixty years old and ill at the time, he could not have contemplated the death of his son Sheoratan issueless before his own expected death and, therefore, that he must have intended that Sheoratan should take an absolute estate on the death of the testator and subsequently if and when Sheoratan died without issue the estate should devolve upon the deities. This argument is, in my opinion, beside the point. Section 124 of the Indian Succession Act, 1925, corresponding to section 111 of the Succession Act of 1865, is quite specific and is as follows :—

"Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable."

Illustrations (*i*) and (*ii*) are as follows :—

"(*i*) A legacy is bequeathed to *A* and, in case of his death, to *B*. If *A* survives the testator the legacy to *B* does not take effect.

(*ii*) A legacy is bequeathed to *A*, and, in case of his death without children, to *B*. If *A* survives the testator or dies in his lifetime leaving a child, the legacy to *B* does not take effect."

The two illustrations are different cases of the same principle, and embody the English law on the

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matter. The intention of the testator is immaterial and the section specifically prevents the legacy, even if made, from taking effect unless the event happens before the period when the fund bequeathed is payable or distributable. This view of the section was adopted by Lord Macnaghten who delivered the judgment of the Privy Council in *Norendra Nath Sircar* v. *Kamalbasini Dasi*(1) and there is no longer any room for doubt about the matter. The " period " here referred to does not mean an indefinite period after the testator's death during which the contingency of the death issueless may occur, but the lawful period for distribution by the executors and " before the period " means " before the commencement of such period ". In my opinion it is clear that Sheoratan took an absolute estate indefeasible by the fact that he died issueless after the death of the testator and the application for probate must, therefore, fail.

Moreover the applicants are a self-appointed body. Worthy persons no doubt with the purest motives but they have no locus standi whatever. In any case probate is granted for the purpose of winding up the estate, that is to say, paying the debts and legacies and not, as the applicants seem to believe, for the purpose of carrying on the management of a trust. But the interest of the deities has completely vanished and there is in any case no trust to manage.

I would allow the appeals of the contesting caveators, reverse the decision of the District Judge and set aside the grant of probate. Since the estate on the death of Sheoratan passed to the reversioners there is no need for a grant of probate to any one else. The applicants should pay to the contesting defendants one set of costs here and below and of this appellants in appeal no. 243 will get 80 per cent. of the hearing fee in each court and the appellants in appeal no. 237 will get 20 per cent.

FAZL ALI, J.—I agree.

(1) (1896) I. L. R. 23 Cal. 563, P. C.