

APPELLATE CIVIL.

Before Broadway and Johnstone JJ.

SATPAL RAM AND OTHERS—Appellants

versus

THE COLLECTOR OF MULTAN—Respondent.

Civil Appeal No. 1565 of 1929.

Indian Succession Act, XXXIX of 1925, sections 211, 255, 257, 258—Limited Probate—when allowable—Compromise—between Executor and parties contesting grant—effect of—on stamp duty—Court-fees Act, VII of 1870, Schedule I, article 11.

A petition for probate of the will of a deceased Hindu, in which the executor stated that the assets likely to come to his hands amounted to Rs. 80,000 being opposed, a compromise was effected and duly filed in Court under which it was agreed that the executor should be given probate of the will entitling him to recover a sum of Rs. 3,270 only. The petitioner then contended that stamp duty should be levied on that amount only. The trial Judge however held that stamp duty was payable on the entire amount stated in the petition as likely to come to the executor's hands, and ordered that probate should issue in terms of the compromise.

Held, that the petitioner, as an executor to whom probate had been granted, would be entitled to deal with the entire estate and the mere fact that he was prepared to allow certain other persons to retain and administer the moneys recovered by them before the grant of probate to him, did not entitle him to evade the duty. Section 211 of the Succession Act indicates that probate should be granted as a general rule for the entire estate of the deceased, the only exception in the case of Hindus (and certain others) being, that any property of the deceased person, which would otherwise have passed by survivorship to some other person, does not so vest.

In re Ram Chand Seal, per Pontifex J. (1) *In re Grish Chunder Mitter*, per Garth C. J. (2), *In re Cowar Suttya Krishna Ghosaul* (3), and *Mahima Chandra Moulick v. Saraju Bala Gupta* (4), followed.

(1) (1880) I. L. R. 5 Cal. 2. (3) (1884) I. L. R. 12 Cal. 554, 556.
 (2) (1881) I. L. R. 6 Cal. 483. (4) (1909) 1 I. C. 140.

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And, that a distinction should be drawn between letters of administration issued in the case of an intestacy, and a probate of a will or the grant of letters of administration with a copy of the will annexed. In the former case, the deceased having died intestate, his estate has to be distributed by an administrator in accordance with such rules of succession as may apply to the particular individual. In the other cases, the estate has to be distributed in accordance with the wishes of the deceased contained in his will; and, though, in certain circumstances, the Court, on application for grant of probate, would be justified in limiting the grant to a specific portion of the estate, but in order to justify that, the circumstances must be special ones.

Haji Ismail v. Haji Abdulla (1), *Shaik Moosa v. Shaik Essa* (2), *Framji Dorabji Ghaswala v. Adarji Dorabji Ghaswala* (3), and *Gurbachan Kaur v. Satwant Kaur* (4), referred to.

Miscellaneous first appeal from the order of Mr. H. B. Anderson, District Judge, Multan, dated the 11th March 1929, granting the petitioner probate in accordance with the terms of the compromise in respect of the whole of the estate, subject to the condition of payment of stamp duty on the whole of the assets.

R. C. SONI, for Appellant.

Government Advocate, for Respondent.

BROADWAY J.—One *Malik Moti Ram* of Multan died on the 27th of May 1926. He had executed a will on the 6th of June, 1923, which had been duly registered. Certain persons were named as executors in this will. One person so named was *Girdhari Lal* and it was specifically stated that he could act as soon as he attained the age of majority. On the 20th of September, 1926, this *Girdhari Lal*, having attained

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(1) (1882) I. L. R. 6 Bom. 452. (3) (1894) I. L. R. 18 Bom. 337.

(2) (1884) I. L. R. 8 Bom. 241. (4) 1925 A. I. R. (Lah.) 493.

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the age of majority, filed a petition in the Court of the District Judge, Multan, for the grant of probate of the said will. This application was made under the Indian Succession Act, XXXIX of 1925. As required by law he set out in this petition that the assets likely to come to his hands amounted to about Rs. 80,000. This petition was opposed by Satpal and others, but a compromise was effected and duly filed in Court according to which Girdhari Lal was to be given probate of the will entitling him to recover a sum of Rs. 3,270 only.

Girdhari Lal then contended that he should be called upon to pay stamp duty on the sum of Rs. 3,270 only and not on the Rs. 80,000 as set out in his petition. The learned District Judge came to the conclusion that stamp duty was leviable on the entire amount and ordered accordingly, directing that probate should issue in terms of the compromise. An appeal has been filed challenging the correctness of the learned District Judge's view as to the amount on which the stamp duty is payable.

Mr. Soni for the appellant advanced two contentions: Firstly, he urged that although the application was one for probate of the will, the result of the compromise warranted its being treated as one for a succession certificate. Secondly, he urged that it was allowable to issue a probate limited to a portion of the estate and that the stamp duty would then be recoverable according to the value of the limited grant.

The first contention need not detain us. The application was one for probate and there is nothing on the record to show that the petitioner ever asked that it should be amended so as to become a petition for the grant of a certificate for the recovery of a debt.

The second contention needs further consideration. Attention was drawn by the learned counsel to sections 255, 257 and 258 of the Act and it was urged that limited grants were obviously contemplated. Of this there can be no doubt. But a reference to the sections themselves indicates the circumstances in which such grants should be made and the purposes to which they should be limited. There are no direct authorities on the point before us, but a reference to section 211 of the Act seems to indicate that probate should be granted *as a general rule* for the entire estate of the deceased, for it is clear that the entire estate of a deceased person vests in the executor named by him in his will, the only exception in the case of Hindus (and certain others) being that any property of the deceased person, which would otherwise have passed by survivorship to some other person, does not so vest. In *In re Ram Chand Seal* (1) it was held by Pontifex J. that in the case of a Hindu letters of administration should issue, if at all, for the whole estate. To a similar effect was the decision in *In re Grish Chunder Mitter* (2) where Garth C. J. says as follows:—"we think it quite clear that, in this case, and as a rule in all cases, general letters of administration of a Hindu's estate must be taken out for the immovable as well as the moveable property, and that duty must be paid upon the value of the whole. Limited administration can only be granted under special circumstances." The case of *Ram Chand Seal* (1) was acted on in *Cowar Suttya Krishna Ghosaul* (3) and the case of *Ram Chand Seal* (1) was again approved in *Mahima Chandra Moulick v. Saraju Bala Gupta* (4) the inconvenience of granting separate letters of ad-

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ministration for separate portions of one estate was emphasized. Grant of Probate limited to a portion of the estate for certain specific reasons appears to have been allowed in *Haji Ismail v. Haji Abdulla* (1). This question, however, does not appear to have been considered in *Shaik Moosa v. Shaik Essa* (2) cited by Mr. Soni. The case of *Ram Chand Seal* was referred to in *Framji Dorabi Ghaswala v. Adarji Dorabji Ghaswala* (3) but without any comment as to its correctness or otherwise. The only authority which appears to me to have a direct bearing on the point at issue is to be found in *Gurbachan Kaur v. Satwant Kaur, etc.* (4), where Abdul Raof J., is reported to have said as follows:—"The other contention put forward before me is that letters of administration cannot be granted in respect of part of the property covered by the will. He has been unable to draw my attention to any provision in the Act prohibiting the grant of letters of administration for part of the property only."

I think a distinction should be drawn between letters of administration issued in the case of an intestacy and the case of a probate of a will or the grant of letters of administration with a copy of the will annexed. In the former case the deceased having died intestate, his estate has to be distributed by an administrator in accordance with such rules of succession as may apply to the particular individual. In the other cases the estate has to be distributed in accordance with the wishes of the deceased contained in his will. As I have already said on the death of a testator his estate in its entirety vests in the executor, *vide* section 211. Probate can only be granted to an executor and it is necessary for that executor to set

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(3) (1894) I. L. R. 18 Bom. 337.

(2) (1884) I. L. R. 8 Bom. 241.

(4) 1925 A. I. R. (Lah.) 493.

out in his petition the amount of assets which he expects to come into his hands. He is under statutory obligation to furnish a full and complete inventory of the entire estate within a period of six months and later, within a year from the grant of the probate, to furnish an account of his dealings with the estate. In these circumstances it seems to me that the intention of the Legislature was to lay down *as a general rule* that a grant of probate should be made for the whole estate of a deceased person. It may be that in certain circumstances the Court would be justified in limiting the grant to a specific portion of the estate as apparently was done in the Bombay case cited; but in order to justify that it seems clear that the circumstances must be special ones.

In the present case no such special circumstances appear to exist. It has been urged by Mr. Soni that certain other executors named in the will had succeeded in realising over Rs. 40,000 out of the estate without having obtained probate. In his petition, however, Girdhari Lal definitely stated that the assets he expected to realise amounted to Rs. 80,000. As an executor to whom probate had been granted, he would be entitled to deal with the entire estate and the mere fact, that he is prepared to allow certain other persons to retain and administer the moneys recovered by them before the grant of probate to him, does not, I think, entitle him to evade the stamp duty that he seems to wish to do.

I would, therefore dismiss this appeal with costs.

JOHNSTONE J.—I agree.

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Appeal dismissed.

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