

In The Goods Of Ernest Raymond Yakchee, ... vs Unknown on 4 November, 1955

Equivalent citations: AIR1956ALL152

JUDGMENT

Brij Mohan Lall, J.

1. This is an application for the probate of a will executed by Ernest Raymond Yakchee who died in the night between the 9th and the 10th of September, 1954. The petitioner is required by Section 19-I of the Court Fees Act (VII of 1870) to deposit the amount of court fee payable for the probate before an order for the grant of probate can be made. Similarly Section 57(b) of the Estates Duty Act (34 of 1953) lays down that no order entitling the applicant to the grant of probate or letters of administration can be made unless a certificate is produced from the Controller of Estate Duty to the effect that the Estate duty has been paid or will be paid or that none is due.

2. The petitioner has no funds in his hands. We are informed that the amount of court fee and the Estate duty payable in respect of this Estate will come to Rs. 52,302/-. The question that has arisen for our decision is as to what procedure is to be adopted for finding funds for payment of court fee and the Estate duty.

3. It goes without saying that the aforesaid sums are to be paid out of the deceased's estate. The petitioner is not liable under any provision of law to pay the said amount out of his own property. It appears that in the present case an amount in excess of Rs. 1,00,000/- is in deposit in the deceased's current account (Ledger Folio No. 341) in the Gorakhpur Branch of the State Bank of India.

In the circumstances, we think that the proper procedure would be to direct the Agent of the Gorakhpur Branch of the State Bank of India to deposit the aforesaid sum with the Registrar of this Court. This amount shall remain in deposit and a part of it will be utilised towards the payment of Court fee if the probate is granted and the balance shall be paid to the Controller of the Estate Duty on account of the said duty. On receipt of the sum the Registrar shall Inform the Controller that the amount of the Estate Duty (the amount to be mentioned in the information) has been received and is in deposit with the Court.

He shall further be informed that in case the probate is granted the said amount shall be paid to him. On the basis of this information, the Registrar shall ask the Controller to treat the amount in deposit in this Court as security and to issue a certificate to the effect that estate duty will be paid.

4. A direction shall, therefore. Issue to the Agent, Gorakhpur Branch of the State Bank of India to deposit a sum of Rs. 52,302/- in this Court within a period of six Weeks from the date of the receipt

of direction by him.