

The Chief Inspector Of Stamps, U.P. vs The Sunni Central Board Of Waqf, U.P. on 10 October, 1952

Equivalent citations: AIR1953ALL550, AIR 1953 ALLAHABAD 550

ORDER

Misra, J.

(1) This revision is directed against the order of the learned Civil Judge, Bara Banki, rejecting the report of the applicant, the Chief Commissioner of Stamps, U. P. made in a declaratory suit. The Chief Inspector claimed that the plaint was taxable under Section 7(iv-A), Court-fees Act and there was a deficiency of Rs. 615/10/- in the court-fee stamp. The plain-tiff who is the liquidator of the Bank of Upper India Ltd., prayed for the following reliefs in his suit:

(a) A declaration to the effect that a previous decision of the District Waqf Commissioner, Bara Banki, was ultra vires, erroneous and bad;

(b) A declaration that there is no such waqf as was found by the District Waqf Commissioner, Bara Banki, to have been constituted under the will of Chaudhri Sarafraz Ahmad.

(c) Award of costs of the suit, and

(d) Such further and other reliefs as the nature of the case may justify or demand.

(2) From the allegations contained in the plaint it would appear that Chaudhri Sarfaraz Ahmad who was the taluqdar of Bhilwal, Khanpur and Sikandarpur taluqas within the meaning of the Oudh Estates Act (1 of 1869) executed a will on 3-5-1870, expressing a desire that a sum of Rs. 2000/- per annum should be spent out of the income of the property bequeathed to Chaudhrain Bechunnissa on certain specified objects. It was said that after the death of Chaudhri Sarafraz Ahmad the will failed to take effect in view of the fact that it offended against the provisions of Section 13 of the aforementioned Act, and that the Bank of Upper India, Ltd., became the owner of the properties covered by the will. On account of the claim made by Chaudhri Shafiquzzaman Khan the present taluqdar of Bhilwal, to the effect that the sum of Rs. 2000/- which under the will was to be given for certain specified objects constituted a waqf. A notice under Section 4, Muslim Waqfs Act was issued to the plaintiff and the District Waqf Commissioner in spite of the liquidator's objection came to the conclusion that the claim was correct and the Central Board thereupon issued a notification in the official gazette regarding the exist-

ence of the waqf so declared. The liquidator of the Bank of Upper India Ltd. maintained in the present case that this decision was wrong for various reasons. One of the points urged in this connection was that the existence of a waqf and the validity of the will being denied, the District Commissioner of Waqfs had no jurisdiction to decide the matter in controversy, the matter being within the exclusive jurisdiction of the Civil Courts.

(3) The Chief Commissioner of Stamps was of the view that the suit was in effect for cancellation of the decision of the District Commissioner of Waqfs and for declaring void the will which according to him is an instrument securing property within the meaning of Section 7(iv-A), Court-fees Act. Sub-section (iv-A) applies to suits 'for or involving cancellation of or adjudging void or voidable'-

(a) a decree for money or other property having a market value, or

(b) an instrument securing money or other property having such value.

The applicant considered that the case fell under the second of the two categories mentioned above. In other words he maintained that the decision of the District Waqf Commissioner as well as the will of Chaudhri Sarafray Ahmad constituted an instrument securing money or securing property.

(4) The learned Civil Judge repelled the contention of the Chief Inspector holding that inasmuch as the Commissioner's decision only interpreted the will and did not by its own force create the alleged waqf, it could not be deemed to be an instrument securing either money or property. This part of the decision of the Court below is no longer disputed. So far as the prayer for a declaration that the will is void is concerned, the learned Civil Judge held that the will being merely a legal declaration of the testator's intention with respect to his properties which he desired to be carried out after his death, it cannot be regarded as an instrument of the nature contemplated by Sub-section (iv-A) of Section 7.

(5) It is urged on behalf of the applicant in revision that though it may be possible to hold that the will is a mere declaration of the testator's intention during his life-time, it secures the properties covered by it after the testator's death.

(6) The expression 'will' has been defined by the Indian Succession Act as "The legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death."

(7) The Oudh Estates Act likewise defines a will as:

"The legal declaration of the intentions of the testator with respect to his property affected by this Act, which he desires to be carried into effect after his death."

In -- 'Chief Inspector of Stamps v. Ramesh Chandra', AIR 1944 All 84 (A), a Bench of this Court held that Sub-section (iv-A) does not cover a case where the declaration sought relates to a will. It appears to me that the vesting of the property in the legatees after the death of the testator cannot

convert an instrument which merely constituted a declaration of intention into an instrument securing property by its own force. It is true that the law enforces the wishes of the testator after his death but this fact does not alter the legal nature of the testamentary bequest.

(8) I ought to mention that reference was invited on behalf of the applicant to the decision in -- 'Ram Narain Singh v. Pancham Singh', AIR 1944 Oudh 29 (B) wherein a will was regarded as an instrument securing property. Inasmuch, however, as this was done on account of the concession made by the other side in that behalf the case loses its importance so far as interpretation of Sub-section (iv-A) is concerned, (9) I agree with the Court below that the court-fee of Rs. 18/12 paid by the plaintiff on the declaratory relief sought by him was sufficient (10) There is no force in this application. It is dismissed with costs.