

1967      *Present : Abeyesundere, J., and Samerawickrame, J.*

IN RE K. I. SAMSUDEEN

*S. C. 208/67—Application for conferment of Sole Testamentary Jurisdiction on the District Court of Colombo in respect of the Estate of Katchi Ibrahim Samsudeen, deceased*

*Stamp duty—Death of a person outside Ceylon leaving property within Ceylon—Application to Supreme Court to appoint court to exercise sole testamentary jurisdiction—Mode of computing stamp duty leviable on the documents filed by the applicant in the Supreme Court—Relevancy of gross value, and not the nett value, of the deceased's estate—Stamp Ordinance, Schedule A, Part III, paragraph 5—Estate Duty Ordinance, s. 21.*

In an application to the Supreme Court for the conferment of sole testamentary jurisdiction on a District Court in respect of the estate of a deceased person, the stamp duty leviable on the documents filed by the applicant must be determined by reference to the probable market value, at the time of the death of the deceased, of all the property of the estate of the deceased. In determining that value no deduction shall be made in respect of any liabilities of the estate.

ORDER of Court concerning the stamp duty leviable on the documents filed by the applicant in an application for the conferment of sole testamentary jurisdiction on the District Court of Colombo in respect of the estate of a deceased person.

*S. Sharvananda, with M. T. M. Sivardeen, for the Petitioner.*

*M. Kanagasunderam, Crown Counsel, as Amicus Curiae.*

September 28, 1967. ABEYESUNDERE, J.—

The question that arises for consideration in this case is the mode of computing the stamp duty leviable on the documents filed by the applicant in the Supreme Court in connection with application No. 208/67. That application is for the conferment of sole testamentary jurisdiction on the District Court of Colombo in respect of the estate specified in the applicant's petition. The Registrar of this Court has required the applicant to stamp the documents on the basis that the stamp duty is computed by reference to the gross value of all the property of the estate of the deceased. The applicant's contention is that the stamp duty should be computed by reference to the net value of the deceased's estate.

It is settled law now that Part III of Schedule A of the Stamp Ordinance containing the duties in testamentary proceedings applies to District Courts only. The Part of the Stamp Ordinance that applies to duties in legal proceedings in the Supreme Court is Part II of Schedule A of that Ordinance. In the said Part II the stamp duties are determined by reference to the value of the legal proceedings in the Supreme Court but there is no provision in that Part or in any other provision of the Ordinance specifying the mode of computing the value of any legal proceedings in the Supreme Court for the purpose of stamp duty. Under the said Part III the value of testamentary proceedings in a District Court for the purpose of stamp duty is now determined in the manner set out in paragraph 5 of that Part. According to paragraph 5, the value of testamentary proceedings in a District Court is determined by reference to the value of the estate and it is provided in that paragraph that the value of the estate shall be taken to be the value as determined for the purpose of estate duty of all property for the administration of which a grant of probate or letters of administration is required. The mode of determining the value of property for the purpose of estate duty is specified in Section 21 of the Estate Duty Ordinance. Sub-section (i) of that Section provides that the value of any property shall be estimated to be the price which, in the opinion of an Assessor, such property would fetch if sold in the open market at the time of the death of the deceased. Therefore in the case of testamentary proceedings in a District Court the value of the estate for the purpose of paragraph 5 of Part III of Schedule A of the Stamp Ordinance is the value which, in the opinion of an Assessor, would be the market value of all property of the estate of the deceased at the time of the death of the deceased.

We are of the view that the principle of determining the value of an estate in testamentary proceedings in a District Court may well be applied to the determination of the value of an estate for the purpose of legal proceedings in the Supreme Court relating to the conferment of sole testamentary jurisdiction on a District Court. In the case before us therefore the stamp duty leviable on the documents filed by the applicant

must be determined by reference to the probable market value at the time of the death of the deceased of all the property of the estate of the deceased. In determining that value no deduction shall be made in respect of any liabilities of the estate. We hold that the Registrar of this Court has taken the correct view, namely that the documents filed by the applicant are liable to stamp duty computed by reference to the gross value of all the property of the estate of the deceased.

SAMERAWICKRAME, J.—I agree.

*Assessment of stamp duty upheld.*

