

Present: De Sampayo and Schneider JJ.

1922.

MURUGAPPA CHETTY *v.* THE COMMISSIONER OF STAMPS.

99—D. C. (Inty.) Chilaw, 1,326.

Estate duty—Deductions for assessing duty—Are foreign debts to be deducted? Opinion of Commissioner of Stamps final as deductions of debts—“Property”—What forms the estate of the deceased?—Procedure under the Ordinance indicated.

The term “debts and incumbrances” in section 17 (1) (b) of the Estate Duty Ordinance, 1919, refers to such debts and incumbrances as have been incurred or created within the Island. For the purpose of payment of estate duty, debts incurred or payable out of the Island are not to be deducted from the estate.

The procedure under the Estate Duty Ordinance indicated. “The opinion of the Commissioner appears to conclude the question as to what are the debts of incumbrances which must be deducted.”

Arulanandan (with him *Ramachandra*), for appellant.

Fernando, C.C., for respondent.

December 21, 1922. SCHNEIDER J.—

One Maiyappa Chetty described in the proceedings in this action as a Natukotte Chetty, meaning thereby a native of Southern India, had carried on business as a money lender in Madampe in this Island. He died leaving a last will, whereby he devised all his estate in Ceylon to three persons. Administration with the will annexed was granted to the attorney of one of the executors, Murugappa by name, who is also one of the devisees under the will. This administrator filed an inventory showing the assets of the estate in Ceylon as of the value of Rs. 61,005.02. As liabilities he showed as due by the deceased a sum of Rs. 737.18 to creditors in Ceylon and Rs. 39,993.14 to creditors in India. Under the provisions of “The Estate Duty Ordinance, No. 8 of 1919,” the District Court of Chilaw, which had jurisdiction in the matter, appears to have called for a certificate of the payment, or of having secured the payment of the estate duty (section 23). It would seem that the administrator in the statements required under the provisions of section 21 (1) to be delivered by him to the “proper officer” of all the property in respect of which duty is payable on the death of the deceased, and of the deductions which are to be made therefrom, claimed that the whole sum of Rs. 39,993.14 shown as debts due to creditors

1922.

SCHNEIDER
J.*Murugappa
Chetty v. The
Commissioner of
Stamps*

in India should be deducted from the assets in Ceylon. He appears also to have submitted that the deceased was the sole surviving partner of the firm of M. K. P., and that the Ceylon assets should be regarded as held by him "under the *vilasam* of Muttu Kuna Pana," that the debts payable to the creditors in India had been incurred by the deceased for the purposes of his trade in Ceylon, and that the assets in India which amounted to Rs. 25,000 were held by him "privately and not under the *vilasam*" above named. It is stated in the petition to the District Court that the Commissioner of Stamps who is "the proper authority" in valuing the estate for the purpose of assessing the duty payable deducted the whole of the debts due to creditors in India from the value of the assets there. In this petition, which is the appeal by one of the executors of the last will to the District Court under the provisions of section 22 (3), the petitioner contends that what he called "the foreign assets," that is, the estate of the deceased in India, "ought not to be brought into the accounting at all," or in the alternative that only the value of the movable assets of the estate in India should be deducted from the debts payable in India. The matter of the petition was heard and determined upon arguments addressed to the District Judge by the proctors for the executor-petitioner and the Commissioner of Stamps. The learned District Judge upheld the Commissioner's order as to the assessment of duty with costs. He thought that the debts payable in India should primarily be paid from the assets in India, and that, therefore, the Commissioner of Stamps had rightly exercised his discretion. From this holding the executor-petitioner has appealed.

I am of opinion that the learned District Judge's holding is quite right, and that not one of the contentions submitted by the appellant is sound. His first contention that no part of the assets in India should be taken into consideration is based upon the assertion that the assets in Ceylon belonged to the deceased as the sole surviving partner of the firm of M. K. P., while his assets in India were "held by him privately," and that, therefore, the character of the two estates is different. I am obliged to say that I cannot follow this argument at all. In the eye of the law, upon the death of a person, all he was entitled to whether in Ceylon, India, or elsewhere forms his estate in each of those countries, although it be the fact that in Ceylon he traded under a particular *vilasam*, in India he lived the life of a gentleman of private means, and elsewhere traded under a different *vilasam* to that he adopted for his business in Ceylon. In so far, therefore, as the first contention is founded upon the alleged unsound distinction in the character of his title to the assets in the two countries, it may be dismissed. His second contention purports to be based upon the definition of "property" in section 2. This contention is obviously unsound for several reasons. The movable property of the deceased does not come

within that definition, as there is no evidence that the deceased " was at the time of his death domiciled in Ceylon." Moreover, the matter in controversy between the parties is not what assets form the property of the deceased, but what deductions are permitted under section 17 (1) of the Ordinance. In short, the whole dispute turns upon the construction of section 17 (1) (b) of the Ordinance.

1922.

SCHNEIDER
J.

*Murugappa
Chetty v. The
Commissioner of
Stamps*

The argument on behalf of the appellant as presented before us on appeal was that " the debts and incumbrances " mentioned in section 17 (1) (b) include all debts and incumbrances, irrespective of the question where they were incurred or payable. This, undoubtedly, is a better argument than those urged in the lower Court. But I am unable to uphold it. The Ordinance is one dealing only with property situated in Ceylon. Whenever its provisions render it necessary to provide for any matters beyond the limits of this Island, there is express mention of such matters, *e.g.*, in the definition of " property " in section 2, and in the deductions provided for in section 17 (2) and (3). That being so the words " debts and incumbrances " must be interpreted to mean such debts and incumbrances as have been " incurred or created " within the Island, as there is no reference to debts incurred elsewhere. It is not a sound argument against this view to say that there are no express words creating such a limitation. Such a limitation can be inferred from the Ordinance considered as a whole, and from the fact that the Ordinance is primarily intended to deal with matters within the Island, and where matters beyond the limits of the Island should be taken into consideration, express provision is made for that purpose. There is another reason. Our Ordinance is based upon the English Finance Act, 1894 (57 and 58 Vict., c. 30). Section 17 of our Ordinance is closely modelled upon section 7 of that English Act. Section 7 (2) of the English Act is as follows:—

" An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British Possession in which the person to whom such debts are due resides, is insufficient for their payment."

The omission of this provision from our Ordinance is significant, and points to the intention as having been not to recognize debts

1922.

SCHNEIDER

J.

*Murugappa
Chetty v. The
Commissioner of
Stamps*

due from the deceased to persons resident out of this Island as coming within the sphere of section 17 (1) (b).

In section 28 of the Customs and Inland Revenue Act, 1881, c. 12, which preceded the Finance Act, 1894, the only debts permitted to be deducted from the value of the estate were "the debts due from the deceased to persons resident in the United Kingdom."

It would therefore appear that the only debts permitted at first to be deducted in England were those payable to persons resident in the United Kingdom, and that even when the Finance Act in 1894 modified this provision, deduction was only allowed (1) where it was expressly contracted that the debt should be paid in the United Kingdom; or (2) when estate duty is paid in respect of property situated out of the United Kingdom.

There is a third reason.

It would be recognized as a broad principle that the debts, the amount of which should ordinarily be deducted, are those for the payment of which the property from the value of which they are deducted might eventually be rendered exigible. To deduct from the Ceylon assets the whole of the debts payable to persons in India might result in injustice. By his will the deceased left all his Ceylon property to three devisees. None of that property is charged with the payment of the Indian debts. Why should the devisees under the will have their legacies diminished, while the heirs of the deceased in India succeeded to a free inheritance by reason of the fact that the whole burden of the debts are thrown upon the Ceylon assets. There is nothing to show that the heirs to the estate in India are the same as the devisees under the will. Moreover, it is by no means clear that the deceased was liable to pay all the debts payable in India—for it is stated that these debts were incurred for a partnership business, the representatives of deceased partners may or may not therefore be liable to pay a share of those debts.

There is nothing definite on record in the proceedings before the matter reached the Appeal Court to show that the Commissioner of Stamps was of opinion that the debts had "been incurred or created by the deceased *bona fide* for full consideration in money or money's worth for the deceased own use and benefit." Unless he is of that opinion no deduction on account of any debt is permitted to be made. The argument of Mr. Martin who appeared for the Commissioner of Stamps in the lower Court, on the contrary, was to the effect that he contested that the debts had been incurred by the deceased for the purpose of trading in Ceylon. But so far as we are concerned in appeal, Mr. Crown Counsel Fernando frankly stated that he would not contest that point as the Commissioner of Stamps had for the purpose of his assessment accepted the statement as to the existence of the debts in question, and that the statement in the petition as to the deductions made by the Commissioner was correct.

I would, therefore, hold that the order of the learned District Judge is correct, and dismiss the appeal, with costs.

In view of the absence in these proceedings of proof or of admission of facts which should have been placed before the Court, and the absence of which proof gave some trouble in appeal, and in view of the statement of the appellant's counsel that an expression of opinion from us in the appeal would be of assistance, as the procedure prescribed in the Ordinance was not well known to our Courts, I would make the following observations.

Under the Ordinance no District Court is permitted to issue probate or letters of administration until a certificate is produced that an executor has paid or secured to the satisfaction of the Commissioner of Stamps the payment of all estate duty (section 23). To enable the Commissioner of Stamps to make his assessment, a statement verified on oath setting out the value of the property and the deductions to be made is to be furnished to the Commissioner (section 21).

Then comes section 22 (3), which gives a right of appeal to the District Court to any person dissatisfied with any assessment or valuation. It requires—

- (1) That the sum in dispute in respect of duty shall exceed Rs. 200.
- (2) That notice of intention to appeal against the assessment or valuation be given in writing to the Commissioner within twenty-one days of the receipt of notice of the assessment of valuation.
- (3) That a statement in writing of the grounds of the appeal be furnished to the Commissioner within the period of twenty-one days next following the first period of twenty-one days.
- (4) That the appeal be by petition.

It seems to me that the petition should set out in its caption the title of the testamentary action, the name of the petitioner, and the provisions of the law under which it is presented. It should set out in numbered paragraphs the relevant particulars as regards the right of the petitioner to appeal, the amount in dispute, the due giving of the notice of appeal, and the furnishing of the statement of the grounds of appeal, and it should also set out the grounds of the appeal. The prayer should contain the relief asked for. There should be attached to this petition as exhibits, or produced in evidence at the trial, copies of the statements furnished to the Commissioner for the purpose of assessment, and any other documents relating to facts which had taken place before the matter was brought into Court. It is necessary to put a Court in possession of such facts. The language of section 22 (4) gives the District Court powers for a full investigation, so that, if necessary, issues

1922.

SCHNEIDER
J.

Muragappa
Chetty v. The
Commissioner of
Stamps

1922.

SCHNEIDER
J.

*Murugappa
Chetty v. The
Commissioners of
Stamps*

might be framed and tried. The necessary facts must either be admitted or proved as in all other cases where a Court is called upon to adjudicate upon any matter. Incidentally, I would also mention that the language of section 17 (1) (b) is such that the opinion of the Commissioner appears to conclude the question as what are the "debt" or "incumbrances" which might be deducted.

DE SAMPAYO J.—I agree.

Appeal dismissed.

