cannot be granted in case of gratuity which does not form part of the assets of the deceased but was merely a sum paid to particular persons who are not necessarily the heirs of the deceased. The amount of gratuity, therefore, has to be excluded from the list of assets in respect of the assets of the deceased. Similarly, it has been conceded by Mr. Kapur that the amount of Rs. 1,500 payable as Benevolent Fund could not form part of the assets of the deceased and has to be excluded from the list of the assets.

Mr. Atma Ram for the respondent has not raised any serious contest with regard to the sum of Rs. 200 being the amount lying under the Compulsory Deposit Scheme with the Controller of Defence Accounts and the amount of Rs. 1,000 shown against pay, allowances and bounty.

The result would be that the amounts of Rs. 5,000 and Rs. 1,500 would be excluded from the list of assets of the deceased in respect of which probate is being granted. The petitioner shall be entitled to the grant of a probate with regard to all the other assets shown in Annexure "A", to have effect throughout India and I order accordingly. The necessary court-fee shall be paid by the petitioner within a month. There will be no order as to costs of this petition.

B.R.T.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

MAHANT RAM PARKASH AND ANOTHER,—*Petitioners*

versus

SHANKARI AND OTHERS,— *Resondents*

Civil Revision No. 660 of 1966
Civil Miscellaneous No. 2933 of 1967

September 15, 1967

Code of Civil Procedure (Act V of 1908)—Order 22 Rule 5—Dispute as to who is the legal representative of the deceased—Whether must be decided by the Court before proceeding with the suit.

Held, that a bare reading of Order XXII Rule 5 of the Code of Civil Procedure would show that when a dispute arises as to who is the legal representative of a deceased plaintiff or defendant, that question has to be determined by the Court. It is obvious that this question should be determined by the Court before proceeding further with the suit. The Court cannot absolve itself from the duty cast on it by the statute in this behalf by resorting to the practice of impleading all the alleged legal representatives and leaving that matter to be decided in a separate suit. Such a course is not warranted by the language employed in this rule. Besides, it would not be proper that after the suit is decided, the plaintiff, who may be one of the persons claiming to be the legal representatives of the deceased, should not be able to reap the fruits of the decree, if ultimately in the separate suit, he or she is not held to be the real legal representative.

Petition under section 44, *Punjab Courts Act*, 1918, *for revision of the order of Shri Arjan Singh, Sub-Judge, III Class, Hoshiarpur, dated February* 14, 1966, *impleading Shmt. Shankari as legal representative of deceased Bhagat Ram.*

H. S. GUJRAL, ADVOCATE, for the Petitioner.

S. K. JAIN, ADVOCATE, for the Respondent No. 1.

JUDGMENT

PANDIT, J.—Bhagat Ram and his brother, Munshi Ram, brought a suit against Roshan Lal and others for the issue of a permanent injunction restraining the defendants from constructing some building on the land in dispute and interfering in any way with the possession of the plaintiffs regarding the said land. During the pendency of the suit, one of the plaintiffs, namely, Bhagat Ram, died. Thereupon, Mehanga Ram and Ram Parkash made an application under Order 22, Rule 3 of the Code of Civil Procedure for being impleaded as the sole legal representatives of the deceased on the basis of a registered will alleged to have been made in their favour by Bhagat Ram. Similarly, Smt. Shankari, daughter of the deceased, also applied for this very purpose. The question, therefore, arose as to who was the real legal representative of Bhagat Ram and that largely depended on the validity of the alleged will. The trial Judge, instead of determining this question, directed on 14th February, 1966, that all the applicants ,namely, Ram Parkash, Mehanga Ram and Smt. Shankari be brought on the record as the legal representatives of the deceased. In the said order, he proceeded to say ——"..... this order

will in no way prejudice the validity of the will in question nor to the question of real heir to the deceased which is open between applicants to contest." After having passed this order, the learned Judge made another order on the same date to the effect that the said three applicants be impleaded as the legal representatives of Bhagat Ram 'for the purpose of this suit.' He further directed the parties to produce evidence in the suit. Against both these orders dated 14th February, 1966, the present revision petition has been filed by Ram Parkash and Mehanga Ram.

It was contended by the counsel for the petitioners that the learned trial Judge had erred in impleading all the three applicants as the legal representatives of Bhagat Ram, deceased, without first deciding as to who in fact was the true legal representative of the deceased.

After hearing the counsel for the parties, I am of the view that this contention must prevail. Order 22, Rule 5 of the Code of Civil Procedure reads—

> Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court."

A bare reading of this provision would show that when a dispute arises as to who is the legal representative of a deceased plaintiff or defendant, that question has to be determined by the Court. It is obvious that this question should be determined by the Court before proceeding further with the suit. The Court cannot absolve itself from the duty cast on it by the statute in this behalf by resorting to the practice of impleading all the alleged legal representatives and leaving that matter to be decided in a separate suit. Such a course is not warranted by the language employed in this rule. Besides, it would not be proper that after the suit is decided, the plaintiff, who may be one of the persons claiming to be the legal representatives of the deceased, should not be able to reap the fruits of the decree, if ultimately in the separate suit, he or she is not held to be the real legal representative.

I would, therefore, accept this revision petition, set aside both the impugned orders dated 14th February, 1966 and remit the case to the trial Judge with the direction that he should decide this matter

before proceeding further with the suit. The parties have been directed to appear before the trial court on *9th October*, 1967. There will be no order as to costs.

It may be mentioned that during the pendency of this revision petition in this Court, an application was made by the petitioners on 30th of August, 1967, that Munshi Ram, the other plaintiff, had also died on 10th of March, 1967, leaving behind the petitioners as his sole legal representatives. It was said that the deceased had also left a will in their favour bequeathing his entire property to them to the exclusion of all others including his daughter Smt. Vidya. The learned trial Judge will dispose of this matter as well, after issuing a notice to Smt. Vidya and the opposite party.

B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

GHANSHAM DASS AND OTHERS,—*Appellants*

versus

MUNICIPAL COMMITTEE, BHIWANI AND OTHERS,—*Respondents*

Regular Second appeal No. 1189 of 1963

September 26, 1967

Punjab Municipal Act (III of 1911)—Ss. 61, 62 and 62-A—Water-tax already imposed by the committee at the rate of 3⅛ per cent on the annual value of the buildings and lands—Subsequently house-tax at the rate of 6¼ per cent on the annual value of the buildings and lands—Whether can be imposed.

Held, that when section 61(1)(a)(i) of the Punjab Municipal Act, 1911, talks of a tax payable by the owner on buildings and lands, not exceeding 12½ per cent on the annual value, it means that the outside limit of 12½ per cent on the annual value has been fixed by the Government for the imposition of the tax on the buildings and lands. The tax payable by the owner on buildings and lands can be split up into various categories and given different names as, e.g., house-tax and water-tax, but there is one limitation fixed by the statute and that is that all these taxes on lands and buildings taken together should not exceed 12½ per cent of their annual value.