

CIVIL MISCELLANEOUS

Before Kapur, J.

MRS. SUSHEELA DANTYAGI,—Petitioner.

versus

THE STATE AND 2 OTHERS,—Respondents.

Probate Case No. 3-D of 1955.

1956
 May, 18th. *Court Fees Act (VII of 1870)—Section 19-I—Application for Probate, Court Fee thereon, when to be paid—Whether payment of Court fee necessary before trial of the application for Probate can proceed.*

Held, that Section 19-I of the Court Fees Act, requires that before an order is made issuing the probate which certainly cannot be made if the petition is dismissed and can only be made after a Judge decides in favour of the will, the probate duty is required to be paid by a petitioner. Therefore, it is not necessary for the petitioner to pay Court fee at the stage of the trial but it may be paid after the trial, after it is decided that the will is genuine and the propounder is entitled to the probate and before order for issue of the probate is made.

Application under section 151, Civil Procedure Code, read with sections 268/300 of the Indian Succession Act, for clarification of the orders of the Court (Hon'ble Kapur, J.) dated 7th November, 1955 and for exemption from making advance deposit of the stamp duty for the grant of the probate in the matter of an application for Probate or Letters of Administration of the will of late Shri V. D. Dantiyagi, I. A. and A. S., and in the matter of an application under section 276 of the Indian Succession Act.

R. S. NARULA, for Petitioner.

NEMO. for Respondent.

ORDER.

KAPUR, J. This is an application made by Shrimati Susheela Dantiyagi stating that the office note requiring the probate duty to be paid at this stage is not in accordance with law and that the fee should be paid at the time when the probate is issued. Counsel for the petitioner has relied on a judgment of the Calcutta High Court in *In the Goods of Mrs. Lilian Singh* (1), where it was held that the effect of section 19-I of the Court-fees Act is not that the Court should not try a proceeding for probate, but all that it requires is that it shall not make an order entitling the grant of a probate. In the Calcutta case the learned Judge interpreted section 19-I of the Court-fees Act in the following words at page 21 (passage marked 'b')—

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“The section says that the Court shall not grant probate until the fees are paid. It does not say that the Court shall not try an application for probate or letters of administration until the fees are paid or that the payment of the fees is a condition precedent to the making of the application. I hold, therefore, that there is a properly constituted application for letters of administration before the Bhagalpur Court.”

The Stamp Reporter in this Court has written the following note—

“The previous practice of this Court is to ask for court-fee after the probate or letters of administration has been granted but before these are issued.”

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He also informs me that the practice in the Lahore High Court was that before the probate was issued but after the trial and after the Judge had given his decision in favour of the petitioner that the probate should be granted, the probate duty was collected but not at the time of the trial or at the time of the petition, and this is also my recollection of that practice. He also informs me that there was an order made by the Judges of the Lahore High Court but unfortunately that file is not traceable.

As I read the section it requires that before an order is made issuing the probate which certainly cannot be made if the petition is dismissed and can only be made after a Judge decides in favour of the will, the probate duty is required to be paid by a petitioner. I would therefore order in this case that it is not necessary for the petitioner to pay the court-fee at this stage, but it may be paid after the trial, after it is decided that the will is genuine and the propounder is entitled to the probate and before order for issue of the probate is made. The costs of this hearing will come out of the estate.