

1936

*Present : Dalton S.P.J. and Koch J.*MAHROOF *et al.* v. SAILE

134—D. C. Galle, 680/33,891

*Muslim Intestate Succession and Wakfs Ordinance—Stamping of documents—
Ordinance No. 10 of 1931, s. 16 (1).*

Documents produced in proceedings under section 16 (1) of the Muslim Intestate Succession and Wakfs Ordinance are liable to stamp duty as documents in civil proceedings in the District Court under Schedule B, Part II. of the Stamp Ordinance.

A PPEAL from an order of the District Judge of Galle.

H. V. Perera, for respondent, appellant.

M. I. M. Haniffa, for petitioners, respondents.

February 20, 1936. DALTON S.P.J.—

This appeal arises out of proceedings commenced under the provisions of section 16 (1) of the Muslim Intestate Succession and Wakfs Ordinance, No. 10 of 1931. Two questions arose on the appeal out of the judgment of the Court below.

¹ *Times L. R.* 259.

¹ *18 N. L. R.* 164.

The first question relates to the stamping of the documents. Objection was taken in the lower Court on behalf of the respondent to the petition, that the documents did not require to be stamped, on the ground that there was no provision for stamping them in the Ordinance under which the proceedings were taken. The trial Judge disagreed with this contention, holding that they were properly stampable, as civil proceedings in the District Court, under Schedule B, Part II. of the Stamp Ordinance, 1909, as amended by Ordinance No. 19 of 1927, as an action of the value of Rs. 1,000.

In the course of the argument on the first question, after opening his argument Mr. Perera for the appellant stated that proceedings of the present nature, prior to Ordinance No. 10 of 1931, would be brought under the provisions of section 102 of Chapter X. of the Trusts Ordinance, 1917, to which proceedings section 116 of the Ordinance applied. He intimated that on consideration he was not in a position to show that the provisions of section 116 of the Trusts Ordinance were inconsistent with the provisions of Ordinance No. 10 of 1931. If not inconsistent, the provisions of section 116 are not repealed by the latter Ordinance. He also properly called our attention to the decision of Bertram C.J. in *Sathasivam v. Vaithianathan*¹. He was unable to urge, therefore, on further consideration, that on the question of stamping the learned Judge in the lower Court was wrong. If so, it is not necessary to consider other reasons that might appear to support the judgment on this question.

The second question raised related to the Judge's order that an arbitrator or arbitrators be appointed under section 5 of Ordinance No. 15 of 1866 (The Arbitration Ordinance) to scrutinize and make an award on the accounts filed by the respondent (appellant in appeal). Counsel for the petitioners (respondents in appeal), made it clear he had not asked for such an order and stated he did not support it.

The learned Judge no doubt thought that the Court should have assistance in respect of the accounts, but he erred in applying the provisions of the Arbitration Ordinance, 1866. The matter is amply provided for in the Ordinance under which the proceedings were taken, which he possibly overlooked. Section 20 of Ordinance No. 10 of 1931 empowers the Court to refer matters to arbitration or enquiry. The powers of the arbitrator or committee under this Ordinance do not appear to be so wide as those of an arbitrator under the Arbitration Ordinance, no doubt for good reason.

The appeal therefore made in respect of the order for arbitration must be allowed and the order for arbitration under the Arbitration Ordinance must be struck out. That will not prevent the Court hereafter, if on further consideration it thinks desirable, from making an order under the provisions of Ordinance No. 10 of 1931.

Subject to that variation in the judgment, the appeal is dismissed with costs.

Koch J.—I agree.

Appeal dismissed.

¹ 24 N.L. R. 94.