

1958 Present : Basnayake, C.J., de Silva, J., and Sinnatamby, J.

MERCANTILE BANK OF INDIA LTD., Appellant, and (1) DE SILVA,
(2) COMMISSIONER OF ESTATE DUTY, Respondents

S. G. 257, with Application 159—D. C. Galle, No. X 1,773

Estate Duty Ordinance (Cap. 187)—Recovery of estate duty out of debts, etc.—Scope of Section 55.

Section 55 of the Estate Duty Ordinance has no application to money lying to the account of any suit, and the Commissioner of Estate Duty has no authority in law to issue a notice under that section to a Court or Judge.

APPEAL from an order of the District Court, Galle.

Walter Jayawardene, with *Neville Wijeratne*, for Plaintiff-Appellant in S. C. No. 257 and in support of Application No. 159.

V. Tennekoon, Senior Crown Counsel, with *B. C. F. Jayaratne*, Crown Counsel, for 2nd Defendant-Respondent in S. C. No. 257 and for Application No. 159.

No appearance for 1st Defendant-Respondent.

January 21, 1958. BASNAYAKE, C.J.—

The question that arises for decision in this case is whether the Commissioner of Estate Duty has authority in law to give notice under section 55 (1) of the Estate Duty Ordinance requiring the District Judge of the District Court of Galle to pay, as directed in the notice hereinafter set out, a sum of Rs. 26,165/90 out of the money lying in deposit with the Government Agent on account of this action.

It is urged on behalf of the appellant that the Commissioner of Estate Duty has no such authority. The grounds submitted in support of the appellant's contention are as follows :—

- (a) the money is not in the custody of the District Judge as an individual,
- (b) the District Court is not a legal person,
- (c) the District Court was not about to pay any money to an executor for or on account of the estate of the deceased,
- (d) the District Court did not hold any money for or on account of the estate of the deceased,
- (e) the District Court did not have authority from some other person to pay any money to an executor for or on account of the estate of the deceased,

(f) the District Court was not liable to pay for or on account of the estate of the deceased money which, if paid to an executor, is bound to be credited by him to that estate.

The material facts shortly are as follows :—The appellant the Mercantile Bank of India sued and obtained judgment against the administratrix of the Estate of the deceased Liyana Peeris Mendis for a sum of Rs. 117,026. In execution of the decree a total sum of Rs. 36,750/87 was recovered. This amount was deposited with the Government Agent to the account of the case as required by section 296 of the Civil Procedure Code.

On 9th March 1956 the Commissioner of Estate Duty issued the following notice :—

“CEYLON ESTATE DUTY

Charge No. ED/9550

Collection File No. AJ/10275

Notice under Section 55 of the Estate Duty
Ordinance (Cap. 187)

To/The District Judge,

District Court, Galle.

Whereas the sum of Rupees Twenty Six Thousand One Hundred and Sixty Five and Cents Ninety (Rs. 26,265·90) being the amount of Estate Duty with interest thereon at 4 per cent per annum from 12th January 1953, to date of payment and accrued interest Rupees—(Rs.—) payable by Mrs. E. Dolly Nona de Silva, Dadalla, Galle, the executor of the estate of L. P. Mendis (deceased), is in default, and whereas it appears to me to be probable that you—

- (1) owe or are about to pay money to the executor for or on account of the deceased abovenamed ;
- or (2) hold money for or on account of the said estate* ;
- or (3) have authority from some other person to pay certain sums of money to the said executor for or on account of the said estate;
- or (4) are liable to pay for or on account of the said estate money which if paid to the executor is bound to be credited by him to that estate.

I, L. G. Gunasekera, Deputy Commissioner of Estate Duty by virtue of the powers vested in me under section 55 of the Estate Duty Ordinance (Cap. 187) do hereby require you to pay to me at the Estate Duty Office of the department of Income Tax, Estate Duty and Stamps, Colombo, any such moneys referred to above, not exceeding the said amount of the estate duty in default.

2. This Notice shall apply to all such monies referred to above which are in your hands or due from you or about to be paid by you at the date

of the receipt of this notice, or come into your hands, or become due from you, or are about to be paid by you at any time within a period of **THIRTY DAYS AFTER THAT DATE.**

*Monies now lying in deposit in D. C. Gallo Case Nos. X-1356, X-1773 and S-1445 being amounts realized by the sale of lands belonging to the Estate of the abovenamed deceased.

Sgd. L. G. GUNASEKERA,
Deputy Commissioner of Estate Duty.

Department of Income Tax,
Estate Duty and Stamps,
Colombo, 9th March, 1956 "

Learned counsel's submissions are in our view sound and must be upheld. The law requires that money received by Fiscal's officers at execution sales should be paid in to the office of the Government Agent (section 296 (4) C. P. C.). Such monies remain in deposit with the Government Agent until they are paid out on an order of Court (section 297 C. P. C.). The Court has power to make such an order under section 350 of the Civil Procedure Code. Section 55 has no application to money lying to the account of any suit and the Commissioner has no authority in law to issue a notice under that section to a Court or Judge.

The appeal must therefore be allowed. We accordingly set aside the order of the learned District Judge and allow the appeal with costs both here and in the court below.

In application No. 159 the same relief is sought as on this appeal. As we have allowed the appeal, to the hearing of which no objection has been taken by the respondent, we make no order on this application as it is not necessary to do so.

DE SILVA, J.—I agree.

SINNETAMBY, J.—I agree.

Appeal allowed.