
(1962) 02 MAD CK 0021

In the Madras High Court

Case No : Tax Case No. 33 of 1959 (Ref. No. 9 of 1959)

A. Narayanan and Another

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-02-1962

Acts Referred:

Succession Act, 1925 — Section 111

Citation : AIR 1963 Mad 179 : (1963) 47 ITR 740

Hon'ble Judges : Srinivasan, J; Jagadisan, J

Bench : Division Bench

Advocate : K.A. Ramaswamy, for V. Sethuraman and S. Padhmanabhan, for the Appellant; S. Ranganathan, for the Respondent

Judgement

Jagadisan, J.—Chockalingam Chettiar, a Hindu of the Nattukottat Chettiar community and his son, Annamalai, effected a partition of their

family properties on the 28th March 1939. Chockalingam executed a Will on 2nd February 1945 By which he made bequests of the properties

got by him under the partition. On the date of the will, he had two grand-sons by Annamalai, Narayanan and Viswanathan. Narayanan was born

on 29th May 1939, and Viswanathan was born on 17th September 1941. Annamalai's wife was one Meenakshi Achi. Chockalingam died on 7th

February 1943. After the death of Chockalingam, two sons were born to Annamalai. They are Chockalingam born on 11th August 1946 and

Ramaswami born on 23rd March 1948.

2. The income from the estate of Chockalingam came in for assessment under the Indian Income Tax Act for the year 1951-52. The assessment

was made by the Income Tax Officer on the footing that Narayanan and Viswanatham the two grand-sons of Chockalinga who alone were in

existence on the date of his death were each entitled to a moiety of the estate. Annamalai was in possession of the estate as executor under the will

of the late Chockalinga. He raised the contention that his subsequent born sons, Chockalingam and Ramaswami, were also entitled to a share in

the estate, having regard to the terms of the will and the statutory provisions of the Indian Succession Act. This contention was, however, not

accepted by the Assessing officer. The assessments for the subsequent years 1952-53, 1953-54 and 1956-57 were also made treating Narayanan

and Viswanathan, the first two sons of Annamalai as being entitled to the estate as between themselves to the exclusion of their after-born brothers.

The assessee's appeal to the Appellate Assistant Commissioner of Income Tax against the order of the Income Tax Officer failed and a further

appeal to the Income Tax Appellate Tribunal, Madras also proved futile. On an application made by the assessee u/s 66(1) of the Indian Income

Tax Act, the Tribunal has referred the following question to this court:

Whether the assessment on Viswanathan and Narayanan on a half share of the income of the estate of S. N. A. S. Chockalinga Chettiar is valid

on a proper construction of the will dated 2nd February 1943.

It will now be convenient to extract the relevant provisions of the Will:

""After my lifetime, the minor sons of my divided son, the aforesaid Annamalai Chettiar, viz, Narayanan and Viswanathan and the male children

that may be born hereafter in the aforesaid Annamalai Chettiar shall take and enjoy in equal shares and with absolute rights all assets and liabilities

in respect of Immovable and moveable properties, items, banks, Chettivettu firms etc, as per the accounts of the aforesaid S.N.A.S. firm at

Penang. . . I hereby appoint my divided son S. N. A. S. A. Annamalai Chettiar, Nattukottai, Vaisia caste, Banker, residing at Karaikudi,

Tirupattur firka, Ramanathapuram Dt. and his wife Meenakshi Achi, aforesaid caste and calling, residing at the aforesaid village as executors.

Therefore, they shall, after my lifetime manage and augment all my Immovable and moveable properties and firms, which are mentioned above, in

their capacity as guardians and executors of the aforesaid minors, and when the aforesaid minors attain majority, deliver the same to them.

The provisions of the Will are fairly clear to indicate the mind of the testator. He has made a bequest of his properties to his grand-sons by

Annamalai two of whom, Narayanan and Viswanathan were already in existence on the date of the will. It is manifest that he did not intend ether

male children that may be born to Annamalai subsequent to the execution of the will should also participate and come in, for a share in the legacy.

But did he intend that male children that may be born to Annamalai after his death should also be benefited is the crucial question. The answer to

this question cannot easily be gathered from the terms of the will. There is no doubt, however, that the testator wanted the administration of his

estate by his son, Annamalai and daughter-in-law, Meenakshi as joint executors during the minority of the legatees. These joint executors are also

described by the testator as guardians of the minor legatees. We must also observe at this stage that there is no provision in the will which can be

construed as a condition operating upon the legacy that it can take effect only, if and when, the legatee or legatees attain the age of majority. Nor

can it be said from a reading of the will that the vesting of the title of the subject of bequest in the legatees or vesting of the possession of the

subject-matter of the legacy is deferred and postponed till the attainment of the age of majority of the legatees, or till after the termination of their

period of minority.

3. The bequest by Chockalinga is certainly in favour of 8 class of heirs namely, his grand-children born of his divided son Annamalai. Where there

is a bequest to a class under the will, the essential thing to be determined first, is the point of time when the class has to be ascertained. The normal

rule is that the date of death of the testator crystallises the class of legatees and those who come within the class and are capable of taking on that

date obtain the benefit; the subsequent expansion of the class cannot diminish that benefit. But if on a proper construction of the will the

ascertainment of the class is deferred to a later date, namely a date subsequent to the date of the death, those who become members of the class

within the extended period are admitted to the benefits of the bequest. Section 111 of the Indian Succession Act, which applies to Hindu wills,

provides that the date of ascertainment of the class or the period of distribution, as it may be called, shall be the date of the testator's death. The

section reads as follows :

Where a bequest is made simply to a described class of persons the thing

bequeathed shall go only to such as are alive at the testator's death.

There is an exception in the following terms:

If the property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual but their

possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time

go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.

If there is postponement of possession of the property bequeathed beyond the testator's death either by reason of a prior bequest in favour of

another legatee not belonging to the class or otherwise, the period of distribution for the purpose of ascertainment of the class is not, the date of the

death but the date on which possession is to vest. The period of distribution may be postponed either by some prior bequest or by the nature of

the property given, or by the condition of the bequest.

4. Primarily, the words of the will if they are clear enough and unambiguous should be depended upon, to indicate the point of time at which the

class is to be ascertained. No rule of construction can overrule or displace the plain meaning of the terms employed in the testamentary instrument

where the intention of the testator cannot be gathered from the language of the instrument and from the context and the circumstances of the case,

the court which is entrusted with the task of reading the mind of the testator acts upon certain rules of construction. These rules are, no doubt,

artificial rules and have been described as rules of convenience. The first rule of convenience, which alone need be adverted to, in the present case,

is thus set out by ""William on Wills"", Vol. I, page 429:

The class is prima facie composed of those members (if any) existing ascertainable and capable of taking at the death of the testator, but where

the period of distribution is at a later date, the class opens so as to let in, all those members coming into existence before the period of distribution.

Apart from the letting in of additional members, the postponement of the gift does not otherwise postpone the time of ascertainment of the class,

and, on the one hand, persons who come into existence after the period of distribution are excluded, and, on the other hand, those in existence at

the death of the testator take an immediate vested interest, so that, if they died

before the date of distribution their share passes to their personal representatives.

The most important thing to be considered in this case in the light of the principles set forth above, is whether the exception to Section 111 of the Indian Succession Act can come in, for application. It is only in a case where possession of the subject matter of the legacy is deferred to a time later than the death of the testator that the exception can operate. The fact that the executors cum guardians of the minor legatees are vested with possession with, of course, no beneficial interest in themselves, cannot lead to the inference of a postponement of possession till the minors reach the age of adolescence.

One person may possess a thing for and on account of some one else. In such a case the latter is in possession by the agency of his who so holds the thing on his behalf. The possession thus held by one man through another may be termed mediate while that which is acquired or retained directly or personally may be distinguished as immediate or direct." (Salmond on Jurisprudence, 11th Edn. p. 332).

It is not possible to construe the words in the will providing for the management and administration of the testator's estate by the executors of the will as operating to bring about deferred possession of the estate to the legatees comprised in the class of grandchildren of the testator till any one or all of them become majors. We have no doubt that the exception to Section 111 has no application and that therefore the ascertainment of the class of heirs namely the grand-children of Chockalinga is to be, as on the date of the death of the testator.

5. The learned counsel for the assessee relied upon the decision of this court in T.B. Sri Rangi Vs. Asia Bai, and submitted that the period of distribution should be the date of the attainment of majority of the eldest grand-son, Narayanan. The terms of the will which came in, for construction in that case were as follows:

The aforesaid properties shall after my life time be enjoyed in absolute rights by Yasodai now aged three, daughter of my daughter, Lakshmi

Ammal's son and my grandson Rangaswami Naidu and other children of Rangaswami Naidu male or female who would be born to him hereafter

on their attaining majority. None else shall have any manner of right over the

said properties. Until the aforesaid minors attain majority my daughter

Lakshmi Ammal shall be their guardian and with the income of the properties shown below she will meet the family expenses take care of the

minors and on their attaining majority make over the said properties to them.

The learned Judge, Ramachandra Iyer J. as he then was, held that the period of distribution was the date when Yasodai attained majority, the

earliest time when possession was to be given. As we understand that decision, it turned on its peculiar facts. The provision in the will was that the

bequest shall be taken by the members of the class of heirs on their attaining majority. Clearly the exception to Section 111 of the Succession Act

governed that will, and if that were so, the decision of the learned Judge, it we may say so, with respect, is correct. There was no postponement of

possession either by reason of a prior bequest or otherwise. As stated already, the possession of the joint executors and guardians in the present

case was, in fact and in truth, the possession of the legatees themselves.

6. We are clearly of opinion that though the testator made a bequest to his grand-children by Annamalai and that such a bequest was to a class of

heirs, there being no provision in the will, express or implied, indicating a period of distribution later than the death of the testator and there being

no deferring of possession beyond the death, the date of ascertainment of the class must be in view of Section 111 of the Indian Succession Act be

taken to be the date when the testator died.

7. The question is answered in the affirmative and against the assesseees who will pay the costs to the department. Counsel's fee Rs. 250.