
(1969) 12 MAD CK 0042

In the Madras High Court

Case No : Tax Case No. 40 of 1965 (Reference No. 13 of 1965)

Alladi Kuppuswami

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 05-12-1969

Acts Referred:

Estate Duty Act, 1953 — Section 40, 5, 6, 7(1)

Hindu Womens Right to Property Act, 1937 — Section 3(2)

Citation : (1970) ILR (Mad) 603 : (1970) 76 ITR 500

Hon'ble Judges : K. Veeraswami, C.J;Somasundaram, J;Natesan, J

Bench : Full Bench

Advocate : K.R. Ramamani and S.V. Subramaniam, for Subbaraya Aiyer, Sethuraman and Padmanabhan, for the Appellant; V. Balasubrahmanyam J. Jayaraman, for the Respondent

Judgement

Veeraswami, C.J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953. Sri Alladi Krishnaswami Iyer, who died before the Estate Duty Act came into force, had, during his lifetime, settled certain properties absolutely on his wife, Srimathi Alladi Venkalakshamma, and had also declared certain other properties as joint family properties. The lady having died on January 5, 1956, the principal value of her estate passing on her death was determined by the revenue at Rs. 7,25,527. This sum included Rs. 2,02,271 as the value of her 1/4th share in the properties belonging to the Hindu family consisting of herself, and her three sons. The Central Board of Revenue, agreeing with the Estate Duty Officer, upheld the inclusion as warranted by Section 7(1) and dismissed the appeal from the assessment order. The Board held the view that the Hindu widow's estate created by Section 3(2) of the Hindu Women's Rights to Property Act, 1937, was an interest in property which ceased on the death of the widow attracting duty, and that Attorney-General of Ceylon v. Arunachalam Chettiar, [1957] A.C. 513; [1958] 34 ITR (E.D.) 20; 3 E.D.C, 799 . had no application to such a case.

2. The original reference to this court was of the following three questions:

"1, Whether, on the facts and in the circumstances of the case, one-fourth share of the deceased in the joint family properties, to which she was entitled u/s 3 of the Hindu Women's Rights to Property Act, 1937, was correctly included in her estate as property deemed to pass on her death u/s 7 of the Estate Duty Act, 1953 ?

2. Whether the Estate Duty Act, 1953, in so far as it seeks to levy duty on agricultural lands, is ultra vires of the legislative powers of the Union Legislature ?

3. Whether, on the facts and in the circumstances of the case, the accrued interest on fixed deposits and Government securities up to the date of death of the deceased was correctly included in her estate u/s 34(2) of the Estate Duty Act, 1953 ?"

Of these, only the first is now pressed and not the others, on behalf of the accountable persons. The tax Bench, to which one of us was a party, thought when the reference in the first instance came before it, that having regard to the importance of the question, it should be disposed of by a fuller Bench. We have carefully examined the first question, and are clearly of opinion that it should be answered in favour of the accountable persons.

3. By Section 3(2) of the Hindu Women's Rights to Property Act, 1937, a Hindu widow became entitled to have the same interest as her husband had at his death in the joint family property, but subject to the limitation placed by Sub-section (3), that the interest so devolving on her should be but a limited interest known as a Hindu women's estate, provided, however, that she should have the same right of claiming partition as a male owner. As Mulla on Hindu Law points out, the estate taken by a Hindu widow in property inherited by her from him husband, is called widow's estate or women's estate. As to the incidents of women's estate Mulla sums up at page 246, 12th edition, "A widow or other limited heir is not a tenant-for-life but is owner of the property inherited by her, subject to certain restrictions on alienation, and subject to its devolving upon the next heir of the last full owner upon her death ; *Bijoy Gopal Mukherji v. Krishna Mahishi Debt*, [1907] L.R. 34 I.A.87, 91-92; I.L.R., 34 Cal. 329. The whole estate is for the time vested in her, and she represents it completely ; (1880) L.R. 7 I.A. 115 (Privy Council) her right is of the nature of a right of property ; her position is that of owner; her powers in that character are, however, limited ; but...so long as she is alive no one has any vested interest in the succession."

4. What the widow takes, however, u/s 3(2) is not her husband's separate property by right of inheritance, as an heir, but an interest same as her husband had at his death in the joint family property. The interest her husband had in the joint family property was that of a coparcener in the coparcenary, as known to the Hindu law, with its peculiar character and incidents. Though the widow takes the same interest as her husband had as a coparcener, such interest in her hands is, however, precisely not the same in its character and incidents as that of her husband at his death. This aspect has been judicially determined in several

cases of which it will suffice to refer only to the recent ones. In *Satrughan v. Subujpari*, AIR 1957 S.C. 272, 274, 275 it is observed :

"The interest of the widow arises not by inheritance, nor by survivorship, but by statutory substitution: *Lakshmi Perumallu v. Krishnavenamma*, AIR 1965 S.C.25.....

By the Act certain antithetical concepts are sought to be reconciled. A widow of a coparcener is invested by the Act with the same interest which her husband had at the time of his death in the property of the coparcenary. She is thereby introduced into the coparcenary, and between the surviving coparceners of her husband and the widow so introduced, there arises community of interest and unity of possession. But the widow does not on that account become a coparcener : though invested with the same interest which her husband had in the property she does not acquire the right which her husband could have exercised over the interest of the other coparceners. Because of statutory substitution of her interest in the coparcenary property in place of her husband, the right which the other coparceners had under the Hindu law of the Mitakshara school of taking that interest by the rule of survivorship remains suspended so long as that estate enures. But on the death of a coparcener there is no dissolution of the coparcenary so as to carve out a defined interest in favour of the widow in the coparcenary property : *Lakshmi Perumallu v. Krishnavenamma*. The interest acquired by her u/s 3(2) is subject to the restrictions on alienation which are inherent in her estate. She has still power to make her interest definite by making a demand for partition, as a male owner may. If the widow after being introduced into family to which her husband belonged does not seek partition, on the termination of her estate her interest will merge into the coparcenary property. But if she claims partition, she is severed from the other members and her interest becomes a defined interest in the coparcenary property, and the right of the other coparceners to take that interest by survivorship will stand extinguished. If she dies after partition or her estate is otherwise determined, the interest in coparcenary property which was vested in her will devolve upon the heirs of her husband. It is true that a widow obtaining an interest in coparcenary property by Section 3(2) does not inherit that interest but once her interest has ceased to have the character of undivided interest in the property, it will upon termination of her estate devolve upon her husband's heirs. To assume as has been done in some decided cases that the right of the coparceners to take her interest on determination of the widow's interest survives even after the interest has become definite, because of a claim for partition, is to denude the right to claim partition of all reality."

5. The actual decision in that case was that after the widow's interest u/s 3(2) got defined by a partition, it will no longer revert to the coparcenary, but succession to it would be traceable to her husband. The character of the widow's interest devolving on her by force of Section 3(2), and its incidents were, therefore, part of the ratio in this case. *Govindammal v. Ramaswami Pillai*,

[1968] 81 L.W. 655, 657 to which one of us was a party, and in which no attention would appear to have been drawn to *Satrughan v. Sabujpari*, expressed much the same view as to the character of the widow's interest u/s 3(2):

"The effect of the Act was, therefore, to give a Hindu widow a better right in respect of property, to wit, she will have, on the death of her husband, who was a coparcener, the same interest in the joint family property as her deceased husband had, subject of course to the limitation that the interest so devolving on her shall be a Hindu woman's estate and is known to the Hindu law with the right superadded of claiming partition as a male owner. The Act does not make her a coparcener, and the basis of her right is not right by birth but by statute."

6. It was further pointed out in this case that the widow having the interest u/s 3(2) was not merely entitled to a right to demand partition, but was within her rights to interdict an alienation by a coparcener of the joint family property, and that the interest she became entitled to under the statute was an interest in property.

7. The widow in this reference had never asked for partition. On her death, therefore, her interest merged in the coparcenary, of which her sons were coparceners. It will be inappropriate to describe the merger as passing of property on the death of the widow. "Passes" in Section 5 implies; movement of the estate from one dying to another, and means changing hands. When by the death of the widow her interest u/s 3(2) lapsed or it merged in the coparcenary automatically, not involving any mode of devolution known to the law, and her interest up to her death, unless worked out by a partition, was but a fluctuating one as in the case of her husband when alive, and is in no way different in its behaviour or character from the interest of a coparcener, it cannot possibly be said that on her death her interest passed within the meaning of Section 5. This view, we think, is fully supported by *Attorney-General of Ceylon v. Arunachalam Chettiar*. The widow not being competent at the time of her death to dispose of her interest, Section 6 would not help the revenue either. The argument, therefore, centred round Section 7(1) the revenue asserting to show it is not under it, and the accountable person equally asserting disentitlement.

8. Quite obviously, on the death of the widow, there was cesser of her interest in the joint family property. But the question is whether it was such an interest as is contemplated by Section 7(1). The further question is whether by the cesser any benefit of value could be said to have accrued, or arisen ? Counsel for the accountable person seems to be well-supported by *Attorney-General of Ceylon v. Arunachalam Chettiar*, for it seem to answer both the points in his favour. The Privy Council there held:

"That for Section 8(1) to be applicable there must be not only a cesser of interest in property, but also a benefit arising by such cesser; and further, the benefit, as provided by Section 17(6) of the Ordinance, must be capable of valuation by reference to the income of the property which the deceased had enjoyed. Here,

the son merely had a right to be maintained by the karta out of the common fund to an extent in the karta's absolute discretion, and there was no basis of valuation which in relation to such an "interest" would conform to the scheme prescribed by Section 17(6). Nor, upon a cesser of that "interest" could a "benefit" of any value be said to have accrued to the surviving coparcener when the son's interest "lapsed".

9. We are aware of the inclusive coverage of Sub-section (1) of a cesser benefit in respect of coparcenary interest, but even so we are of opinion that the scheme of interpretation adopted by Attorney-General of Ceylon v. Arunachalam Chettiar would still govern the construction of Section 7(1). But for the inclusive part of Section 7(1), and the related provisions in the Indian Act, the provisions of the Ceylon Estate Duty Ordinance, 1919, especially Section 7, 8(1)(a) and (b) as well as Section 17(6), are in pan materia with corresponding provisions of the former Act.

10. Let us scrutinise the material provisions of the Estate Duty Act, 1953, "Property" is defined to include, of course, any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also any property converted from one species into another by any method. Included in the definition of the expression "property passing on the death" is property passing either immediately On the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation. Pausing here for a moment, we may observe that the interest a widow has u/s 3(2) of the Hindu Women's Rights to Property Act, 1937, may be regarded as property. That is the view rightly taken in Govindammal v. Ramaswami Pillai. The charging Section 5 directs levy of duty on the estate of the deceased which passes on his death. The section also says that the levy and demand of duty be upon the principal value ascertained as provided later in the Act. What property is deemed to pass is specified in the next following sections, including Section 7. Special provisions relating to transfer to companies then follow. Certain exceptions from the charge of duty are provided in respect of specified property of the deceased, depending on its situs or the status in which it was held by him, or other detailed considerations. Section 34 relates to aggregation of property and rates of duty. Then we have Section 36 (Part V) which deals with the manner of estimation of the principal value chargeable to tax. Section 36 states that the principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased's death, and that in so estimating the Controller shall fix the price of the property according to the market price at the time of the deceased's death. Section 39 contains special provisions for valuation of interest in coparcenary property ceasing on death, and as related to the inclusive part of Section 7(1). The benefit accruing or arising from the cesser of a coparcenary interest in a joint family property governed by the Mitakshara school of Hindu law on the death of a member thereof shall be the principal value of the share in the joint family

property which would have been allotted to the deceased had there been a partition immediately before his death. The principle is applied also to cesser benefit in cases governed by the Marumakkattayam or Aliyasantana rule of inheritance. But in order to arrive at the value of the deceased's share which would have been allotted to him had there been a partition before his death, the principal value of the entire property of the joint family should be estimated. The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall, u/s 40, be the principal value of the property,

- (i) if the interest therein is extended to the whole income of such property ; and
- (b) in case the interest extended to less than the whole income of the property, the value of the benefit should be the principal value of an addition to the property equal to the income to which the interest extended.

11. It would be proper, and necessary, in our opinion, to understand the words "property", "interest" and "benefit" in the context and in the light of these provisions. It follows that though property, or an interest in property, may well be included in the definition of the term "property", still it may or may not be so for purposes of a particular section in the Act. For instance, it is only property that passes in the sense of passing hands by way of inheritance, or other form of devolution, which seems to attract Section 5. Likewise, for purposes of Section 6, it must be property which the deceased at the time of his death was competent to dispose of. So also, for the application of the first part of Section 7(1), it should be such interest in property, as on its cesser the benefit that accrues or arises should be referable to the whole or less than the whole income of the property. The implication is that if this measure in terms of income of the property is not apposite to the cesser of an interest, it will not be an interest such as is contemplated by Section 7(1). The inclusive provision of the sub-section does not seem to affect this construction as the principal value of the class of interest within the coverage is value accruing to the members contained in Section 39, and not on the basis of valuation of benefits from interest ceasing on death u/s 40. It is clear from the language of Section 49(b) that the cesser benefit by ceasing of the corresponding interest is an addition to the property equal to the income to which the interest extended.

12. Having regard to the nature of the interest a widow has u/s 3(2) of the Hindu Women's Rights to Property Act, 1937, we doubt whether it is at all an interest ceasing on her death within the contemplation of the first part of Sub-section (1) of Section 7. So long as the widow did not work out her interest by asking for partition and separate possession of her husband's share in the joint family properties, she is not entitled to any specified part of such properties, or the income referable to it. The entire properties are owned by the coparcenary, and so too the income therefrom wholly belongs to it. Each member of the coparcenary is entitled to be maintained out of the income, and so too the widow of a deceased coparcener ; but the expenditure to be incurred, and its quantum in respect of maintenance rested on the discretion of the karta of the joint

family. The result of the fluctuation of a coparcener's interest in the joint family properties is but reflected only at the partition thereof. But before then, the idea is but notional. There may be births and deaths of the coparceners in a joint Hindu family, but they have no effect in a sense on the coparcenary as such, which remains the same. The widow's interest u/s 3(2) of the Hindu Women's Rights to Property Act, 1937, is not that of a coparcener as we shall presently see. But even so, her statutory interest is of undefined character before partition. We are of the view, therefore, that on the widow's death there was no cesser of any interest she had in the joint family property, and that, in any case, her interest being entirely undefined, it lapsed at her death, resulting in no change in the coparcenary property as such, and her interest cannot properly be regarded as an interest in property within the meaning of Section 7(1). Further, we fail to see what benefit accrues or arises, on the cesser of her interest. The income of the joint family properties is available to the coparcenary both before and after her death. Apart from that, the scheme of the statute, in the light of Section 40(b), is that any interest in property not capable of measurement in terms of income is not within the purview of Section 7(1). *Attorney-General of Ceylon v. Arunachalam Chettiar*, supports this view. In *Gartide v. Inland Revenue Commissioners*, [1968] A.C. 553 ; 70 ITR 663 with reference to Section 7(7)(a) and (b) of the English Act, which corresponds to Section 40(a) and (b) of our Act, it was observed at page 718:

"This shows that for the cesser of an interest to give rise to a charge for duty, it must be possible to say of the interest that it extended to the whole income, or to a definite part of the income. This notion of definite extension is, in my opinion, vital to the understanding and working of Section 2(1)(b) and consequently of Section 43 of the Act of 1940."

13. Section 2(1)(b) is in pari materia with the first part of Section 7(1) of the Indian Act. For the revenue, our attention was invited to *Kuppathammal Vs. Sakthi alias Thayammal and Another*, . But we do not think that the learned judge in that case meant to lay down the law to be that the widow of a Hindu deceased coparcener is, by reason of her interest u/s 3(2) of the Hindu Women's Rights to Property Act, 1937, entitled, without effecting partition, to any definite share of the income of the joint family properties. In our opinion, it follows that the charge to estate duty in this case cannot be sustained as valid under the first part of Section 7(1).

14. There is even less justification, as it seems to us, for the revenue to invoke the extended scope by the inclusive coverage of Section 7(1). It goes no further than that a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara ceasing on the death of the coparcener shall be deemed to pass to the extent to which a benefit accrues or arises by the cesser of such interest. We are clearly of opinion that the interest of a widow of a deceased coparcener u/s 3(2) of the Hindu Women's Rights to Property Act, 1937, is in no sense a coparcenary interest. It is well-settled that the widow is

not a coparcener, though she is a member of a Hindu joint family. *Satrughan v. Sabujpari* says this :

"A Hindu coparcenary under the Mitakshara school consists of males alone : it includes only those members who acquire by birth or adoption interest in the coparcenary property. The essence of coparcenary property is unity of ownership which is vested in the whole body of coparceners. While it remains joint, no individual member can predicate of the undivided property that he has a definite share therein. The interest of each coparcener is fluctuating, capable of being enlarged by deaths, and liable to be diminished by the birth of sons to coparceners; it is only on partition that a coparcener can claim that he has become entitled to a definite share. The two principal incidents of coparcenary property are: that the interest of coparceners devolves by survivorship and not by inheritance; and that the male issue of a coparcener acquires an interest in the coparcenary property by birth, not as representing his father but in his own independent right acquired by birth."

15. The widow gets a right to the interest of her husband in the joint family properties u/s 3(2) of the Hindu Women's Rights to Property Act, 1937, not by any right by birth, but by force of the statute. The basis of her right is not her birth, but the statute. Nor does her interest u/s 3(2) devolve on the coparcenary on her death; but it merges with the coparcenary property in that event. In the same case which we just now noticed, the Supreme Court pointed out:

"If the widow after being introduced into family to which her husband belonged does not seek partition, on the termination of her estate, her interest will merge into the coparcenary property."

16. It is clear, therefore, that the interest of a widow u/s 3(2) of the said Act is not coparcenary interest within the meaning of Section 7(1). It is true that the expression "coparcenary interest" has been used in the sub-section even in respect of joint family property of a Hindu family governed by the Marumakkattayam or Aliyasantana law. In the context, that expression only means as apparently *The Commissioner of Income Tax New Delhi Vs. Chuni Lal Moonga Ram*, a case of a Mohamedan tarwad, was inclined to think. But we see no justification why the expression "a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara" should be understood not in the light of the exposition by that school of the Hindu law, but as mere joint interest in the joint family property of a Hindu family. The legislature must be taken to have had in mind, while enacting Section 7(1), the incidents of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara. We find nothing in *Mammad Koyi v. Assistant Controller of Estate Duty*, which compels us to take a different view. Section 7(2) read with Section 39(1) and (3) leaves no room for doubt that a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara law is a coparcenary interest in such family property as expounded by the Mitakshara.

17. We answer the question in favour of the accountable persons, with costs.
Counsel's fee Rs. 250.