

(1966) 11 KL CK 0013

In the High Court Of Kerala

Case No : Writs Appeals No's. 119, 174, 179, 276 and 338 of 1965 from O. Ps.
No's. 1323, 2425, 1159 and 1151 of 1963 and 77 of 1964 respectively

Assistant Controller of Estate Duty

APPELLANT

Vs

Balkrishna Menon

RESPONDENT

Date of Decision : 29-11-1966

Acts Referred:

Constitution of India, 1950 — Article 14, 252, 366
Estate Duty Act, 1953 — Section 10, 11, 12, 13, 14
Hindu Succession Act, 1956 — Section 7

Citation : (1967) 64 ITR 223

Hon'ble Judges : M.S. Menon, C.J

Bench : Single Bench

Judgement

M.S. Menon, C.J.—These appeals raise a common question. The question relates to the extent of the property that attracts estate duty on the death of a sthanamdar.

2. The contention of the department is that estate duty is payable on the entire property of the sthanam concerned. That contention has been accepted in the judgment under appeal in Writ Appeals Nos. 119, 174, 179 and 338 of 1965.

3. The history and legal incidents of the sthanams have been the subject of a summary by the Supreme Court in Kochunni v. States of Madras and Kerala. That summary reads as follows:

The origin of the sthanam is lost in antiquity. It primarily means a dignity and denotes the status of the senior Raja in a Malabar Kovilgom or palace. It is surmised that sthanams were also created by the Rajas by giving certain properties to military chieftains and public officers and also by tarwads creating them and allocating certain properties for their maintenance. Most of the incidents of a sthanams are well settled. Usually the senior most member of the family and occasionally a female member attains a sthanam. Properties are attached to the sthanam for the maintenance of its dignity. The legal position of

a sthanee is equate to that of a Hindu widow, the successor to a sthanee is always a life-estate holder. In that respect his position is more analogous to an impartible estate-holder. He ceases to have any present interest in the tarwad properties. Like a Hindu widow of an impartible estate-holder, has an absolute interest in the income of the sthanam properties or acquisitions therefrom. His position is approximated of the tarwad succeed to his acquisitions unless accreted to the estate and he succeeds to the tarwad properties if the tarwad becomes extinct. Questions like what would happen if there is no male heir to a sthanam at any point of time whether the properties pertaining to the sthanam would sacht to the State or devolve upon the members of the tarwad or whether a subsequent birth of a male heir would revive the sthanam - are raised by Sunder Aiyar in his book, but there is a decision of the Madras High Court where in the case of Punnathood family a subsequent born male heir was given a decree for the possession of the properties of a sthanam. On the question whether a sthanam property, not being the property of a member of a tarwad, be blended with the property of the tarwad so as to make if a tarwad property, there is no direct decision. On principle if the sthanee, on attaining the sthanam, is in the position of a separated member of a Hindu family, there may not be any scope for the application of the doctrine of blending. No member of tarwad has any right to maintenance from out of the sthanam properties and the mere fact that a sthanee for the time being, out of generosity or otherwise; gives maintenance to one or other members of the tarwad cannot legally have the effect of converting the sthanam property into a tarwad property; nor the fact that the sthanam properties are treated as tarwad properties can have such a legal effect.

Now, what is the relationship between the tarwad and the sthanee ?

It is true that whatever may be the origin of the sthanam, ordinarily, the senior most member of a tarwad succeeds to that position, but once he succeeds, he ceases to have any proprietary interest in the tarwad. So too, the members of the tarwad have absolutely no proprietary interest in the sthanam property. Thereafter, they continue to be only "blood relations" with perhaps of some contingencies. The said right is nothing more than a mere succession is; the tarwad may supply future sthanees.

4. The Estate Duty Act, 1953, came into force on the 15th October, 1953. The Hindu Succession Act, 1956, came into force on 17th June, 1956. All the five sthanamdars to whose estates these appeals relate died after the commencement of both the enactments mentioned above.

Section 5 of the Estate Duty, 1953, is the charging section of that Act. It reads as follows:

(1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not

settled, including agricultural and situate in the territories which immediately before the 1st November, 1956, were comprised in the States specified in the First Schedule to this Act and in the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry which passes on the death of such person, a duty called estate duty at the rates fixed in accordance with section 35.

(2) The Central Government may, by notification in the official Gazette, add the names of any other States to the First Schedule in respect whereof resolutions have been passed by the legislatures of those State adopting this Act under clause (1) of article 252 of the Constitution in respect of estate duty on agricultural lands situate in those States, and in the issue of any such notification the States so added shall be deemed to be State specified in the First Schedule within the meaning of sub-section (1).

5. Sections 6 - 16 of the Act deal with property which is deemed to pass for the purposes of the Act. Adopting the words of Viscount Simonds in *Public Trustee v. Inland Revenue Commissioner*, it can be said that section 5 of the Act imposes a charge in general terms and that sections 6 - 16 define by inclusion and exclusion the precise area of that charge.

6. Section 7 of the Act deals with interest ceasing on death. Sub-section (1) of that section provides to the provisions of the section, "property in which the deceased or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceaseds death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkathayam or Aliyasantana law"; and sub-section (4) of that section provides that the provisions of sub-section (1) shall not apply "to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole". There is an Explanation to sub-section (4). It says:

For the removal of doubts, it is hereby declared that the holder of a sthanam is neither the holder of an office nor a corporation sole within the meaning of this sub-section.

7. The validity of the Explanation was challenged before the High Court of Madras in *Manavikraman Raja v. Controller of Estate Duty*. That court held that a sthanam is not an office or a corporation sole, that the Explanation declaring that the holder of a sthanam is neither in statutory from what is already the law, and that the Explanation does not offend article 14 of the Constitution.

The definition of the expression "estate duty" in section 2 of the Act only says:

Estate duty means estate duty under this Act.

There is a definition in article 366 of the Constitution. It says:

Estate duty means a duty to be assessed on or by reference to the principle

value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament of the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass.

8. Section 5 of the Estate Duty Act, 1953, corresponds to section 1 of the United Kingdom Finance Act of 1894, which imposed for the first time an estate duty in the country. The meaning of the words "passes on the death" has not been the subject of a definition either in the Act of the United Kingdom or of this country. As stated in *Mahendra Rambhai Patel v. Controller of Estate Duty*.

... it would be a fair presumption to make that when the legislature enacted our Act, the legislature used the expression passes on the death in the sense in which it had been judicially interpreted in England. We might, therefore, usefully refer to English decisions on the interpretation of section 1 of the U. K. Finance Act, 1894, in order to comprehend the true import of passing of property referred to in section 5 of our Act.

9. In *Attorney-General v. Milne*, Lord Parker of Waddington - father of the present Lord Chief Justice of England - said that the expression "passes on the death" in section 1 of the Finance Act, 1894, is evidently used to denote some actual change in the title or possession of the property as a whole which takes place at the death and that for the purpose of that section it is absolutely immaterial to whom or by virtue of what disposition the property passes. A few years later, in *Nevill v. Inland Revenue Commissioner*, Viscount Haldane L. C. said that the general scheme of the Act is that a new duty called estate duty is to be levied on the principal value of the property, settled or not settled, which "passes" on death, and that "passes" may be taken as meaning "changes hands".

10. It is disputed that if the Estate Duty Act, 1953, stood alone, the entire properties of the five sthanams concerned are liable to estate duty under that Act. The contention is that the Hindu Succession Act, 1956, makes a difference.

11. The contention is based on sub-section (3) so section 7 of the Hindu Succession Act, 1956. That sub-section provides that when a sthanamdar dies after the commencement of that Act, "the sthanam property held by him shall devolve upon the members of the family to which the sthanamdar belonged and the series of the sthanamdar as if the sthanam property had been divided per capita immediately before the death of the sthanamdar among himself and all the members of his family and the then living, and the shares fall to the as their separate property." There is an Explanation to sub-section (3). It reads follows:

For the purpose of this sub-section, the family of a sthanamdar shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of sthanamdar of this Act had not been passed.

12. There has been an amendment to sub-section (3) by section 27 of the Kerala

Act No. 28 of 1958. That section is in the following terms:

In section 7 of the Hindu Succession Act, 1956, in its application to the State of Kerala, -

(a) In sub-section (3) between the words him and shall, the words or her, between the words himself and and, the words or herself and between the words his and family in the two places where they occur, the words or her shall be respectively inserted.

(b) In the Explanation to sub-section (3) the word male shall be omitted.

(c) The existing explanation to sub-section (3), shall be numbered as Explanation I and the following shall be added as Explanation II.

Explanation II. - The devolution of sthanam properties under sub-section (3) and their division among the members of the family and heirs shall not be deemed to have conferred upon them in respect of immovable properties any higher rights than the sthanamdar regarding eviction or otherwise as against tenants who were holding such properties under the sthani.

13. The contention of the appellant in Write Appeal No. 276 of 1965 and of the respondents in Write Appeals Nos. 119, 174, 179 and 338 of 1965 is that as a result of the partition postulated immediately before the death of a sthanamdar in the provision above-mentioned, the property that passes or should be deemed to pass on the death of a sthanamdar is only his per capita share of the sthanam property and not the sole of the purpose of ascertaining the shares of the members of the family and the heirs of the sthanamdar in the sthanam property he leaves behind.

14. A legal fiction, like the fiction of a partition, immediately before the death of a sthanamdar embodied in sub-section (3), should certainly be carried to its logical conclusions. In the words of the oft-quoted passage of Lord Asquith in *East End Dwelling Co. Ltd. v. Finsbury Borough Council*:

If you are bidden to treat an imaginary state of as real, you must surreal, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

15. It is equally clear the legal fictions are created for definite purposes, that they are limited to the purpose for which they are created and that they should not be extended beyond that legitimate field. This has been repeatedly held by the Supreme Court in *Bangle Immunity Co. Ltd. v. State of Bihar*, *Commissioner of Income Tax v. Elphinston Spinning and Weaving Mills Co.*, *Commissioner of Sales Tax v. Modi Sugar Mills Ltd.*, *Commissioner of Income Tax v. Amarchand N.*

Shroff and Commissioner of Income Tax v. Ajax Products Ltd.

16. The first portion of sub-section (3) of section 7 clearly shows that what passes on the death of a sthanamdar so the whole of the Sthanam property held by him. It says:

When a sthanamdar dies after the commencement of this Act, the sthanam property held by him shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar.

17. The second portion of that sub-section has nothing to do with extent of the property that passes on the death of a sthanamdar. It only deals with the distribution of that property had been divided per capita immediately before the death of the sthanamdar among himself and all the members of his family then living." The device of the "as if" should be confined to the purpose for which it was intended.

18. Leach M. R. said in Parr v. Parr that the word "devolve" means to pass from a person dying to a person living and that "the etymology of the word shows its meaning". We entertain no doubt that it is in the sense indicated by the Master of the Rolls that the word "devolve" is used in the first portion of sub-section (3) of section 7 when it says that the sthanam property held by a sthanamdar shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar. In other words, the words "as if the sthanam property had been divided per capita immediately before the death of the sthanamdar" do not attenuate the sthanam property that passes on the death of the sthanamdar to a per capita share therein as contented by the appellant in Write Appeal No. 276 of 1956 and by the respondent in Write Appeals Nos. 119, 174, 179 and 338 of 1965.

19. Under the Scots of marriage at the instance of an innocent wife entitles her to a share of the husband's movable estate upon the basis of the fiction that as between husband and wife the husband is to be treated as dead at the date of the decree of dissolution. A life interest ceases on death; and the question whether a wife is entitled to a share in a life interest belonging to the husband in view of his premature death postulated by the fiction arose for consideration before the House of Lords in *Selsdon v. Selsdon*. The House decided that the fiction should not be used beyond its real purpose, that is, give the wife a right to share; and that the quantum of the share should be determined by the husband's actual wealth at the time of the divorce inclusive of the life interest that belonged to him. Lord Tomlin said:

It is in my judgment reasonable and sufficient to say that the fiction operates no farther than is necessary, that is, to give rise to just, and when the question is quantum, reference to the actual facts is alone permissible. As was aptly said by counsel for the respondent, the fiction must not be ridden to death.

20. Our attention was invited to the decision of the High Court of Madras in *K. C.*

Manavedan v. Deputy Controller of Estate Duty, which is against the stand taken by the department. We were also told that the said decision is now pending in appeal before a Division Bench of that court. All that we propose to say, with respect, is that the reasoning adopted in that decision does not appeal to us and that the conclusion reached, in our opinion, is incorrect.

21. Our decision in these appeals can be summed up in the form of four questions and answers:

S.No.

Questions

Answers

1.

What is the extent of the property that passes or is deemed to pass on the death of a sthanamdar ?

The whole of the sthanam property.

2.

On whom does the sthanam property devolve on the death of a sthanamdar ?

On the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar.

3.

In what manner does the devolution take place ?

As if the sthanam property had been divided per capita immediately before the death of the sthana-mdar among himself and all member of his family then living.

4.

What is the extent of the property that attracts estate duty on the death of a sthanamdar ?

The whole of the property that passes or is deemed to pass on the death of a sthanamdar, namely, the whole of the sthanam property.

22. In the light of what is stated above. Write Appeals Nos. 119, 174, 179 and 338 of 1965 have to be allowed and Write Appeals No. 276 of 1965 has to be dismissed. We do so, but in the circumstances of the case with our any order as to costs.

Velu Pillai, J.

23. I agree, but would like to add a few words of my own on the interpretation of section 7(3) of the Hindu Succession Act, 1956. The sthanam properties concerned in these appeals were held by the respective sthanamdar, all of whom

died after the Hindu Succession Act came into force on the 17th June, 1956. By the impugned assessments, the whole of the sthanam property concerned in each case was assessed to estate duty. Section 5 is the charging section in the Estate Duty Act, sub-section (1) of which provides:

In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principals value ascertained as hereinafter provided of all property which passes on the death of such person, a duty called estate duty at the rates fixed in accordance with section 35.

24. Estate duty is thus levied on the valued of property which passes on a mans death. Then follows under the heading "property which is deemed to pass" a group of sections, sections 6 - 16, of which sections 7, sub-sections (1) and (4) and the Explanation there to, are relevant and are as follows:

(1) Subject to the provisions of this section, property in which the deceased, or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceaseds death to extent to which a benefit accrues or arises by the ceases of much interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkathayam or Aliyasantana law....

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as corporation sole.

Explanation. - For the removal of doubts it is hereby declared that the holder of a sthanam is neither the holder of an office nor a corporation sole within the meaning of this sub-section.

25. According to the department of estate duty represented by the appellants in Write Appeals Nos. 119, 174, 179 and 338, sthanam property was assessed to estate duty under these respondents in the above appeals and the "accountable persons" who are respondents in the above appeals and the appellant in Write Appeals No. 276 of 1956, the assessment to estate duty cannot be of the entirely of sthanam property, but can be only of that share of it as might be deemed to have fallen to the sthanamdar just before his death, as provided by section 7(3) of the Hindu Succession Act. This section has been extracted in the leading judgment.

26. It seems to me out not open to doubt that, except to the extent especially provided for in the Estate Duty Act, what property passes on a mans death has to be judge with reference to the relevant rule of substantive law applicable to him. In this sense, section 7(3) of the Hindu Succession Act may be said to lay down a rule of substantive law as to sthanam property. But if, on a true construction, section 7(3) may be held to lay down only a rule of succession to sthanam property on the death of the sthanamdar, that is, of distribution of

sthanam property between his successors, it is not to be supposed that it also lays down a rule for the composition of estate duty as to what the sthanamdar died possessed of and what passed on his death of his successors as a body. What the Estate Duty Act "taxes is not the interest to which some person succeeds on a death, but the interest which ceases by reason of the death" : see M. C.J. Kagzi on Estate Duty in India, 1962 Edition, page 3, quoting from Hansons Death Duties. Section 7(3) does ordain that a per capita division of sthanam property between the persons specified shall be deemed to have taken place just before the sthanamdar died possessed of was only the share that might have fallen to him on such division, national thought it be, and that, therefore, what passed on his death was only such share. On further reflection, I have come to the conclusion that the proper constructions of the section is that what the sthanamdar died possessed of was the entirety of the sthanam property. To my mind the word "devolve" is not conclusive, that it connotes only devolution by succession. There is high authority for the view, that in certain context the term has a wider import. In *In re Hindu Womens Rights to Property Act*, Sir Maurice Linford Gwyer C.J. said "devolution may be wider in scope than succession in the sense that the former is not restricted to the result of a death." Giving the term "devolve" the wider connotation as including vesting of property by division or partition, logically the clause "shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar" must imply that devolution of sthanam property on the two classes of successors, viz., the members of his family and his take place at the same time and perhaps even by the same process. Obviously, the time element is not fulfilled, as ex hypothesi, so far as the heirs of the sthanamdar are concerned, there can be no devolution of property to them at the time or by means of the antecedent division, but only by succession upon the death of the sthanamdar taking place after such division. The next clause "as if the sthanam property had been divided per capita immediately before the death of the sthanamdar" does not present any insuperable difficulty, as it prescribes how the property shall be taken by or distributed among those entitled. In support of the view that what the sthanamdar died possessed of was the sthanam property as a whole, and not a portion or share of it, another indication is to be found in the clause, "the sthanam property held by him shall devolve"; it does not seem reasonable to construe this as descriptive, that is, as meaning "sthanam property which was held by him prior to division."

27. As a result, it seems proper and reasonable to hold that section 7(3) of the Hindu Succession Act has enacted a rule of distributing of sthanam property upon the death of the sthanamdar, and not of passing of such property, the object in so enacting being to do away with sthanam property for the future, on the death of existing sthanamdar. It has to be observed in passing that section 7 (1) of the Estate Duty Act, under which assessments of sthanam property used to be made, has not been amended after the passing of the Hindu Succession Act. Speaking with respect, for the reasons stated above, I find myself unable to

agree with the judgment of Srinivasan J. on this point in K. C. Manavedan v. Deputy Controller of Estate Duty.