

(1974) 11 MAD CK 0035

In the Madras High Court

Case No : Writ Appeal No. 18 of 1972 against Writ Petition No. 516 of 1966

Assistant Controller of Estate Duty

APPELLANT

Vs

R. Sarangapani Chettiar

RESPONDENT

Date of Decision : 27-11-1974

Acts Referred:

Estate Duty Act, 1953 — Section 5, 6, 7

Citation : (1976) 105 ITR 351

Hon'ble Judges : V. Sethuraman, J; V. Ramaswami, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; S. Rajagopalan, for the Respondent

Judgement

V. Ramaswami, J.—This is an appeal against the judgment of our learned brother in S. Sarangapani Chettiar Vs. Assistant Controller of Estate Duty-cum-Income Tax, The said petition was filed by the respondent herein for the issue of a writ of certiorari to quash the proceedings of the appellant herein in R. No. 143 C. No. 6566 dated December 31, 1965. The facts leading to the filing of the writ petition were these:

2. One Gopalasami Chettiar died on September 19, 1908, leaving a will dated September 8, 1908. Under the will, he bequeathed a life estate in favour of his wife, Seshammal, with reference to his properties. After the death of Seshammal, Ramathilakam, the daughter of the testator, was to enjoy the properties for her life. The will proceeded further to state that on the death of Ramathilakam, the estate was to devolve on her putra ponthrathi santhathi, and in default of such heirs, to her female descendants and in default of such heirs also, to her husband, Sethu Chetty, and his descendants. Sethu Chetty died on October 28, 1919, and Seshammal died in the year 1938. The writ-petitioner, who is the respondent herein, was adopted by Ramathilakam on October 10, 1953. On the death of Ramathilakam on November 4, 1962, the respondent as the accountable person filed a return under the Estate Duty Act, 1953, in which

he had disclosed that the principal value of the estate of Ramathilakam was Rs. 44,560 but contended that that was not liable for any estate duty on the ground that on his adoption on September 10, 1953, the properties had been vested in him and there was no passing of any property consequent upon the death of Ramathilakam. Apart from filing the return and producing the judgment of this court in A.S. No. 80 of 1960, the respondent did not appear before the Assistant Controller of Estate Duty in order to substantiate his legal contention. After considering the objections raised by the accountable person, the assessing officer was of the view that the estate duty was leviable u/s 7. He further considered that the principal value given by the accountable person is riot correct and, therefore, he completed the assessment u/s 58(4) of the Estate Duty Act. The respondent accountable person filed an appeal to the Appellate Controller of Estate Duty against this order of the Assistant Controller of Estate Duty. Pending this appeal, he also filed a writ petition in this court seeking to quash the order of assessment itself. The question of maintainability of this writ petition was not raised and the matter was dealt with on merits by the learned judge. The learned judge held that on adoption, Ramathilakam the widow of Sethu Chetty, was divested of all her interest in the properties including the life estate she had in the same and that, therefore, she was not at the time of her death competent to dispose of the properties within the meaning of Section 6 and there was also no passing within the meaning of Section 5 or Section 7 of the Estate Duty Act.

3. In this appeal, the learned counsel for the revenue did not seek to support the assessment on the basis of Section 6 of the Estate Duty Act, but the learned counsel contended that this was a clear case which will come under the provisions of Section 5 as settled property passing on death. In any case, the deceased had a life estate during her lifetime and that interest ceased on her death and, therefore, the estate shall be deemed to pass u/s 7 of the Estate Duty Act. In fact, this is the basis on which the Assistant Controller of Estate Duty made the assessment order. On the other hand, the learned counsel for the respondent submitted that on adoption of respondent by Ramathilakam whatever interest Rama-thilakam had over the estate was completely divested including her life interest and that no property passed on her death and no interest also ceased on her death. Before dealing with these rival contentions, it is necessary to set out certain findings given by this court relating to the validity of the adoption and the dispositions made in the will.

4. One Appasami Chettiar and another claiming to be the legal heirs of the testator, Gopalasami Chettiar, filed O.S. No. 13 of 1958 in the subordinate court of Kumbakonam against Ramathilakam and the writ petitioner herein. The plaintiffs in that suit not only questioned the validity of the adoption made by Ramathilakam but also the right of the adopted son to the properties of Gopalasami Chettiar under the provisions of the will. In the appeal against the decree in O. S. No. 13 of 1958 a Division Bench of this court in A.S. No. 80 of 1960 held that the adoption was legally and validly made by Ramathilakam. It was argued before the Bench that even if the adoption was valid, it should be

declared that the adopted son could not be a legatee under the will of Gopalasami Chettiar. This court considered that the adopted son occupied a two-fold position with reference to Gopalasami Chettiar, one as the adopted son of Ramathilakam, the daughter of Gopalasami Chettiar, and the other as the adopted son of Sethu Chetty. Under the will the estate was directed to be taken after the lifetime of Ramathilakam by the "putra pouthrathi santhathi" and failing that by her female children and failing that also it would go to Sethu Chetty and his descendants. The Division Bench held that this expression, putra pouthrathi santhathi, in the context in which it was used would not include the adopted son and that, therefore, as the adopted son of Ramathilakam he could not take the bequest under the will. They then went on to consider the question as to whether the adopted son would take the estate under bequest made in favour of "Sethu Chetty and his descendants". It was held since the bequest in favour of Sethu Chetty was a vested remainder that interest bequeathed to him was heritable and on the death of Ramathilakam, therefore, the legacy would devolve on the adopted son of Sethu Chetty. In the result it was held that the adopted son could take the estate of Gopalasami Chettiar under his will. The resultant position of these findings may be stated thus: Under the will of Gopalasami Chettiar after the death of Seshammal, the life estate will be vested in Ramathilakam and on her death, as a descendant of Sethu Chetty, the property will devolve on the adopted son of Sethu Chetty.

5. u/s 5 of the Estate Duty Act the estate duty is to be levied and paid upon the principal value of all properties settled or not settled which passes on the death of a person, "Settled property" is defined in Section 2(19) as meaning among others the property which has been limited to any person by way of succession, whether the settlement took effect before or after the commencement of the Estate Duty Act. The words "passing on death" are not defined in the Act. But we find the following useful passage in Greene's Death Ditties (VII Edition) at page 231 :

"It was said that the expression, " passing on the death ", which is not further defined, 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.

In general, "passes" may be taken as meaning "changes hands". To ascertain whether property has passed, a comparison had to be made between the persons beneficially interested the moment before the death and the persons so interested the moment after the death. If, after such a comparison, it appeared that the beneficial enjoyment of the property (or a definite part thereof) was, in substance and in events, unaffected by the death, the property (or that part thereof) did not pass on the death merely because, as a matter of terminology, one set of limitations then ceased to have effect and another became operative."

6. During the lifetime of Ramathilakam she was entitled to be in possession of the property and enjoy the whole of the income as life estate holder, though the title to the property had not been vested in her absolutely. On her death, Sethu

Chetty, if he had been alive, would have been entitled to take possession of the estate and enjoy the income therefrom. Though Sethu Shetty died during the lifetime of Ramathilakam, by reason of the adoption and the adoption taking effect under the Hindu Law from the date of death of Sethu Chetty, the adopted son becomes entitled to take possession of the estate on the death of Ramathilakam. There was, therefore, clearly a passing of the property on the death of Ramathilakam which would attract the provisions of Section 5 of the Estate Duty Act. A similar view was taken in *Baidyanath, Banerjee v. Assistant Controller of Estate Duty* [1965] 55 ITR 31.

7. The facts of that case, as summarised in the head note, are as follows:

8. One Narendra Nath Banerjee died in 1930, leaving a will by which he bequeathed a life estate in respect of certain items of property to his wife, Sudhir Bala, and an absolute estate in such property on her death to the accountable person and his brothers. Sudhir Bala died in 1960 and in proceedings for the recovery of estate duty on her death the accountable person contended that there was only a change of possession and no passing of property on the death of Sudhir Bala and no estate duty was payable. It was held that the "property passes" within the meaning of Section 5 of the Estate Duty Act, 1953, when property changes hands. It is not necessary that there should be passing of title in such property and estate duty was properly leviable on the death of Sudhir Bala. The facts in our case are almost identical and the ratio of the decision in *Baidyanath Banerjee v. Assistant Controller of Estate Duty*¹ would apply. The estate would be liable to duty u/s 5 of the Estate Duty Act.

9. We are of opinion that the instant case will also fall u/s 7 of the Estate Duty Act. As already stated, after conferring the life estate on Ramathilakam the testator bequeathed the vested remainder on Sethu Chetty and his descendants. The life interest created in favour of Ramathilakam is a right to possession of the estate and to enjoy the entire income arising therefrom. This life interest created in favour of the deceased Ramathilakam ceased on her death and Sethu Chetty and his descendants became entitled to the possession of the estate and enjoyment of the income. Thus what was merely the vested remainder enlarged into an absolute estate and that can be only by the life interest created in favour of the deceased ceasing and the corresponding benefit accruing to the remainderman. In other words, the right to the entire income on the property which was enjoyed by the deceased had ceased and the right to derive that income and enjoy the same had accrued to the adopted son. This would clearly attract the provisions of Section 7 of the Estate Duty Act. Thus, both u/s 5 and Section 7 of the Estate Duty Act, the estate duty was leviable.

10. The entire argument of the learned counsel for the respondent proceeded on a wrong assumption that the property belonged to Sethu Chetty and he died possessed of the entirety of the interest. As already stated, the property originally belonged to Gopalasami Chettiar and his testamentary capacity is not in dispute. Sethu Chetty was only a legatee under the will and his interest could

be ascertained and determined only as per the terms of the will. Whatever interest Sethu Chetty died possessed of was inherited by the adopted son and this inheritance dates back to the date on which Sethu Chetty died. The fact of giving such a retrospective succession to Sethu Chetty is only to deface whatever that happened to his estate in between the date of death of Sethu Chetty and the adoption; but it will have no effect on any interest which was not vested in Sethu Chetty or that had to devolve subsequent to his death. Bearing these principles in mind, let us consider the decisions cited by the learned counsel for the respondent.

11. Erram Reddy Chenchu Krishnamma Vs. Maram Reddy Lakshminarayana and Another, was a case where a Hindu by his will left his properties to his widow absolutely and also gave her authority to adopt and the widow in pursuance of such authority made an adoption subsequent to the death of the Hindu. It was held that since the adoption dates back to the date of the death of the Hindu, the widow could not have derived any interest in the properties under the will. This was for the reason that an adopted son becomes a coparcener with the deceased and since the adoption dates back to the date of death, the deceased becomes incompetent to dispose of the property by will. It may be seen from this case that the decision related to the property of the deceased who is an adoptive father and not any property which belonged to a third party. In Sukhdevdoss Ramprasad Vs. Mt. Choti Bai and Others, it was held that the adoption would have the effect of vesting the estate in the adopted son even though the widow was holding the property of her husband subsequent to his death as an absolute owner as the effect of adoption would divest her of any estate held by her. Subramanian alias Seeni Chettiar v. Muthiah Chettiar, ILR [1945] Mad 638. related to the fact of adoption by the husband after the death of the wife with reference to her stridhanam property. It was held that by adoption he becomes not only the son of the adoptive father but also of the adoptive father's deceased wife and that in this respect there was no distinction between adoption by a widow and adoption by a widower. The doctrine of relation back will have an effect of disentitling the heirs of his mother in preference to the adopted son. These decisions in no way support the proposition of the learned counsel for the respondent that the adoption completely divested the life interest of Ramathilakam which she got under the will of her father, Gopalasami Chettiar. As regards cesser of interest and the applicability of Section 7, the learned counsel for the respondent relied on a case in Alladi Kuppuswami Vs. Controller of Estate Duty, . In that case, the deceased was entitled to a 1/4 share in the properties of a joint Hindu family consisting of herself and her three sons by virtue of the provisions of Section 3(2) of the Hindu Women's Rights to Property Act, 1937. It was contended on behalf of the revenue that her interest in the joint family property was in the nature of coparcenary interest in the same and as such the provisions of Section 7 would be applicable. A Full Bench of this court after a review of the earlier decisions held that the interest of the deceased derived by her by virtue of Section 3(2) of the Hindu Women's Rights to Property Act, 1937,

was not a coparcenary interest but it was a statutory interest of an undefined character. So long as she had not asked for a partition and secured separate possession, her right in the joint family property on her death would lapse resulting in no change in the coparcenary property. The statutory interest was also not an interest in property within the meaning of Section 7(1), In that view the learned judges have held that Section 7(1) was not applicable. The revenue in this case did not rely on Section 7(1) on any basis that the interest of Ramathilakam was an interest in any joint family property of which the adopted son was a coparcener. We do not find, therefore, any relevance of this decision on the facts of this case. The decision in *Yelukuru Satyanarayana Vs. Assistant Controller of Estate Duty, Kurnool*, also related to a case where the estate was that of the adoptive father and the question for consideration was the applicability of Section 6 which related to the competence of the deceased to dispose of the property. That question does not arise for consideration here as the revenue did not rely on Section 6. *DWARAKA PRASAD Vs. CONTROLLER OF ESTATE DUTY, ANDHRA PRADESH.*, was a case similar to *Yelukuru Satyanarayana Vs. Assistant Controller of Estate Duty, Kurnool*, and has no application to the present case.

12. We must observe that the decision of the learned judge under appeal proceeded on the assumption that the adopted son was not a legatee under the will and that Sethu Chatty, the adoptive father, had already inherited the entire estate of Gopalasami Chettiar even before the death of Rama-thilakam. But we have already pointed out that the Division Bench of this court held in A.S. No, 80 of 1960 that the adopted son could inherit the estate of Gopalasami Chettiar under his will though he might not have come under the expression "putra pouthrathi santhathi" of Rama-thilakam. In the circumstances, therefore, with great respect to the learned judge we are unable to agree with his conclusions.

13. In the result the writ appeal is allowed and the assessment order of the Assistant Controller of Estate Duty is restored. The appellant will be entitled to his costs. Counsel's fee Rs. 250.