(1990) 10 MAD CK 0050

In the Madras High Court

Case No : Tax Case No. 114 of 1980 and 462 of 1986

Controller of Estate Duty APPELLANT

Vs

Rm. Muthappan RESPONDENT

Date of Decision : 26-10-1990

Acts Referred:
Estate Duty Act, 1953 — Section 64

Citation : (1991) 189 ITR 760 : (1991) 1 LW 712

Hon'ble Judges : V. Ratnam, J;T. Somasundaram, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; R. Janakiraman, for the Respondent

Judgement

Ratnam, J.—These tax case references arise out of the estate duty assessment of Shri Ramanathan Chettiar, who died on February 23,

1964 at Melasivapuri. I the estate duty account filed by the son of the deceased, the accountable person, it was claimed that the deceased was

domiciled in Malaya and, therefore, the foreign movable properties valued at Rs. 3,65,700, could not be included in the dutiable estate. The

Assistant Controller of Estate Duty rejected the claim so made by the accountable person, holding that the deceased had not abandoned the

domicile of origin with a view to acquire a domicil of choice in Malaya. In that view, the value of the foreign movables, was also included in the

value of the estate that passed on the death of Shri Ramanathan Chettiar. On appeal by the accountable person before the Appellate Controller of

Estate Duty, it was found that the deceased had manifested an intention to continue his domicil of origin and in that view, the order of the Assistant

Controller of Estate Duty was affirmed and the appeal was dismissed. On further appeal by the accountable person before the Tribunal, it took a

contrary view and upholding the stand taken by the accountable person, excluded the value of foreign movable properties from assessment. On a

reference at the instance of the Controller of Estate Duty, Madras, the matter was brought up before this court earlier and this court directed the

Tribunal to consider the question, whether the deceased had given up the domicile of origin and has acquired a new Malayan domicil, afresh, and

dispose of the appeal. Pursuant to this direction, the Tribunal, after hearing the appeal afresh, concluded that on the date of death, deceased

Ramanathan Chettiar was domiciled in Malaya, and, therefore, the value of the foreign movable properties should be excluded from assessment to

estate duty. That is how, agains, in T. C. No. 114 of 1980, the following question of law has been referred for the opinion of this court at the

instance of the Controller of Estate Duty, Madras, u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as ""the Act"") :

Whether, on the facts and the circumstances of the case, on the date of his death, the deceased was domiciled in Malaya ?

2. In the course of securing a reference u/s 64(1) of the Act, the Controller of Estate Duty also sought a reference on two other question which

were, however, negatived by the Tribunal, and, u/s 64(3) of the Act, the Controller of Estate Duty, had sought and obtained a reference in T.C.

No. 462 of 1986 on the following two questions of law :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the deceased had given up the domicil

of origin and acquired a new Malayan domicile ?

(2) Whether, on the circumstances relied, on the accountable person could said to have discharged the onus placed on him to show that the

domicil of origin has been superseded by a domicil of choice ?

3. Thus, the question to be decided in these tax case reference is what was the domicil of Shri Ramanathan Chettiar on his death in India on

February 23, 1964 ? We may observe that there is no dispute that the father of the deceased, when the deceased was born, was domiciled in

India and, therefore, the domicil of origin of deceased Ramanathan Chettiar was in India. Whether the deceased Ramanathan Chettiar abandoned

the domicil of his origin in India and secured a domicil of choice in Malaya, would depend upon the state of mind or animus manendi of the

deceased, apart from his physical presence or personal appearance in Malaya. We may, in this connection, make a reference to the decision of the

Supreme Court in Kedar Pandey Vs. Narain Bikram Sah, . In that case, the controversy related to the question whether the respondent before the

Supreme Court was a citizen of Indian so as to fulfil the qualification under article 173 of the Constitution of India to contest the Assembly election

in Bihar, and in deciding that question, the principles governing the change of domicil came to be considered by the Supreme Court. The following

observations at pages 163 and 164 would be relevant.

The law attributes to every person at birth a domicil which is called a domicil of origin. This domicil may be changed, and a new domicil, which is

called a domicil of choice, acquired; but the two kinds of domicil differ in one respect. The domicil of origin is received by operation of law at birth;

the domicil of choice is acquired later by the actual removal of an individual to another country accompanied by his animus manendi. The domicil of

origin is determined by the domicil, at the time of the child''s birth, of that person upon whom he is legally dependent. . . As regards change of

domicil, any person not under disability may at any time change his existing domicil, and acquire for himself a domicil of choice by the fact of

residing in a country other than that of his domicil of origin with the intention of continuing to reside there indefinitely. For this purpose, residence is

a mere physical fact, and means no more than personal presence in a locality, regarding apart from any of the circumstances attending it. If this

physical fact is accompanied by the required state of mind, neither its character nor its duration is in any way material. The state of mind, or animus

manendi, which is required demands that the person whose domicil, is the object of inquiry should have formed a deliberate intention to settled

there. It is also well-established that the onus of proving that a domicil has been chosen in substitution for the domicile of origin lies upon those who

assert that the domicil of origin has been lost. The domicil of origin continues unless a fixed and settled intention of abandoning the first domicil and

acquiring another as the sole domicil is clearly shown . . . We are of the view that the only intention required for a proof of a change of domicil is an

intention of permanent residence. In other words, what is required to be established is that the person who is alleged to have changed his domicil of

origin has voluntarily fixed the habitation of himself and his family, in the new country not for a mere special or temporary purpose, but with a

present intention of making it his permanent home"".

4. Against the backdrop of these observations of the Supreme Court, we have to consider the facts in the present case for deciding whether the

deceased had adopted Malaya as his permanent residence with the intention of acquiring a domicil of his choice an thereby of abandoning his

domicil of origin in India. Sri Ramanathan Chettiar belonged to that class of people, who had adventure in their blood and were seafaring people

crossing the seas in the way of their business and no wonder he departed from the shores of India to Malaya, for business purposes, in which

perhaps he applied himself with an amount of attention, constancy and diligence that was never relaxed. From the facts, it is seen that deceased

Ramanathan Chettiar left India for Malaya in 1946, returned to India in 1950, and after staying for a few months again left for Malaya and after

staying for about four year, he returned to India and stayed for nearly two years. He again left for Malaya to return to India nearly seven years

later, and on his last visit to India, on February 23, 1964, he died. The Tribunal, in para 16 of its order, had also found that the deceased went to

Malaya for business purposes an settled there for the same purpose and had visited India on several occasion. From the fact of his stay in Malaya

in his residential property, the Tribunal proceeded to infer an intention on the part of the deceased to settle down in Malaya on a permanent basis.

Merely on the basis of the period of stay and the presence of the deceased in Malaya in his residential house, it is not possible to infer that there

was an abandonment of domicil of origin by the deceased. At best, the residence and thereby the personal appearance in Malaya, would be in the

nature of a physical fact, as pointed out by the Supreme Court. However, the requirement is that the physical fact should be accompanied by a

state of mind to have a fixed and settled abode in Malaya with the intention of making Malaya the principal or sole permanent home. The period

during which the deceased was residing in Malaya can be attributed to his carrying on his business in Malaya. Even according to the Tribunal, the

deceased had left the shores of India and stayed in Malaya for the purpose of his busines, and , under those circumstances, merely on the basis of

the period of residence of the deceased in malaya, it cannot be stated that the deceased had abandoned his domicil of origin. On the contrary, the

retention of ancestral houses and other properties in India and his vists to the family in India, would constitute facts in the opposite direction

indicating a heavy pull towards home and establishing that the deceased had not broken away from his home, or had served a single tie with his

country of orgin. Evenwhen there is an apparent severance of ties with the country of origin, by residence in another country for a long time, it

would be unsafe to gather an intention to abandon the domicil of origin, if it could be attributyed to some other cause, as, in this case, business

reasons. Further, it would be a material cirucstance in determining the domicil of a person to consider where the wife and children have their

permanent place of residence. In this case, it is not disputed that the wife and children of the deceased had their permanent place of residence only

in India and this is also referred to by the Tribunal in the course of its order. That would also establish that the deceased has surrandered to the

power of human, affection, particularly of his wife and children and that brought him to India, though at intervals. It is also significant that the

deceased had died while on a visit to India to finalise his son''s marriage and that also clearly establishes that severance of ties with the country of

origin was farthest from his mind. Besides, the Tribunal had referred to the assessments of the deceased for the assessment year 1947-48 to 1963-

64, in the status of ""non-resident"" and in the status of ""not ordinarily resident"" for 1964-65 and 1965-66. The reliance on the Income Tax

assessments in our view, was misplaced, for, those assessments had been made on the basis of the provisions of the Indian Income Tax Act and

that would not in any manner indicate the state of mind of the deceased regarding domicil. The Tribunal had also made a reference to the obtaining

of a Malayan passport by the deceased and his registration as a citizen of Malaya as clear indications of abandonment of domicil of origin. It is

seen that till 1960, the deceased had only an Indian passport. It is thereafter that the deceased appears to have obtained on December 14, 1962, a

Malayan passport valid up to 1967. But, there are also the other facts, like the acceptance of the claim of the deceased in his Income Tax assessments that two properties in India were his dwelling houses, the purchase of a site in 1961 in India out of his funds in the name of his wife,

the provisions for the payment of his insurance monies in India. Unfortunately, these facts have not been taken into account by the Tribunal in

considering the question of acquisiton of domicil of choice. The obtaining of a passport or the acquisition of Malayan citizenship would not, in our

view, loom large in the consideration of the question of abandonment of the domicil of origin. These could at best be described as matters of

business expendiency and utility. Essentially, a passport is a travel document and the obtaining of such a travel document would not in any manner

indicate abandonment of the domicile of origin. For the purpose of business, the deceased Ramanathan Chettiar had gone to malaya on an Indian

passport, which was valid till January 19, 1960, and it is quite possible that being fully posted with the local business conditions, he had thought it

worthwhile and prudent to secure citizenship of Malaya in 1958 and on that footing, had obtained a Malayan passport in 1962. We have not had

the benefit of ascertaining the conditions under which Malaya citizenship had been granted to the deceased. The application that should have been

made by the deceased had not been placed before us, and there is, therefore, no knowing whether he had made any clear and unequivocal

declaration under his hand to acquire Malayan citizenship by totally servering all his connections with India, abandoning his domicil of origin. For all

that, it might have been quite in order to secure citizenship of Malaya, if a person had put in a minimum period of residence, that is, physical

residence, but that would not enable to establish a change of domicil. Even assuming that he had made some such declaration, as pointed out by

Lord Atkin in Wahl v. Attorney-General [1932] All E. R. 922, it is important to remember that naturalisation is one thing, and change of domicil is

another, and that it is not the law either that a change of domicil is a condition of naturalisation, or that naturalisation involves necessarily a change

of domicil. Yet another circumstance strongly relied upon by the Tribunal was a statement in the will of the deceased declaring that the domicil of

the deceased was in the Federation of Malaya and that he desired his will to take effect according to the law of that country. We are of the view

that this circumstance may not be conclusive, for, the concept of domicile is an idea of law and not a matter of choice of a citizen and the question of domicil must be decided anima et facto on a consideration of the animus manendi. We may, in this connection, refer to the following passage in

Cheshire on Private International Law (Seventh Edition) at page 156 :

The requirement that declarations should contain ''a real expression of intention'' deserves emphasis, for it only too frequently happens that they

cannot be taken at their face value. They may be interested statements designed to flatter or to deceive the hearer; they may represent nothing

more than vain expectations unlikely to be fulfilled; and the very facility with which they can be made requires their sincerity to be manifested by

some active step taken in furtherance of the expressed intention"".

5. It would also be appropriate to refer to Attorney-General v. Yule and Mercantile Bank of India [1931] All ER . 400; where the question arose

whether a declaration in a will regarding domicile would be conclusive. Lord Hanworth, Master of the Rolls, observed at page 404 as follows :

For my part, the wills, or drafts of them have not much weight-the source of the description in the draft or the will remains obscure and uncertain.

I do not find any sure ground on which to base an inference"".

6. Romer L.J. at page 408, in considering the question of the effect of a declaration made in a will regarding domicil, pointed out that no

importance could be attached to such declaration, in the following words :

It only remains to refer to the declaration contained in his will. For myself, I am not prepared to attach any importance to a declaration by a man

to his domicil, unless there is some evidence to show that the man knew what ''domicile'' means. A declaration by a man made orally or in writing

that he intends to remain in a certain country will, if not inconsistent with the facts, be of assistance in determining the question whether he has

become domiciled there. Domicile is, however, a legal conception on which the views of a layman are not of much assistance. In the present case,

the subject appears to have been presented to the testator, as and upon which he had for the purpose of his testamentary dispositions an unfettered

choice. The subject of domicil being so presented, he elected in favour of an Indian one. It is true that some of the testamentary dispositions he

desired to make could not be given effect to, if his domicil were Indian, and that, by reason of his election those dispositions had to be modified. It

is, however, obvious that the election of an Indian domicil would greatly benefit the principal objects of his bounty, though whether this was or was

not known to Sir David, we do not know. But, however this may be, the fact that when his solicitor offered him a choice of domicil, he choose an

Indian one, can have no bearing upon the question of what his domicil in fact was in circumstance that, as I have already indicated, were so strong

as to deprive him of exercising any choice in the matter at all"".

7. We find from the preamble to the will that the deceased had declared his domicile with a desire that the bequests should take effect according to

the law of Malaya. We have not had the benefit of the full text of the will as well as the bequests therein. It may be as stated by Romer L.J., that

with a view to give effect to some of the testamentary dispositions, which could not be given effect to, if he was a person of Indian domicil, the

testator elected to describe himself as a person of Malayan domicile. We are also unable to find any material from which it could be gathered that

the testator knew or was aware of the importance of the declaration relating to the domicil and that he did not merely as a layman, before whom an

option to elect in favour of one of the two domicil was presented with a view to implement the bequests in the will. We may also refer to Liddell-

Grainger''s Will Trusts [1936] 3 All ER . 173 , where the domicil of origin of the testator was England, where he was born; but he moved over to

Scotland, where his father purchased certain properties and lived there till his death. Under the will of the father, the properties in England and

Scotland passed to the testators, but he lived in Scotland from 1897 onwards till his death, except for brief visits to England. In his three prior wills

and his last will, the testator had declared that he had not relinquished his English domicile and, on the question as to whether the testator, at the

time of his death, was domiciled in England or in Scotland, the court ruled that despite declarations in the will, the testator intended that Scotland

should be his permanent home and that was his place of domicile. This case illustrates the principle that a declaration in the will is not always

decisive; but has to be considered in the light of the other facts and the circumstances. We are, therefore, of the view that in the light of the other

circumstances earlier referred to appearing in the case, the recital in the will cannot be taken as conclusively establishing an intention on the part of

the testator to acquire a domicile of choice, viz., Malaya, abandoning his domicile of origin in India. We also find on a perusal of the record of

proceedings, that the Tribunal has adverted only toe the visits of the deceased, his obtaining a Malayan passport and securing Malayan citizenship

and the recitals in the will, as supporting its conclusion, but, while, doing so, it had omitted to consider the other circumstances, like the retention of

ancestral properties in India, claim of the deceased with reference to the dwelling houses in India, the purchase of property by the deceased in the

name of his wife in 1961 in India, the arrangement for payment of insurance moneys in India, the presence of his family members in India and the

proposal for the marriage of his son in India.

8. In other words, as pointed out by the Supreme Court in Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras, , it was

necessary for the Tribunal to have considered every fact, for and against, and then to give finding in a manner which would clearly indicate the

nature of the question, the evidence pro and contra and the findings reached. We find that the Tribunal had over-emphasised a few circumstances

as, being almost decisive of the case, without adverting to the other circumstances, and we cannot, therefore, accept the conclusion arrived at by

the Tribunal in view of what had been laid down by the Supreme Court in Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras,

. We may also point out that learned counsel for the accountable person relied upon circumstances referred to in the order of the Tribunal to

contend that an intention to abandon the domicile of origin and acquire a domicil of choice had been made out. But we are unable to accept this for

the reasons set out earlier. Likewise, the reliance upon the decision of the Supreme Court in Abdus Samad Vs. State of West Bengal, by counsel

for the accountable person does not in any manner support the case of the accountable person that there was an abandonment of the domicile of

origin and the acquisition of a domicile of choice by the deceased or even the conclusions arrived at in that regard by the Tribunal. We, therefore,

answer the question referred in T.C. No. 114 of 1980 in the negative and in favour of the Revenue. Likewise, the questions referred in T.C No.

462 of 1986 are answered in the negative and in favour of the Revenue. The Revenue will be entitled to its costs in these references. Counsel''s fee

Rs. 500 (one set).

