

(1978) 03 KAR CK 0051

In the Karnataka High Court

Case No : Tax Referred Case No. 3 of 1975

Controller of Estate Duty, Karnataka

APPELLANT

Vs

Raghavendra Purnaiya

RESPONDENT

Date of Decision : 11-03-1978

Acts Referred:

Estate Duty Act, 1953 — Section 64 (1), 7 (1)

Citation : (1980) 126 ITR 185

Hon'ble Judges : M.K. Srinivas Iyengar, J; E.S. Venkataramaiah, J

Bench : Division Bench

Advocate : S.R. Rajasekhara Murthy, for the Appellant; T.V. Viswanatha Iyer, for the Respondent

Judgement

Venkataramiah, J.—This case arises out of the estate duty proceedings consequent on the death of one Nagaraja Rao Purnaiya (hereinafter referred to as the "deceased") who died on April 27, 1960. The estate duty return was filed by the legal representatives of the deceased, namely, Raghavendra Rao Purnaiya, Malathi Purnaiya and Kumari Nirmala Bai. In the course of the assessment proceedings, the question relating to the liability of certain amount which had been awarded as compensation by the State Government under the provisions of the Karnataka (Personal and Miscellaneous) Inams Abolition Act, 1954 (hereinafter referred to as "the Inams Abolition Act"), in respect of Yelandur jahgirdar, arose for consideration. The facts relating to the above question are as follows :

The deceased was a descendant of Dewan Purnaiya who was the original grantee of the jahgirdar of Yelandur consisting of several villages in the District of Mysore. The grant was made in the year 1807 by His Highness, Krishnaraja Wodeyar, the then Maharaja of Mysore for the services rendered by Dewan Purnaiya. The original grant is both in Kannada and Persian. The true translation of the relevant part of the grant reads :

"It being considered that the memory of the good deeds done by you should be

held in remembrance in the world, and that your sons, grandsons in continuous order of succession should in supreme happiness contemplate that this was the reward of the eminent service and live in perpetual happiness and prosperity, commands have been given by the advice and with the consent of the government of the English Company Bahadur to grant to you in Inam twenty-five primary and twenty-one secondary villages forming the six Hoblies of the Taluk of Yelandur of the Mysore Province. We have determined (settled) and give (you) that (you) your sons, grandsons in continuous order of succession shall continue to enjoy the benefit of the Inam as long as the Sun and Moon, which illuminate the world, run in their courses."

2. Accordingly, Dewan Purnaiya accepted the grant and the jahgirdar continued to remain in the possession and enjoyment of the descendants in the male line of Dewan Purnaiya. Presumably, because of the existence of some differences amongst the members of the family, certain orders were made from time to time by the Government of Mysore regarding the manner in which the jahgirdar in question should be enjoyed by the descendants of Dewan Purnaiya. Ultimately, when it was felt that it was advisable to make a law in relation to the administration, management and enjoyment of the jahgirdar, His Highness the Maharaja of Mysore promulgated a law for the aforesaid purpose called "The Yelandur jahgirdar Act" (Mysore Act 1 of 1885) (hereinafter referred to as "the Act"). The preamble of the Act reads as follows :

"WHEREAS, by a Sannad granted by His Highness the Maharaja of Mysore under the date the December 27, 1807, the Taluk of Yelandur was granted as jahgirdar to the late Dewan Purnaiya, and in order his heirs and successors, in perpetuity, as a reward for the meritorious services rendered by the said Dewan Purnaiya, and in order that his descendants may live in perpetual ease and comfort :

AND WHEREAS, with the object of carrying out the purposes of such grant the Government of Mysore did, at various times, pass orders with the view to regulate the succession to, and define the mode of enjoyment of the said jahgirdar of Yelandur :

AND WAEREAS, doubts have arisen as to the validity of some of the orders of Government in regard to the said jahgirdar, and it is deemed expedient to remove such doubts and to make adequate provision for the maintenance of the dignity of the head of the family of the said Dewan Purnaiya and for the support of the subordinate members thereof, His Highness the Maharaja is pleased to enact as follows :-"

3. Section 2(1) of the Act provided that the jahgirdar was inalienable and impartible. It further provided that it was not competent for the jahgirdar of Yelandur, for the time being, to encumber, charge, or in any manner alienate the said jahgirdar or any part thereof by act inter vivos or by testamentary dispositions. Sub-section (2) defined the family of Dewan Purnaiya as comprising and including all the existing members named and enumerated in the order of

their respective seniority under five branches in Schedule "B" of the Act and their lineal descendants whether by blood or adoption according to the rules and usages of the Hindu law and also any other legal heirs, male or female, of the said lineal descendants in the ascending, descending or collateral lines. Sub-section (3) made provision for recognising one of the members of the family of Dewan Purnaiya as the jahgirdar of Yelandur. Sub-section (4), however, provided that the succession to the said jahgirdar except in so far as otherwise provided in the Act be regulated by ordinary rules governing the Hindu law of inheritance and adoption of Mysore. The succession to the office of the jahgirdar of Yelandur was, however, to be governed by the rule of primogeniture. Section 3(1) of the Act directed the jahgirdar to distribute certain amounts by way of annuities amounting to Rs. 23,200 amongst the different branches mentioned in Schedule "B". The jahgirdar was allowed to enjoy the remainder of the revenues from the jahgirdar. The Act contained some other ancillary and subsidiary provisions.

4. The jahgirdar was being enjoyed by the members of the family of Dewan Parnaiya in accordance with the terms of the grant and till the year 1956 during which year, a notification dated October 2, 1956 was issued by the State Government in exercise of its powers under sub-s. (1) of s. 3 of the Inams Abolition Act. The notification had the effect of abolishing the jahgirdar and divesting the title thereto, as one of the consequences of the issue of the notification was that all the right, title and interest of jahgirdar and the other members of the family of Dewan Purnaiya in the jahgirdar came to be vested in the State Government, by virtue of s. 3(1) of the Inams Abolition Act, and with effect from the date of vesting of the jahgirdar in the State Government, the Act (Yelandur jahgirdar Act) stood repealed by virtue of s. 34(3) of the Inams Abolition Act.

5. Under the Inams Abolition Act, a certain amount was awarded as compensation and it was distributed amongst the members of the family of Dewan Purnaiya. In the amount which was awarded to the branch of the deceased, the deceased had 4/9ths share. A sum of Rs. 4,91,890 was awarded as compensation to the branch of the deceased. The Asst. Controller, Bangalore, who assessed the estate of the deceased under the provisions of the E.D. Act, 1953 (hereinafter referred to as "the E.D. Act"), treated only 4/9ths share of the amount of compensation that was allotted to the branch of the deceased as passing on the death of the deceased and levied estate duty accordingly. Subsequently, the order of assessment was reopened under s. 59 of the E D. Act. After hearing the accountable persons, the Asst. Controller passed a revised assessment treating the entire amount of compensation which was awarded to the branch of the deceased as passing on the death of the deceased on the ground that the jahgirdar was an impartible estate and no other member of the family of the deceased could claim any interest therein before the death of the deceased. The appeal filed by the accountable persons before the Appellate Controller was dismissed. On further appeal, the Income Tax Appellate Tribunal, Bangalore Bench, held that the amount of compensation was a joint family asset

and s. 7(1) of the E.D. Act was applicable to it. The appeal was accordingly allowed.

6. At the instance of the department, the Tribunal has referred the following question of law to this court, under s. 64(1) of the E.D. Act :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that only the 4/9ths share of the deceased in the total compensation of Rs. 4,91,890 paid on the abolition of Yelandur jahgirdar passed on the death of the deceased and was liable for estate duty and not the whole of the said sum ?"

7. On behalf of the department, Sri Rajasekhara Murthy, submitted that since, under the Act, the jahgirdar had been declared as impartible and the succession to the office of the jahgirdar was regulated by the rule of primogeniture the entire jahgirdar had to be treated as the absolute property of that person who had been recognised as the jahgirdar by the State Government and since, in the instant case, the deceased was the jahgirdar at the time when the inam tenure was abolished and compensation was awarded under the Inams Abolition Act, the entire compensation awarded to the branch of the deceased should be treated as absolute property of the deceased and that on his death the whole of it must be deemed to have passed for the purposes of levy of estate duty. It is no doubt true, that under s. 3 of the Act, the jahgirdar had been declared as inalienable and importable and the Act provided for recognising only one person belonging to the family of Dewan Purnaiya as jahgirdar. If there was nothing else on record, probably it may have been possible to agree with the submission made on behalf of the department that the jahgirdar in question in the hands of the deceased was his absolute property and the incidents of that property were similar to the incidents attached to the estate which was the subject-matter of the case, P.V.G. Raju Vs. Commissioner of Wealth-tax, Sri T. V. Viswanatha Iyer, learned counsel appearing for the respondent, says that the above case is also distinguishable on facts from the present case. It is not necessary to go into the details of that case, since we are of the view that the incidents of ownership of the jahgirdar in question are different from those of the estate involved in that case. This case has to be decided in accordance with the terms of the grant and the Act. We are of the view that the decisions dealing with impartible estates governed by customary law have no relevance to this case.

8. It is seen from the grant of 1807, that it had been made in absolute terms in favour of Dewan Purnaiya with the object of benefiting him and his descendants. There were no restrictions placed on the mode of enjoyment of the jahgirdar or in regard to succession to it. There were no restrictions on the powers of alienation. There was also no element of impartibility of the estate in question. Under the Mitakshara law, on the death of Dewan Purnaiya, the jahgirdar became ancestral estate in the hands of his successors. The grant had been made for the maintenance of the descendants of Dewan Purnaiya. We do not consider that the Act, which was enacted in 1885, had the effect of substantially altering the true

nature of the property in the hands of the descendants of Dewan Purnaiya. On the other hand, the preamble to the Act which is extracted above, emphasised that the income from the jabgir was to be utilised for the support of all the members of the family of Dewan Purnaiya who were existing when it came to be passed and their successors even though the extent of income to be enjoyed by them was regulated by it. The condition that the jahgirdar shall not be alienated or partitioned, according to us, had been introduced in the Act to preserve the estate for the benefit of the members of the family but not to alter the character of the jahgirdar in the hands of the members of the family. It continued to be joint family property even after the Act was passed. As mentioned earlier, the deceased was the jahgirdar just before the abolition of the jahgirdar by virtue of the notification issued under the Inams Abolition Act. On the issue of that notification, the Act came to be repealed and all the rights of the jahgirdar and the members of his family in jahgirdar came to be vested in the State Government. Any compensation paid in lieu thereof, was received by the deceased on behalf of himself and the members of his branch. We are of the view, that on the repeal of the Act, all the restrictions which were introduced by it, came to an end and all the original incidents of ordinary joint family property revived. Since the deceased died after the repeal of the Act and the vesting of the estate in the State Government, the Tribunal was right in holding that the compensation which he had received belonged to the joint family of the deceased and the members of his branch, and, therefore, it had to be dealt with under s. 7(1) of the E.D. Act. The question referred to us, is, therefore, answered in the affirmative and against the department.

9. The department shall pay costs. Advocates' fee Rs. 250.