
(1998) 03 KL CK 0003
In the High Court Of Kerala
Case No : TRC No"s. 87 and 88 of 1993

DAYALAN RAJES

APPELLANT

Vs

STATE OF KERALA and Another

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Hindu Marriage Act, 1955 — Section 29

Citation : (1998) 147 CTR 243

Hon'ble Judges : Smt. K. K. Usha, J;K. K. Usha, J

Bench : Division Bench

Judgement

FULL BENCH

SMT. K. K. USHA, J. :

These tax revision cases came up for consideration of the Full Bench along with OP Nos. 9468 and 10950/92 and 1893/93 and certain other tax revision cases. Even though the questions raised in the writ petitions and revision cases mentioned above are not exactly the same which are arising in these cases, we heard all the cases together since the interpretation of the provisions of the Kerala Joint Hindu Family System (Abolition) Act, 1975 arises in all these cases.

1A. These tax revision cases, at the instance of the assessee, arise out of a common order passed by the Commr. of Agrl. IT, Thiruvananthapuram, in AITRP. 17 & 18/93/TX, dt. 5th April, 1993. Relevant assessment years are 1978-79 and 1979-80. The questions of law raised for decision of this Court are as follows :

"(I) Whether the property of the assessee situate in Kerala State who is governed by the Hindu Mitakshara law will not come under the purview of the Kerala Hindu Joint Family system (Abolition) Act on the ground that the assessee is residing outside Kerala State ?

(II) Whether the Kerala Joint Hindu Family (Abolition) Act, 1975, is applicable to the assessee ?

(III) Whether domicile of a person governs the system of law relating to property situate in Kerala State ?

(IV) Whether there is bar of limitation for initiating suo motu proceedings ?

(V) Has not the order passed by the Sub-Court, Salem in IA 1372/80 in OS No. 366/80 allotted shares to the wife and daughter of Dayalan Rajesh the assessee ?"

2. The assessee who is domiciled in Tamil Nadu is having properties in Kerala. He was originally assessed to Kerala Agrl. IT on 1st July, 1988, for the asst. yrs. 1978-79 and 1979-80. Assessee obtained the property under family partition deeds dt. 14th July, 1954, and 16th October, 1956. Assessing authority took the view that for the year 1978-79, the assessee has to be granted the status of tenants-in-common with his wife and one daughter. This view was taken by the assessing authority on the basis that the Hindu Joint Family consisting of the assessee, his wife and daughter has got disrupted on the Kerala Joint Hindu Family System (Abolition) Act, 1975, coming into force on 1st December, 1976. Similar view was taken in respect of the assessment for the year 1979-80 also. Dy. Commr. of Agrl. IT and ST, Palghat, in exercise of his power of suo motu revision under s. 75 of the Kerala Agrl. IT Act, 1991, issued notice on 6th November, 1991, calling for objections. The Dy. Commissioner, prima facie found that the assessment as tenants-in-common in the case of the assessee was irregular since the Kerala Hindu Joint Family System (Abolition) Act, 1975 has no application to the family of the assessee in Tamil Nadu. Assessee filed his objections on 20th December, 1991. He was granted a personal hearing also. He put forward a contention that pursuant to a compromise decree in O.S. 366/80 before the Subordinate Judge, Salem filed by the petitioners wife and daughters for maintenance, education and marriage expenses, a settlement was arrived at between himself, his wife and two daughters and one son on 20th September, 1981. He contended that there is no infirmity in the assessment orders assigning status of tenants-in-common to the assessee, his wife and daughter. The Dy. Commissioner rejected the case put forward by the assessee and came to the conclusion that the Kerala Joint Hindu Family System (Abolition) Act, 1975 has no application to the case of the assessee. Assessment orders for the years 1978-79 and 1979-80 were set aside and the cases were remanded back to the Agrl. ITO, Chittur, for fresh disposal after proper verification in accordance with law.

3. Aggrieved by the order passed by the Dy. Commissioner, assessee filed revision petitions before the Commr. of Agrl. IT. Before the Commissioner, it was contended by the assessee that the Kerala Joint Hindu Family System (Abolition) Act, 1975 is applicable to the assessee that even if family is reduced to a sole surviving coparcener with the other female members, the property and income belonged to the joint family and as a result of the disruption which was brought about by the Kerala Joint Hindu Family System (Abolition) Act, 1975 in the joint family, the assessee, his wife and daughter are to be treated as tenants-in-

common. It was further contended that since the properties are situate in Kerala, Kerala Joint Hindu Family System (Abolition) Act, 1975 is applicable to the property, income from which is being assessed and therefore, the view taken by the Dy. Commissioner is unsustainable.

4. The Commissioner found from the assessment records that original assessments for the years 1978-79 and 1979-80 were completed assigning the assessee's status as individual. Even in the partition which had taken effect in the family in the year 1981, assessee had not allotted any share to his wife and minor daughter. Later, by the revised assessment order dt. 1st July, 1988, they were assigned the status of tenants-in-common. Commissioner agreed with the view taken by the Dy. Commissioner that since the assessee and his family are residing at Tamil Nadu, the provisions of Kerala Joint Hindu Family System (Abolition) Act, 1975 is not applicable to his case. In coming to the above conclusion, reliance was placed by the Commissioner on a decision of this Court in OP 1462/86. Commissioner also examined the contention raised on the ground of limitation and took the view that there is no merit in the contention. Orders in the proceedings initiated pursuant to s. 75 of the Agrl. IT Act, 1991 were issued on 4th February, 1992, that is, within four years from the date of completion of the assessment. Revision petitions were, therefore, dismissed.

5. It is contended by learned counsel for the assessee Sri N. N. Venkitachalam that the Commissioner has committed an error of law in coming to the conclusion that Kerala Joint Hindu Family System (Abolition) Act, 1975, has no application to the assessee's family. He contended that the principle of *lex situs* has to be applied in this case and since the estate, the income from which is assessed is situate within the territory of State of Kerala, the provisions of Kerala Joint Hindu Family System (Abolition) Act, 1975, should decide the manner in which the properties are to be held by the assessee and his family. He placed reliance on two decisions of the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, and *The State of Bihar and Others Vs. Charusila Dasi*, .

6. On the other hand, learned Spl., Govt. Pleader (Taxes), V. V. Asokan submitted before us that an examination of the provisions contained under the Kerala Hindu Joint Family System (Abolition) Act, 1975, would clearly show that what is intended by the statute is to abolish Kerala joint Hindu family system. It cannot have any application to the Hindu family system outside Kerala. Admittedly, the assessee and his family do not belong to Kerala. Therefore, the Act has no application to his family and family property. Learned Govt. Pleader also placed reliance on the decision of a learned Single Judge of this Court in OP 1462/86 where it has been held that the Kerala Joint Hindu Family System (Abolition) Act, 1975, applies only to those whose domicile is in Kerala.

7. The short question that comes up for consideration is whether promulgation of the Kerala Joint Hindu Family System (Abolition) Act, 1975, (hereinafter referred to as Act 30/76) has any impact on a Hindu joint family outside the State of

Kerala. The preamble of the Act reads as follows :

"Whereas it is expedient to abolish the joint family system among Hindus in the State of Kerala;

Be it enacted in the Twenty-sixth Year of the Republic of India as follows : ..."

Sub-s. (1) of s. 1 gives the title of the Act as The Kerala Joint Hindu Family System (Abolition) Act, 1975. Sub-s. (2) provides that the Act extends to the whole of the State of Kerala. The term joint Hindu family is defined under s. 2. It takes in : (1) a tarwad or thavazhi governed by the Madras Marumakkathayam Act, 1932, the Travancore Nayar Act, 11 of 1100, the Travancore Ezhava Act, 111 of 1100, the Nanjanad Vellala Act of 1101, the Travancore Kshatriya Act of 1108, the Travancore Krishnavaka Marumakkathayee Act, VII of 1115, the Cochin Nayar Act, XXIX of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113, (2) a Kutumba or Kavaru governed by the Madras Aliyasanthana Act, 1949, (3) an illom governed by the Kerala Nambudiri Act, 1958, and (4) an HUF governed by the Mitakshara law.

8. The assessee in this case claims that he is a member of an HUF governed by the Mitakshara law. Sec. 3 provides that on and after the commencement of Act 30/76, no right to claim any interest in any property of an ancestor during his or her lifetime which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any Court. The above would mean that after the Act came into force, there is no right by birth in any family property. Sec. 4 replaces joint tenancy in the case of the joint Hindu family as defined under s. 2 of Act 30/76 by tenancy-in-common. There is a statutory disruption of the joint family thereby vesting the joint family property in the members of the family as tenants-in-common as if a partition had taken effect among them. Sec. 5 abrogated the rule of pious obligation of Hindu son. Sub-s. (1) of s. 7 provides that any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of Act 30/76 shall cease to have effect with respect to any matter for which provision is made in this Act. Sub-s. (2) repeals the Acts mentioned in the Schedule in so far as they apply to the whole or any part of the State of Kerala. This, in general, is the scheme of Act, 30/76.

9. We do not find any merit in the contention raised by the assessee that since no reference is made to the domicile of the HUF coming under category (4) in s. 2 and also in s. 4 of the Act, there is no justification in limiting the application of the Act to the Hindu joint family domiciled in State of Kerala. When the preamble itself makes it clear that the object of the legislation is to abolish the joint family system among Hindus in State of Kerala, it is not necessary to refer to the territorial limitation in every section. Therefore, the HUF governed by Mitakshara law coming under category (4) in s. 2 has to be taken as an HUF governed by Mitakshara law domiciled in the State of Kerala. The intention of the legislature that the impact of Act 30/76 shall be only on the joint family system among

Hindus in State of Kerala, is evident from sub-s. (2) of s. 7 also. The above sub-section repeals 12 enactments included under the Schedule. But such repeal is limited to its application to the whole or any part of the State of Kerala. Thus, for example, when the Madras Marumakkathayam Act, 1932 as well as Madras Aliyasanthana Act, 1949, are applicable to Hindus inside as well as outside the present State of Kerala, the repeal is limited only to its application to those who are within the State of Kerala. Therefore, from the title, preamble and also from the provisions of the Act as referred above, it is clear that the Act has application only to Hindus in State of Kerala.

10. In this connection, it is relevant to note that under Madras Marumakkathayam Act, 1932 (22/33) there is specific provision by which the Act is made applicable to Hindus outside the presidency of Madras also. Sub-s. (2) of s. 1 of the above Act reads as follows :

"It shall apply :

(a) to all Hindus in the Presidency of Madras who are governed by the Marumakkathayam Law of inheritance;

(b) to all Hindus outside the said Presidency governed by the said law, in respect of properties within it; and

(c) to all Hindu males whether governed by the said law or not, who have contracted or may contract material or not, who have contracted or may contract marital alliances with Hindu females governed by the said law."

But, as far as enactments like Cochin Marumakkathayam Act, Cochin Nayar Act, etc., and Travancore Nayar Act, Travancore Ezhava Act, etc., are concerned, they apply only to persons domiciled in those territories. Except in the case of Travancore Ezhava Act and Nanchand Vellala Act, all these enactments of Cochin and Travancore had been made applicable to all persons contracting marital alliances with those governed by the respective enactments, unlike the Madras Marumakkathayam Act, where it is made applicable only to those Hindu males under s. 1(2) (c). Absence of a provision similar to one contained under s. 1(2) (b) of Madras Marumakkathayam Act in Act 30/76 is also a clear indication that the legislature intended the statute to apply only among Hindus in the State of Kerala. There was no indication to include Hindus outside Kerala, but holding properties within Kerala, to be brought under the effect of Act 30/76.

11. The law that is applicable to a Hindu joint family depends on its domicile. "Prima facie, any Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu law recognised in that province ... And this rule would apply as much to matters of succession to land as to the purely personal relations of the members of the family. In this respect the rule seems an exception to the usual principle, that the *lex loci* governs matters relating to land, and that the law of the domicile governs personal relations. The same rule as above would apply to any family which, by local usage, had

acquired any special custom of succession, or the like, peculiar to itself, though differing from that either of its original, or acquired domicile. The reason is that in India, there is no *lex loci*, every person being governed by the law of his personal status, though that expression is loosely used in some decisions in view of the fact that though the law is personal and different schools prevail in different areas". (Maynes Hindu Law & Usage, 13th Edn. p. 73). The above view has been taken consistently by the High Court of erstwhile State of Cochin. In *Raman Menon vs. Ravunni Menon* 22 Cochin 554, a Full Bench of the High Court of Cochin considered the question whether a suit for partition at the instance of certain members of a British Malabar tarwad of their tarwad property situate in State of Cochin, is maintainable. Vaidyanatha Ayyar, C.J., who delivered the leading judgment, made the following observations :

"It is beyond dispute that simply because a British Nayar tarwad, which is not compulsorily partible according to the Marumakkathayam law, possesses immovable properties here, a thavazhi of that tarwad cannot take advantage of the provisions of the Nayar Regulation and enforce partition of those properties. This is on the well-known principle that a tarwad is governed by the law of its domicile. The domicile of a tarwad is the domicile of all the members constituting the tarwad.

The same view was taken in *Kumara Pillai vs. Arumukhaperumal Pillai* 34 Cochin 579 and *Ananchaperumal Pillai vs. Bhagavathi Amma & Ors.* 40 CLR 334.

12. It is true that when it comes to the choice of law in respect of immovable property, the general rule is that *lex situs* is the governing law. But, there are exceptions to this general rule. There is a discussion on this aspect at p. 504 of *Cheshire & Norths Private International Law*, 10th Edn. :

"... the whole law of the foreign situs might either include its rules of private international law or might involve an examination of the rule applicable to a domestic situation to see whether it extended to a case with international elements. So, in order to determine this, the relevant rule should be examined in the light of its reason, the purpose that it is designed to effect and the policy upon which it is based. It does not follow that a rule of land law designed to promote the welfare of persons domiciled in the country or to regulate local transactions should necessarily be extended to transactions completed abroad between domiciled foreigners. The truth of this is well brought out by Cook in his discussion of the New Hampshire case of *Proctor vs. Frost* (1938) 89 304; Cook, p. 274), where the facts were these :

By the statutory law of New Hampshire a wife was incapable of becoming surety for her husband, but by the law of Massachusetts she was free from this incapacity. A married woman entered into a transaction in Massachusetts, where she was domiciled, by which she became surety for her husband. By way of security she executed in that State a mortgage of her land in New Hampshire.

There is no dispute that her capacity to execute the mortgage as a surety fell to

be determined by the *lex situs*, but that did not inevitably mean that the New Hampshire statute applied to the instant case. A correct decision on that question could scarcely be reached without first considering the purpose of the statute. Was this purpose to regulate the conveyance of New Hampshire land, or was it to protect wives against the importunities of embarrassed husbands ? If it was the latter, it would be unseemly and inexpedient to extend this paternal solicitude to wives domiciled in foreign jurisdictions. In the result, the Supreme Court of New Hampshire considered that the object of the statute was to protect married women within the jurisdiction and they therefore, held the mortgage to be valid."

A similar treatment of the topic is seen in *The Conflict of Laws* by Dicey & Morris, 9th Edn. At p. 528.

13. Thus when we examine the scope of the Kerala Hindu Joint Family System (Abolition) Act, 1975, it can be seen that the statute was brought in for the purpose of abolishing the Kerala Joint Hindu family system itself. Its emphasis is not on property held by the joint Hindu family. It is true, as a result of the abolition of the system, an automatic division of the property held by the joint family takes effect as in the case of partition. But the Act has other implications also. As mentioned earlier, sub-s. (2) of s. 7 repeals 12 statutes applicable to different sections in the State of Kerala. Provisions are made in the above mentioned statutes in respect of matters other than joint family property also. Even after the coming into force of the Hindu Marriage Act, 1955, certain provisions under the local enactments are saved and kept in force by virtue of s. 29(2) of the above Act. A Full Bench of this Court had occasion to consider in *Ayyappa Kurup Krishna Pillar vs. Parukutty Amma Subhadra Amma* 1970 KLT 442, as to how all rights, substantive, procedural or remedial to obtain dissolution of marriage under Travancore Nair Act, 1100, are saved under sub-s. (2) of s. 29 of the Hindu Marriage Act, 1955. By repeal of these enactments under sub-s. (2) of s. 7 of Act 30/76, what has been saved under s. 29(2) of the Hindu Marriage Act, 1955 as provisions under local enactment are no longer available. This is only to show that the effect of Act 30/76 on joint Hindu family in Kerala, is not on the apportionment of the property alone. So also, the provisions contained under ss. 5 and 6 deal with other obligations and liability of members of joint Hindu family.

14. We do not think that the two decisions relied on by learned counsel for the assessee are of any help to support his contention. In *The State of Bihar and Others Vs. Charusila Dasi*, , the question that came up for consideration was whether the provisions of Bihar Hindu Religious Trusts Act (1 of 1951) were invalid on the ground of extra-territoriality. Sec. 3 of the Act makes the Act applicable to all public, religious and charitable institutions within the meaning of the definition clause in s. 2(1) of the Act which are situate in State of Bihar and any part of the property of which is in that State. Then the further question which arose was whether in bringing out a law in respect of religious institutions situate in State of Bihar as above, the legislature has power to affect trust

property which may be outside Bihar but which appertains to the trust situate in Bihar. Relying on the doctrine of territorial connection or nexus, Supreme Court took the view that such provision will not be invalid. If the religious institution itself is situate in Bihar and trust is functioning there, the connection between the religious institution and the property appertaining thereto is real and not illusory and therefore, one cannot be disassociated from the other. It was held that the law cannot be struck down on the ground of extra territoriality. This decision could have been relied on, if the contention of the assessee was that he is member of a joint Hindu family of Kerala, holding properties outside Kerala and that the properties which are outside the territory of Kerala also should be taken into consideration for the purpose of applying s. 4 of Act 30/76. But the position is converse in the present case and, therefore, the decision is of no help to the assessee. We find that the second decision, AIR 1955, SC 661 (supra), relied on by the assessee is also of no relevance for the issue involved in these cases.

15. On the admitted facts of these cases, we find that the Kerala Joint Hindu Family System (Abolition) Act, 1975, has no application to the assessee. Therefore, the Commissioner is fully justified in rejecting the revisions filed by the assessee and directing the Agrl. ITO to issue fresh assessment orders in accordance with law.

16. We find no merit in the contention raised on the question of limitation also. Under s. 34 of the Agrl. IT Act, 1950, which gave the Commissioner power of suo motu revision, had not provided for any period of limitation. Sec. 75 of the Kerala Agrl. IT Act, 1991, the revisional authority shall not pass the order after expiry of 4 years from the date of passing the order revised. In these cases, the order revised is dt. 1st July, 1988, notice under s. 75 was issued on 6th November, 1991 and the order was passed on 13th February, 1992. Therefore, it is clear that the order is passed within the time prescribed. In view of the above facts, learned counsel for the assessee did not seriously argue the point.

On the questions referred, we hold that the property of the assessee situate in Kerala State will not come within the purview of Kerala Joint Hindu Family System (Abolition) Act, 1975, and that the above Act has no application to the assessee who is admittedly domiciled outside Kerala. In the light of the above finding, there is no relevance for questions III and V. On question No. IV, we hold that there is no bar of limitation in these cases. In the result, the Tax Revision Cases are dismissed.