(1969) 02 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 1316 of 1966

M. Ratnamala Amma APPELLANT

Vs

Assistant Controller of Estate Duty and Others RESPONDENT

Date of Decision : 26-02-1969

Acts Referred:

Estate Duty Act, 1953 — Section 39 (2), 53, 6, 7 (1)
Hindu Succession Act, 1956 — Section 7 (2)

Citation : (1970) 75 ITR 238 : (1969) 2 MysLJ 253

Hon'ble Judges : Ahmed, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : A.G. Holla, for the Appellant; Rajasekhara Murthy and U.L. Narayana Rao, for the Respondent

Judgement

Somnath Iyer, J.—In the South Kanara District there was an Aliyasantana family composed of a certain Gummanna Shetty and his sister, Ratnamala, and her four children. Gummanna Shetty died on January 15, 1959, and Ratnamala, when called upon by the Assistant Controller of Estate Duty, produced an estate duty account in respect of the estate of the deceased. Ratnamala raised the contention when she produced the account that she was not liable to pay any estate duty for the reason that, on Gummanna Shetty''s death, his wife and children inherited a sixth share in the property which belonged to the Aliyasantana family and that estate duty was payable only by those heirs in respect of that sixth share which passed to them on the death of Gummanna Shetty.

2. The Assistant Controller negatived the contention advanced by Ratnamala, who is the petitioner before us, that estate duty was payable only in respect of the sixth share which passed on the death of Gummanna Shetty. He was of the opinion that there was also a cesser of interest in respect of the third share in the property which Gummanna Shetty would have got at a partition if one had been made immediately before his death. In support of this view, he placed

dependence on section 7(1) of the Estate Duty Act with which section 39 of that Act had to be read for the determination of the value of the interest to which sub-section (2) of that section refers for the computation of the estate duty payable.

3. Now section 5 of the Estate Duty Act is the charging section which says that on the death of a person, estate duty shall be payable in respect of property which passes on such death. Section 6 says that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. Section 7(1) on whose provisions the Assistant Controller depended reads :

"7. (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 deceased''s 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, Marumakkattayam or Aliyasantana law."

4. The relevant part of section 39, which is complementary to section 7(1), reads :

"39. (1).......

(2) The value of the benefit accruing or arising from the cesser of an interest in the property of a tarwad or tavazhi governed by the Marumkkattayam rule of inheritance or of a kutumba or kavaru governed by the Aliyasantana rule of inheritance which ceased on the death of a member thereof shall be the principal value of the share in the property of the tarwad or tavazhi or, as the case may be, the kutumba or kavaru which would have been allotted to the deceased had a partition taken place immediately before his death."

5. Under the provisions of the Madras Aliyasantana Act by which the kutumba of Gummanna Shetty, his sister and her four children were governed, at the relevant point of time it was possible for Gummanna Shetty to demand a partition, and, u/s 36(3) of that Act, in the property which could have been allotted to him at such partition he would have had only a life interest if the kutumba from which he separated had at least one female member who had not completed the age of fifty years when Gummanna Shetty died, and so, if Gummanna Shetty had demanded a partition during his lifetime, the provisions of section 36(3) would have become applicable and he would have got only a life interest in the properties allotted a him at that partition.

6. The provisions of the Madras Aliyasantana Act (Madras Act No. IX of 1949) stood amended in some respects by the Hindu Succession Act which commenced to operate on June 17, 1956. Section 4 of that Act stated that, save as otherwise expressly provided in that Act, any text, rule or interpretation of Hindu law or any custom or usage immediately before the commencement of that Act shall cease to have effect with respect to matters for which the Hindu Succession Act

made provision. It further stated that any other law in force immediately before the commencement of the Hindu Succession Act shall cease to apply to Hindus in so far as it was inconsistent with the provisions of the Hindu Succession Act.

7. Since Gummanna Shetty and the members of the kutumba to which he belonged were Hindus, any text, rule or interpretation of Hindu law or custom or usage which was in force immediately before the Hindu Succession Act came into force, ceased to have any effect with respect to matters which stood regulated by the Hindu Succession Act, and similarly the provisions of every other law, to the extent to which they were inconsistent with the provisions of the Hindu Succession Act, stood abrogated and repealed.

8. Under the Madras Aliyasantana Act as it stood before the Hindu Succession Act came into force, one of the important incidents with respect to the property owned by a kutumba of an Aliyasantana family was the right of survivorship, and so on Gummanna Shetty''s death in the year 1959, the other members of the kutumba would have become entitled to the whole of the property of the kutumba by survivorship, unless the right of survivorship created by the Aliyasantana Act was inconsistent with the provisions of the Hindu Succession Act.

9. Section 7(2) of the Hindu Succession Act, which provides for the devolution of the interest in the property of an Aliyasantana family on the death of a person belonging to such family, reads :

"7. (2) When a Hindu to whom the Aliyasantana law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a kutumba or kavaru, as the case may be, his or her interest in the property shall devolve testamentary or intestate succession, as the case may be, under this Act and not according to the Aliyasantana law.

Explanation. - For the purposes of this sub-section, the interest of a Hindu in the property of a kutumba or kavaru shall be deemed to be the share in the property of the kutumba or kavaru, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the kutumba or kavaru, as the case may be, then living, whether he or she was entitled to claim such partition or not under the Aliyasantana law, and such share shall be deemed to have been allotted to him or her absolutely."

10. The provisions of this sub-section are completely destructive of the right of survivorship which might have been asserted under the Aliyasantana Act had not the Hindu Succession Act come into force when Gummanna Shetty died. So, on his death, the interest of Gummanna Shetty in the Aliyasantana property devolved under the provisions of the Hindu Succession Act and not by survivorship, and so it was that Gummanna Shetty''s wife and children, who are in the enumeration of his heirs which the schedule to that Act contains, inherited a sixth share in the property belonging to Gummanna Shetty''s family.

11. That that is the true position under the provisions of the Hindu Succession Act was not disputed by Mr. Rajasekhara Murthy appearing for the department, and the decision of this court in Ratnamala v. State makes it abundantly clear that one of the consequences which ensued on the Hindu Succession Act coming into force was the extinction of the right of survivorship which was created by the Aliyasantana Act.

So Mr. Holla, appearing for the petitioner, maintained the argument that the only property which passed on the death of Gummanna Shetty within the meaning of section 5 of the Estate Duty Act read with section 6 was Gummanna Shetty''s sixth share in the family property, and it passed to Gummanna Shetty''s wife and children and not to the petitioner who is his sister. The estate duty was payable only in respect of that sixth share and by Gummanna Shetty''s wife and children and Ratnamala was not liable to pay any estate duty since she was not the accountable person within the meaning of the Act.

12. Not unnaturally, Mr. Holla placed dependence upon section 6 of the Estate Duty Act which reads :

"Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death."

13. It is common ground that the only property which Gummanna Shetty was competent to dispose of within the meaning of this section was a sixth share.

14. That that is so is clear from the Explanation to section 7(2) which says that the interest of a Hindu in the kutumba or kavaru which devolves by testamentary or intestate succession under sub-section (2) of that section is the share in the property which would have been allotted to the deceased if a partition of that property per capita had been made immediately before his or her death among all the members of the kutumba or kavaru, as the case may be and not the share which could have been claimed under the Aliyasantana law. The argument constructed on its provision was that since what passes u/s 6 of the Estate Duty Act is the property which Gummanna Shetty was competent to dispose of, and what he was competent to so dispose of is the share at a partition had one been made immediately before his death on a per capita basis, the estate duty was exigible only in respect of the sixth share in the family property which is the share which could have been so allotted to him.

15. But the Assistant Controller proceeded to make his assessment not merely u/s 6 of the Estate Duty Act but also u/s 7(1) read with section 39. As explained on his behalf by Mr. Rajasekhara Murthy, appearing for the department, two consequences ensued when Gummanna Shetty died, one of which was the passing of the property to the extent of a sixth share u/s 6 to his wife and children by the process of inheritance, and the other was the cesser of an interest with respect to the remaining sixth share u/s 7(1) of the Act. Although the Assistant Controller did not in the course of his order in so many words depend upon section 6, Mr. Rajasekhara Murthy at one stage during the

argument attempted to defend the order of assessment both u/s 6 and u/s 7, although his principal endeavour was to maintain the order solely on the basis of section 7. We were asked to say that, since Gummanna Shetty during his lifetime could have demanded a partition of the Aliyasantana family property under the provisions of the Aliyasantana Act and if that partition had been made immediately before his death, he would have been allotted a third share in that property, the value of that third share is the value of interest of which there was a cesser within the meaning of section 7(1) of the Estate Duty Act.

16. In support of this postulate, Mr. Rajasekhara Murthy depended upon that part of section 39(2) of the Estate Duty Act which says that the value of the interest of which there was a cesser and in respect of which there was a corresponding benefit accruing to the person who is called upon to pay the estate duty, shall be the principal value of the property of the kutumba or kavaru which would have been allotted to the deceased had a partition taken place immediately before the death of Gummanna Shetty.

17. Since the partition to which this sub-section refers is a partition which is possible under the Madras Aliyasantana Act, the provisions relating to which in that Act to do not stand superseded by the Hindu Succession Act. It was asserted that, for the purposes of section 7(1), the infallible basis for the determination of the value of the property, on which estate duty should be paid is a partition which was possible under the Aliyasantana Act and that that partition would have secured for Gummanna Shetty a third share and not a sixth share of which the Explanation to section 7(2) of the Hindu Succession Act speaks.

18. The first question which we should investigate in the context of this argument placed before us is whether this is a case to which the provisions of section 7(1) of the Estate Duty Act are applicable, and it is only if we could say that they are, that we can proceed to investigate the sustainability of the impugned order under the provisions of section 39(2).

19. Mr. Rajasekhara Murthy did not dispute the correctness of the postulate that section 39 can apply only if section 7(1) of the Estate Duty Act applies, and, that being so the question which we should first investigate is whether section 7(1) has any relevance to the case before us. The two ingredients which should exist before sub-section (1) of section 7 of the Estate Duty Act which we have already extracted can have any application are, firstly, that the property is one in which the deceased had an interest, and, secondly, that that interest should be one which ceases on his death. It is only if these two ingredients co-exist that the property should be deemed to have passed within the meaning of that sub-section.

20. Now, it is indisputable that Gummanna Shetty did have an interest in the property belonging to the family which was governed by the Aliyasantana law within the meaning of section 7(1), and so there can be no doubt that the first condition exists.

21. But it is clear that the second condition does not exist for the reason that that interest which Gummanna Shetty had in the property was not one which could cease on his death after the Hindu Succession Act came into force. That is the important alteration effected by the Hindu Succession Act in the Aliyasantana law which was in force when it was enacted. Under the Aliyasantana law, Gummanna Shetty''s interest in the property of the family, whether he claimed a partition or not, came to an end on his death, and that interest devolved upon the other members of the kutumba or kavaru by survivorship. Section 36 of the Aliyasantana Act makes it clear that even in if a partition was made and a share had been allotted to Gummanna Shetty at the partition, the share so taken by him would have been a mere life interest which would come to an end on Gummanna Shetty''s death. That that is so clear from section 36(5), which reads :

"36. (5) The properties allotted to a nissanthathi kavaru at a partition and in which it had only a life interest at the time of the death of the last of its members, shall devolve upon the kutumba, or where the kutumba has broken up, at the same or at a subsequent partition, into a number of kavarus, upon the nearest santhathi kavaru or kavarus."

22. It is common ground that Gummanna Shetty was a nissanthathi kavaru and the petitioner before us was a santhathi kavaru, and so if nothing else could have been said about it, on the death of Gummanna Shetty the property allotted to him at the partition would have devolved upon the petitioner. But section 7(2) of the Hindu Succession Act destroyed this right of survivorship in the sense that it provided for devolution by testamentary or intestate succession of the interest of Gummanna Shetty in manner provided by that Act, and for that purpose it evolved a formula which the Explanation to that sub-section incorporated. That Explanation enjoined an imaginary partition per capita which should be deemed to have been made immediately before Gummanna Shetty''s death, and the property which would have fallen to his share at that partition is the property which devolves by testamentary or intestate succession. The importance of this provision in the Hindu Succession Act consists of the fact that it extinguished the right of survivorship created by the Aliyasantana Act, and by that process the cesser of interest which was possible under that Act became no longer possible under the Hindu Succession Act. The cesser of interest, to which section 7(1) of the Estate Duty Act refers, is not consistent with the devolution of Gummanna Shetty''s interest on his heirs u/s 7(2) of the Hindu Succession Act, whatever may be the measure of the property which so devolved.

23. Since section 7(1) of the Estate Duty Act has application only to property in respect of which there is a cesser of interest on the death of the deceased, and there can be no such cesser of interest after the Hindu Succession Act can into force in a case like the one before us, it is, we think, manifest that the relevant statutory provision which governs a case like the one before us is section 6 of that Act and not section 7(1).

24. We do not accede to the contention that there was a cesser of interest in Gummanna Shetty''s property to the extent of a sixth share which did not devolve on his heirs u/s 7(2) of the Hindu Succession Act. The clear and express provision which it incorporates is that, if a Hindu, to whom the Aliyasantana law would have applied if the Hindu Succession Act had not been passed, had at the time of his death an undivided interest in a property of a kutumba or a kavaru, as the case may be, such interest in the property shall devolve by testamentary or intestate succession, as the case may be, under the provisions of the Hindu Succession Act. Although the Explanation to that sub-section makes a quantification of the interest which so devolves, what is irrefutable is that what devolves under sub-section (2) is his interest in the property and such devolution is irreconcilable with the cesser of interest to which section 7(1) of the Estate Duty Act refers.

25. The correctness of the view towards which we lean with respect to the interpretation of section 7(1) stands, in our opinion, reinforced by section 39(2) of the Estate Duty Act which says that the value of the interest in the property, of which there is a cesser, is the value of the share in the property of the Kutumba or kavaru which would have been allotted to the deceased had a partition taken place immediately before the death of the deceased. This sub-section which makes the value of the share which would have been so allotted, the value of the interest of which there was a cesser, does not support the argument that some part of that share could be brought into section 7(1) and the other part into section 6.

26. If u/s 39(2) the value of the whole of the share which would have fallen, at the partition is the value of the interest of which there was a cesser, it should follow that the entire third share which Gummanna Shetty would have got at such partition is the interest in respect of which there was a cesser, and any such view would be quite incompatible with the language of section 7(1) of the Estate Duty Act and the provision of section 7(2) of the Hindu Succession Act. It seems to us that, unless with respect to the entire property which the deceased would have got at a partition, if one had been made immediately before his death under the Aliyasantana Act, there could be no cesser of interest, the provisions of section 7(1) can have no application. The cesser must extend to the whole of the property and not merely to a portion of it. It is only then that an appeal could be made to section 7(1) of the Estate Duty Act.

27. In the view that we take, it is not necessary for us to discuss the sustainability of the postulate placed before us by Mr. Holla that the partition to which section 39(2) of the Estate Duty Act refers is a partition which should be made in accordance with the Explanation to section 7(2) of the Hindu Succession Act and that the partition should be a partition per capita and not half per stirpes and half per capita to which the Aliyasantana Act refers. On that question, it is not necessary for us to express any opinion.

28. Even on the assumption that section 7(1) of the Estate Duty Act governs the

present case and so the assessment could be made on the basis of section 39(2) of the Estate Duty Act, and the determination of the interest which ceased could be made u/s 39(2), it should follow that the value of that interest in the present case is such that it cannot produce any liability on the part of the petitioner to pay any estate duty.

29. u/s 39(2), the imaginary partition had to be made at a point of time which was immediately antecedent to the death of Gummanna Shetty which took place of January 15, 1959. u/s 36(3) of the Aliyasantana Act what Gummanna Shetty would have got at such partition was only a life interest in the property allotted to him. u/s 7(1) of the Estate Duty Act, the measure of the liability of the person who is called upon to pay the estate duty depends upon not merely the value of the interest of which there was a cesser, but also on the measure of benefit accruing or arising to the person who is called upon to pay estate duty by the cesser of such interest. Now, if Gummanna Shetty should be deemed have acquired a life interest in the properties allotted to him at the national partition to which section 39(2) of the Estate Duty Act refers, the value of the benefit accruing or arising to the petitioner on the extinction of that life interest is the value which is material for the determination of the estate duty.

30. Now, u/s 39(2) of the Estate Duty Act the life interest which Gummanna Shetty would have acquired under a partition immediately before his death would come to an end immediately after it comes into being for the reason that the partition directed by it is a partition which should notionally be made at a point of time just immediate to his death, and the cesser of interest comes into being immediately on his death. So, the life interest in respect of which there was a cesser and the benefit accruing on such cesser to the petitioner is a life interest which came into being just before death and came to an end immediately when Gummanna Shetty died. It perished immediately after it was created, and it is the value of that life interest which came to an end immediately after it was born that would form the basis for the determination of the estate duty, and it is easy to see that its principal value within the meaning of section 39(2) was nothing, and since the liability of the petitioner could extend only to the value of the life interest which came into being and became extinguished immediately after it was acquired, the Assistant Controller could not have reached the conclusion that the value of the interest is either the value of a third share or even a sixth share in the property. It is plain that it was not.

31. In the view that we take, this is not a case in which it could be said that the property should be deemed to have passed u/s 7(1) in which event alone the petitioner would have become liable to pay estate duty and would have become a legal representative within the meaning of section 53 of the Estate Duty Act or is an accountable person within the meaning of that Act. If section 7(1) did not apply, the only other section which would have materiality is section 6 which, while creating a liability in Gummanna Shetty''s wife and children, would create none in the petitioner or her children.

32. We do not accede to the argument that the only remedy which the petitioner had was to prefer an appeal under the provisions of the Act. It is not in every case that we are forbidden from exercising our jurisdiction under article 226 of the Constitution. In a proper case like the one in which the assessment made by the Assistant Controller is fundamentally defective, we would not be right in thinking that the petitioner cannot appeal to our jurisdiction under that constitutional provision.

33. So, we take the view that the assessment in so far as it concerns the petitioner cannot be supported. But since the assessment made by the Assistant Controller is an indivisible assessment which created a joint and several liability in respect of the third share in the property belonging to the Aliyasantana family, and in the view that we take, the assessment could be made only with respect to a sixth share the value of which had to be independently determined, it is plain that we cannot maintain any portion of the assessment order which has to fall to the ground in its entirety.

34. So we set aside the order of the Assistant Controller reserving liberty for him to make a fresh assessment in accordance with law and in conformity with the observations made in the course of this order.

35. In the circumstances, we make no direction in regard to costs.