

(1949) 08 MAD CK 0059
In the Madras High Court
Case No : A.A.O. No. 476 of 1946

Nadiammai Achi and Another

APPELLANT

Vs

Mariappa Thevar

RESPONDENT

Date of Decision : 17-08-1949

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 5

Citation : AIR 1951 Mad 625

Hon'ble Judges : Subba Rao, J;Chandra Reddi, J

Bench : Division Bench

Advocate : R. Gopalaswami Iyengar, for the Appellant; G.R. Jagadisa Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This is an appeal against the order of the Court of the District Judge of West Tanjore scaling down the decree u/s 19 of

Madras Act IV [4] of 1938. For appreciating the facts and the contentious of the parties the following genealogy may usefully be referred to.

KAYAROHANA

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Ramalinga Sabapathy

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Kasinatha Thevar.

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Kayarohana Subrahmanyam

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Mariappa Thevar (Respondent).

The branches of Ramalinga and Sabapathi had become divided in 1926. But in the partition certain immovables and cash outstandings were left

undivided and they were in the management of Ramalinga. Ramalinga and his sons became divided between 1934 and 1936. In spite of the division

Ramalinga continued to be in management of the assets not divided. During the lifetime of Ramalinga he was assessed to Income Tax in regard to

the income of the property left undivided and after his death his son Kayarohana was also assessed in respect of the same income. After

Kayarohana's death Subrahmanya was assessed in the same manner. Subsequently in O. S. No. 3 of 1938, a partition suit filed in the District

Court of West Tanjore, the undivided assets also were divided between the members of the family. The appellants obtained a decree in O. S. no.

5 of 1934 against Mariappa Thevar and others. Mariappa filed I. A. No. 299 of 1944 for scaling down the decree u/s 19 of Madras Act IV [4] of

1938. The decree-holders relied upon Section 5 of Act IV [4] of 1938 and contended that as the family was assessed to Income Tax the

petitioner being a member of the family could not get the decree scaled down. The learned Judge held that at the time when Kayarohana was

assessed to Income Tax as representing the undivided Hindu family the family was really disrupted and, therefore, Section 5 had no application. In

that view he scaled down the decree as prayed for. The decree-holders preferred the above appeal. The learned counsel for the appellants argued

that Section 6, Madras Agriculturists' Relief Act, 1938 directly applies to the facts of this case. Section 5 reads as follows:

Where an undivided Hindu family other than a martimakkattayam or aliyasanthana tarwad or tavazhi is assessed to the taxes specified in provisos

(A), (B) and (C) to Section 8 (ii), or falls within the category, of persons specified in proviso (D) to the same section, no person who was a

member of the family on the 1st October 1937 shall be deemed to be an agriculturist for the purposes of this Act except section 13.

2. The first contention of the learned advocate is that Section 5 applies whether the Hindu family is joint or divided in status. He argued that the

Legislature intentionally used the words "undivided Hindu family" in contradistinction to the well-known concept "the joint Hindu family" under the Hindu law. He re-inforced his argument by referring us to Section 25A, Income Tax Act. This argument not only ignores the principle underlying

Section 5 but also the meaning of the express words used therein. Under Hindu law, a Hindu family is either undivided or divided and a division

may be by metes and bounds or in status. To describe a divided family either in status or by metes and bounds as an undivided Hindu family is a

contradiction in terms. Further under the Act this disqualification is imposed upon a member of an undivided Hindu family as in law it is treated as

one entity and a member thereof so long as he continues to be a member of the family has no separate or independent rights de hors the family

towards third parties. This conception of Hindu law is recognised by Section 3 (i) of the Act where a person is defined as including an undivided

Hindu family. A decision of a Bench of this Court in *Annam Venkatakutumba Rao Vs. Yenduri Veerabhadhrudu (died) and Others*, , supports this

construction of the section. In that case though a debtor had become divided from his uncle as the result of a partition suit decreed on 30-3-1936,

the uncle was assessed to Income Tax in ignorance of such division as Manager of a joint Hindu family for 1936-37. The learned Judges held :

That under Madras Act IV [4] of 1938, the family so assessed cannot be deemed to be & person after 30-3-1936, and the divided member

is not disentitled to the benefits of Madras Act IV [4] of 1938.

3. It is suggested that there might have been a division by metes and bounds in that case, but we have called for the records in that appeal and

satisfied ourselves that the question arose before there was any division by metes and bounds. Another decision of Wadsworth J. in *Rajeswara*

Rao Garu v. Venkata Rayanim Garu, 54 M. L. W. 223 : A. I. R. 1941 Mad. 846 bears out the said construction. The question that arose in that

case was

"whether an undivided Hindu family in Section 3 (i) of Madras Act IV [4] of 1938 covers those joint families which have re-united as well as

those joint families which never separated.

The Courts below held that the words "undivided Hindu family" did not attract the reunited family as the word used is undivided but not joint. The

learned Judge rejected that distinction and relying upon the provisions of Section 19 of the Act held that the word ""undivided"" was used in the

sense of joint and, therefore, the re-united family also was covered by Section 5. Wadsworth J., stated the principles at p. 224 as follows :

The real question, therefore, is, what was the sense in which the Legislature used the words "undivided Hindu family" in the definition of a person

in Section 3 (i) of the Act. Clearly the reason for treating an undivided family as a person was not the historical origin of the family nor the future

devolution of property on the death of the members of the family. The real reason for treating the family as a unit was the way in which its property

is held and its obligations are incurred jointly.

At p. 295 the learned Judge proceeds to observe:

It seems to me that what the Legislature had in mind in treating an undivided Hindu family as a person, was the present undivided status of that

family and not the historical origin of that status.

Applying these principles we agree with the learned Judge that u/s 5 of the Act the words "undivided Hindu family" are synonymous with the

words "joint family". The contention based upon Section 25-A, Income Tax Act does not help the appellants. Section 25-A, Income Tax Act XI

[11] of 1922 reads as follows :

Where, at the time of making an assessment u/s 23, it is claimed by or on behalf of any member of a Hindu family hitherto (assessed as) undivided

that a partition has taken place among the members of such family, the Income Tax Officer shall make such inquiry thereinto as he may think fit,

and if he is satisfied. . . . that the joint family property has been partitioned among the various members or groups of members in definite portions.

... he shall record an order to that effect.

4. It is argued that Section 25-A contemplates a division by metes and bounds and until it is done and proved to the satisfaction of the Income Tax

Officer the undivided family is liable to be assessed under the Act; and, therefore, as Section 5 refers to assessment under the Income Tax Act the

words "undivided family" used in Section 5 must be understood in the same sense as they are used in Section 25-A, Income Tax Act. This

argument offends against every rule of construction. We cannot construe the words in Section 5, Madras Agriculturists' Relief Act, with reference

to the provisions of the Income Tax Act. The foundation for the application of Section 5 is that there should have been an undivided Hindu family

and the fact that a divided family is assessed by a fiction as an undivided Hindu family u/s 25-A of the Act cannot affect the real status of the family.

We, therefore, hold that Section 5 has no application to the case of Hindu families divided in status.

5. It is next contended that in regard to some immovable properties and outstandings the family continued to be a joint Hindu family. Partition may

be either total or partial. It may be open to the members of a joint family to sever an interest in respect of a part of the joint estate while retaining

their status as joint family and holding the rest as the property of an undivided Hindu family. Co-parcenary may cease as to some of the properties

and continue as to the rest. It is settled law that when there has been a partition the presumption is that it is a complete one as to the parties and

properties. We are not satisfied on the facts before us that when the branches of Ramalinga and Sabapathy became divided in 1926 they intended

to retain their joint family status in regard to some of the immovables and cash outstandings. It is more likely that there was a severance in status in

regard to the entire family property and some of the items were continued to be held jointly for convenience. The fact that they had a separate

mess and lived separately and that in 1934 there was a partition inter se between Ramalinga and his three sons also indicates the same intention. In

our view the appellants on whom the burden lies did not put before us sufficient material to rebut the initial presumption of law. In any view EX. p-

1 the notice dated 10-5-1926 issued on behalf of T. S. Kasinatha Thevar son of Sabapathy Thevar to T. K. Ramalingam Pillai shows a clear and

unambiguous declaration of the intention to divide in regard to the entire properties. It is stated in the letter :

. . . . Therefore you are bound to divide and deliver at once a 1/3rd share at least in the family Immovable and moveable properties and

outstandings which have not been divided according to the talk between you both and to pay the income derivable from the aforesaid one-third

share

We, therefore, hold on the evidence that there was a division in status among the members of the family in regard to the entire family estate.

6. It was next contended by the learned advocate for the appellants that assuming there was a division in status when the joint family was assessed

the petitioner also must be deemed to have been assessed as one of the divided members of the family and in support of his argument he relied

upon the decision reported in Venkadari Somappa Vs. Naresepally Venkataswamy Chetty, . That was a case of a partnership of which the person

claiming relief under the Madras Agriculturists' Relief Act was a partner. The learned Judges held that

when the income of a partnership is assessed to tax what is really assessed is the income of the individual partners and therefore the applicant had

undoubtedly been subjected to Income Tax....

This decision in our view has no application to the facts of our case. There is an essential distinction between a joint Hindu family divided in status

and a partnership. In the case of a joint family divided in status the family is assessed to the Income Tax not as a group of persons but as one

entity, whereas a partnership would be assessed as a group of persons. This distinction in principle between the two classes of cases has been

brought out succinctly in a decision reported in In Re: Keshardeo Chamria, . The learned Judges have held that the members of a formerly

undivided Mitak-shara family after the passing of a preliminary decree for partition are not an association of individuals within the meaning of

Section 3 of the Act. Whatever might be said in the case of an assessment on a group of persons it is impossible to say that, when a family whether

divided or undivided is assessed as a separate legal entity, a member thereof is also assessed as one of a group of persons. We, therefore, reject

this argument also. But there is another fact which really makes a decision on this point unnecessary. Under Ex. P-26 the family was assessed on

23-11-1937 for the year of assessment 1937-38 and under Ex. P-27 the family was assessed on 15-9-1938 for the year of assessment 1938-39.

Section 3 (ii) (A) reads as follows:

Provided that a person shall not be deemed to be an "agriculturist" if he (A) has in both the financial years ending 31-3-1938 been assessed to

Income Tax under the Indian Income Tax Act, 1922, or under the Income Tax laws of any Indian State, or foreign Government.

To come under this proviso the petitioner should have been assessed in both the

financial years ending 31-3-1938. But in this case the respondents' father had not been assessed in the first financial year, that is, between 31-3-1936 and 1-4-1937 and therefore proviso (A) has no application to this case.

7. For the foregoing reasons, we agree with the lower Court that the respondent is an agriculturist within the meaning of the Madras Agriculturists'

Relief Act and is entitled to have his debt scaled down therein. In the result the appeal is dismissed with costs.