

(1972) 03 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 746 of 1971

N.V. Somaraju

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 13-03-1972

Acts Referred:

Constitution of India, 1950 — Article 14
Estate Duty Act, 1953 — Section 34(1), 34(2)

Citation : (1974) 97 ITR 97

Hon'ble Judges : Sreeramulu, J;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : P. Babulu Reddy, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Gopal Rao Ekbote, J.—This is an application filed under Article 226 of the Constitution of India for the issue of a writ to declare the provisions of Section 34(1)(b) and (1)(c) of the Estate Duty Act, 1953, as ultra vires and unconstitutional. It is also prayed that the respondents should be restrained from enforcing these provisions in respect of the estate of the petitioner's father.

2. The material facts are that one Nuli Laxminarayana and his son, the petitioner, constituted a Hindu undivided family governed by the Mitakshara law. The petitioner's father died on March 6, 1966, at Vellore in the State of Madras. The family had extensive properties consisting of agricultural lands situate in West Godavari District, A.P., residential house, godowns, cattle shed, cinema theatre, etc.

3. Under the Estate Duty Act of 1953, on the death of the petitioner's father, the estate of the deceased father, which is deemed to have passed on to the petitioner, was liable to pay estate duty. The third respondent, i.e., the Assistant Controller of Estate Duty, Kakinada, initiated proceedings under the Act. By his final order dated November 27, 1970, the third respondent assessed the principal value of the share of the petitioner's father in the Hindu undivided family at Rs. 8,95,199. Half of the said value was taken as the interest of the petitioner's

father at the time of his death which was deemed to have passed on to the petitioner on the death of his father. The petitioner paid about Rs. 1,05,000 and odd as against the net demand of Rs. 2,50,613,

4. Dissatisfied with that order of the third respondent, he filed an appeal before the second respondent, the Appellate Controller of Estate Duty, Hyderabad, and it is stated that the appeal is still pending.

5. In this writ petition which was filed during the pendency of the appeal the validity of Section 34(1)(c) of the Act is challenged. Two contentions were raised before us by Sri P. Bibulu Reddy, the learned counsel for the petitioner. It was firstly contended that Sub-section (1) of Section 34 is beyond the competence of Parliament inasmuch as estate duty is levied on the whole estate which formed part of the joint family and in which both the deceased as well as the petitioner had interest as coparceners.

6. Now, entry 87 of List I, Schedule VII, reads as under: "Estate duty in respect of property other than agricultural land." The field of legislation, therefore, is specifically mentioned for the purpose of enacting a law on estate duty by Parliament. The entry merely states that estate duty in respect of property other than agricultural land is the field over which Parliament would be competent to legislate. The definition of "estate duty", however, is given in Article 366(9) and it reads :

"Estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass."

7. Even a casual reading of this definition of "estate duty" would disclose that estate duty means that duty which is to be assessed on or by reference to the principal value. The principal value has to be ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the legislature of a State relating to the duty. Thus, the principal value which is to be ascertained would be of all property passing upon the death or deemed, under the provisions of the said laws so to pass. What is clear from this definition is that the principal value can be ascertained in accordance with such rules as may be prescribed by a law made by Parliament. Parliament is thus not only empowered to frame law relating to estate duty which must necessarily include the determination of the principal value ascertained in accordance with such rules as are prescribed under the law made by Parliament, but also determine the rates at which such principal value in regard to the property passing upon death or deemed to pass upon the death is to be levied. It is in exercise of this power to legislate that Parliament has enacted Section 34. Section 34, in so far as it is relevant, reads as under :

"34. (1) For the purpose of determining the rate of estate duty to be paid on any

property passing on the death of the deceased--....

(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, also the interests in the joint family property of all the lineal descendants of the deceased member;

shall be aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof.

(2) Where any such estate as is referred to in Sub-section (1) includes any property exempt from estate duty, the estate duty leviable on the property not so exempt shall be an amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been so exempt, the same proportion as the value of the property not so exempt bears to the value of the whole estate.

8. Explanation.--For the purposes of this sub-section, "property exempt from estate duty" means-

(i) any property which is exempt from estate duty u/s 33; (ii) any agricultural land situate in any State not specified in the First Schedule;

(iii) the interest of all coparceners other than the deceased in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law."

9. A careful and analytical reading of this provision would disclose that the principle of aggregation has been followed in regard to the property passing and which property consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara law, also the interests in the joint family property of all the lineal descendants of the deceased member. This aggregation, however, as is evident from Sub-section (1) is made only with a view to determine at what rate or rates the principal value can be assessed to estate duty.

10. It would be wrong to read in Sub-section (1) anything of the kind that is suggested to us that the duty is levied upon even the interest which belonged to the son during the lifetime of the father and which does not pass to him after the death of his father. The principle of aggregation is applied only for the purpose of determining the rate and not levying duty on the principal value of the interest passed on to the petitioner after the death of his father in so far as it belonged to the deceased.

11. If Sub-section (2) along with the Explanation's read with Sub-section (1) of that section, no one can be left in doubt that Sub-section (1) is meant to aggregate for the purpose of finding out at what rate the interest of the deceased is to be charged with estate duty. The third Explanation attached to Sub-section (2) makes it abundantly plain that from the aggregate principal value of the

entire estate of coparcenary the interest of all coparceners other than the deceased in the joint family property of a Hindu family governed by the Mitakshara law is exempted from the payment of estate duty. The principal value of such part of the property, therefore, is excluded from the payment of estate duty. What becomes plain when one reads both the sub-sections conjointly is that while for the purpose of finding out at what rate the interest which is deemed to have passed from the father to the son after the death of the father, both the interests are aggregated, nevertheless the estate duty is levied only on the interest belonging to the father which is deemed to have passed to the son after the father's death. The argument, therefore, is plainly inconsistent with the express provision of Section 34(1) and (2) and cannot, therefore, be accepted. We are clear, in our view, that Parliament was competent to not only prescribe the rule as to how the principal value is to be determined but is also quite competent to evolve a formula by which the rate at which the aggregate principal value can be charged and then was also equally competent to levy estate duty on the property or interest deemed to have passed after the death of the father to the son.

12. It is, in our judgment, plainly wrong to read anything in Section 34 as to mean that at the rate thus found out, the entire estate including the property or interest of the son living is charged with estate duty. What is charged ultimately is the precise property or interest left by the father and which is deemed to have passed to the son.

13. The phrase "deemed to have passed" has been deliberately introduced in the definition of "estate duty" in Article 366(9). It is obvious that on the death of a coparcener according to the Mitakshara law the interest of the deceased does not pass but surviving coparceners get the interest or property by mere survivorship. It is to get over this legal difficulty that the deeming provision has been made in the definition of "estate duty". When once it is realised that even that property or interest passed by the rule of survivorship can be charged with estate duty, then it would not be difficult to agree that Parliament has all necessary powers, to levy estate duty of course on the property or interest which is deemed to have passed on the death of the father to the son.

14. We do not, therefore, experience any difficulty in rejecting the first contention.

15. It was then argued that Section 34(1)(c) is violative of Article 14 of the Constitution of India. This argument was based upon two grounds. It was firstly argued that a Mitakshara father is placed in a discriminatory position as against the brother or son who can be other coparceners in a joint family under the Mitakshara law. What is ignored in advancing this argument is that a Mitakshara father has a peculiar position in Mitakshara law.

16. As long as the father is living, his sons although coparceners and get rights by birth they get it only in the undivided share of the father who represents their

branch in the overall coparcenary property, if the coparcenary consists of a father and his brother or his brother or their branches. The case of a brother therefore has to be separately considered and cannot be said to be on par with the position of a son. In view of this peculiar feature of the father in coparcenary family under Mitakshara law, that class of fathers has necessarily to be given a separate attention in the matter of levying estate duty. In case where the joint family consists only of father and sons, although the sons have coparcenary interest in the joint family property even during the lifetime of the father, after the death of the father, since the property is got by the sons by way of survivorship, the interest of the dying father has to be assessed to duty. In order to find out as to what is the interest of the father which is deemed to have passed on to the sons, it is not possible precisely to take any portion of the coparcenary property as belonging to the father and obviously it cannot be separately valued. The principle of valuation therefore was evolved by taking the whole aggregate estate and determine its principal value for the purpose of finding out the rate at which the father's interest can be charged with estate duty. No other method of determining the principal value or the rate at which it should be charged is possible or could be suggested as possible to us. That is why Clause (c) of Sub-section (I) specifically mentions "also the interests in the joint family property of all the lineal descendants of the deceased member". In view of this special feature of Mitakshara joint Hindu family consisting of coparceners such as father and sons, the Mitakshara father has been given a special treatment as a class. Between the same class there is absolutely no discrimination whatsoever. All Mitakshara fathers get identical treatment. There is thus no discrimination between the same class.

17. Any discrimination between the class of fathers and the class of brothers or class of sons need not be viewed in the light of the same or similar class. As pointed out above, their class is altogether different even under the Mitakshara law. It is true that if a son dies, the position would be different than the one when the father dies under the Mitakshara law, but on that account one cannot say that there has been any discrimination attracting the provisions of Article 14 of the Constitution. We do not, therefore, find that Section 34(1)(c) is not in any manner discriminatory between the Mitakshara father as against the brother or his sons. Between the same class, there being no discriminatory treatment, Article 14 cannot be said to have been attracted. The provision has, in our judgment, necessary nexus with the object of Section 34. The purpose of Section 34 is to levy in so far as it is possible uniform duty upon the property left by the deceased. There is a good deal of difference between a Mitakshara father and a father under the Dayabhaga law. During the course of discussion it had to be conceded that, as between the two fathers, in so far as the estate duty is concerned, the Mitakshara father has been placed on somewhat advantageous position. If that is so, then no Mitakshara father or Mitakshara son to whose advantage a provision appears to be can question the validity of Section 34(1)(c) on the ground of discriminatory treatment attracting the provisions of Article 14

of the Constitution.

18. We, therefore, reject this contention. The second ground on which this provision was attacked as violative of Article 14 was that there is discrimination between a Hindu joint family father under the Mitakshara law and a father under the Dayabhaga law. Example was given in order to point out the discrimination between the two. We were not clear from the example that any point of discrimination is made out. We have already pointed out that there is undoubtedly a difference in status between the father under the Mitakshara law and a father under the Dayabhaga law. While under the Dayabhaga law as long as the father lives, he is the absolute owner of the property and it is only after his death the property passes on to his sons if they happen to be his heirs, on the other hand under the Hindu law as governed by the Mitakshara school, after the death of the father the property does not pass to his sons as legal heirs but it passes on according to the principles of survivorship. The sons in fact get right in the ancestral joint family property by their birth, which is not possible in the case of a Dayabhaga school. If one keeps these differences in view, the legislature was competent to evolve a method whereby approximately these two fathers living under two different schools can be brought together for the purpose of charging estate duty. There may be slight difference in rates and ultimately in the levy of estate duty. But, if it is remembered that while considering the provisions of Article 14 of the Constitution no precise or mathematical accuracy is contemplated and what is to be seen is overall equality given to the same class, then it would not be difficult to see that such a provision cannot be said to attract Article 14 of the Constitution. We have already stated that the classification is reasonable and rational. There is a basis for such a rational classification. That classification has necessary nexus with the object which the provisions of the Estate Duty Act are seeking to achieve.

19. In matters of taxation it must be borne in mind that the legislature has greater freedom not only to classify the different persons or objects in regard to whom or which tax is to be levied but different modes of taxation can also be adopted. Since Parliament has a greater latitude in this respect, if one carefully analyses Section 34(1)(c), keeping in view the Explanation attached to Sub-section (2), we do not think one can reach the conclusion that these provisions are not violative of Article 14 of the Constitution. That such classification and the method of taxation, is permissible can be seen in the following Supreme Court decision. See *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, (the judgment of Shah J.).

20. We are, therefore, satisfied that both the grounds on which the provisions of Section 34(1)(c) are attacked cannot be accepted as valid and effective.

21. No argument was advanced before us in regard to the validity of Clause (b) of Section 34(1). We are, therefore, relieved from considering its validity.

22. We are fortified in our view which we have taken as above by the following

decisions of this court and that of the Madras High Court in W.P. No. 4038 of 1968 dated June 24, 1971, N. Krishna Prasad Vs. Assistant Controller of Estate Duty, and W. P. No. 549 of 1970 and C. M. P. No. 3872 of 1971 dated August 27, 1971, Smt. Komanduri Seshamma Vs. Appellate Controller of Estate Duty, and Pl. S. Rm. Ramanathan Chettiar Vs. Assistant Controller of Estate Duty, .

23. It is also pertinent to note that the appeal is still pending before the appellate authority. The proper stage for the petitioner was to come after exhausting all the remedies before the authorities constituted under the Act. It is true that the constitutional validity could not have been questioned before the authorities under the Act, but nothing could have been lost if the petitioner had waited till he exhausted all the remedies and then come to this court. In any case, since we have held that the provisions of the Act are not unconstitutional, we would reject the writ petition.

24. The writ petition is dismissed with costs. Advocate's fee, Rs. 100.