
(1997) 01 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 5298 of 1993

P.C. Cheriyan

APPELLANT

Vs

Agricultural Income Tax Officer and Another

RESPONDENT

Date of Decision : 06-01-1997

Acts Referred:

Citation : (1997) 226 ITR 813

Hon'ble Judges : V.V. Kamat, J

Bench : Single Bench

Advocate : M.C. Sen, for the Appellant; Varghese Kuriakose, Government Pleader, for the Respondent

Judgement

V.V. Kamat, J.—The controversy in this petition has really commenced as a result of the earlier decision of this court (exhibit P-4) in O. P. No. 817 of 1990. This court was concerned with the assessment to agricultural Income Tax for the year 1983-84, with reference to exhibit P-1-assessment order dated December 15, 1987, therein.

2. It is observed by this court in regard to the contention which is required to be given effect to. Whether this has been given effect to or not is the concern of this petition.

3. As stated above this court (exhibit P-4) has observed as follows :

"One of the claims of the petitioner is that his father died on January 1, 1974, and his mother, two sisters, the petitioner and his brother are the legal representatives and they are to be assessed as tenants-in-common in the light of the decision reported in Mary Roy and Others Vs. State of Kerala and Others, . The contention of the assessee that the legal representatives are to be assessed as tenants-in-common was accepted by the Department for the years 1977-78 to 1982-83 and the Department by exhibit P-5 order dated January 13, 1989, directed the Agricultural Income Tax Officer to modify the assessment order assigning the status as tenants-in common to the petitioner."

4. It was only for the assessment year 1983-84, it is so stated that the petitioner was assessed assigning the status of individual. This court found the petitioner greatly prejudiced as he was not given sufficient opportunity. This was more so because it is found by this court that for the earlier years 1977-78 up to 1982-83 the petitioner was assessed assigning the status as tenants-in-common.

5. This is so as is also evidenced by the orders at exhibits P-8 to P-12 which are placed on record of this petition. Illustratively exhibit P-8 is the order relating to the assessment years 1977-78 up to 1982-83- It is also seen that exhibit P-10 is also the order for the assessment year 1984-85 (subsequent to the assessment year in question in the present petition). Further it would be seen that at exhibit P-11 it is for the assessment year 1985-86 and exhibit P-12 is for the assessment year 1986-87. It is not disputed that on a perusal of the above orders which have received finality in regard to them for the concerned assessment years, it is held that the estate in question is held as tenants-in-common.

6. Illustratively the order (exhibit P-8) shows the following observations:

" As per Section 36 of the Indian Succession Act, the widow of P. C. Cheriayan (Sr.) is entitled to 1/3rd share in the properties left behind by him and the balance 2/3rds share alone has to be divided equally among his children. The appellant and his two sisters, therefore, got only 1/3rd each of the balance 2/3rds share and this works out to 2/9ths share each for the appellant and his two sisters. The share of the mother of the appellant, the appellant and his two sisters will, therefore, be 3/9, 2/9, 2/9 and 2/9 respectively, for the period up to July 30, 1977. Thereafter the appellant having got assigned also the 1/3rd share of his mother, his share will be 2/9ths share which he originally had and the 3/9ths share which he got assigned from his mother and this works out to 5/9ths share in the entire property. The apportionment of share of income has, therefore, to be made among the appellant's mother, the appellant and his two sisters in the ratio of 3/9 : 2/9 1/2 : 2/9 : 2/9 till July 30, 1977, and thereafter the apportionment has to be between the appellant and his two sisters in the ratio of 5/9 : 2/9 : 2/9. The ratio fixed by the assessing authority for apportionment is, therefore, wrong and is to be modified as above stated. "

7. In this context it is also necessary to observe that the position of law is also settled to be beyond dispute in the following manner :

" It is beyond dispute that in view of the decision of the Supreme Court in Mary Roy and Others Vs. State of Kerala and Others, , it is the Indian Succession Act, 1925, that governs the party in the matter of intestate succession and not the Travancore Christian Succession Act. The assessing authority has accepted this position as rightly contended by the appellant and she has gone wrong in the matter of calculation of share."

8. It would thus be seen that when the proceedings for the assessment year 1983-84 travelled before the Commissioner of Agricultural Income Tax in

pursuance of the order at exhibit P-4, by an order at exhibit P-5 dated August 1, 1990, curiously enough for the assessment year in question the situation is not seen properly, especially the situation of finality as far as the other assessment years are concerned except the assessment year in question. It is observed in regard thereto as follows :

" The first contention raised by the petitioner is that the status assigned as "individual" was irregular. He has failed to raise this contention either at the assessment stage or at the appellate stage. At the revision stage also he has failed to produce any documentary evidence in support of his contention. Even though the Supreme Court in the case of Mary Roy and Others Vs. State of Kerala and Others, , has held that the Travancore Christian Succession Act was repealed by the statute forming Part B States and the Christians are governed by the provisions of the Indian Succession Act, the decision was reported in 1986 and till that date the properties were enjoyed under the Christian Succession Act by the assessee himself. In the return the status claimed is individual and in the account the petitioner has admitted the yield and income from the entire properties and so it is not open to him now to claim the status as tenants-in-common for the year 1983-84, the accounting year being 1982-83. As far as the levy of AIT is concerned, it is to be on the person who has actually possessed the land and received the income from that land. The decision of the Appellate Assistant Commissioner in respect of the assessments for earlier years has not been accepted as correct. The Supreme Court decision relied on by the petitioner is not directly applicable here. Hence the contention with regard to the status cannot be accepted in the facts and circumstances of the case."

9. A view is taken that the agricultural Income Tax is to be on the person who has actually possessed the land and received the income from that land. It is further observed that the decision of the apex court is not directly applicable.

10. It is thereafter that the petitioner preferred an application for rectification (exhibit P-6), dated July 7, 1982. A perusal of the copy of the said application would show that it is prayed that the proceeding should be reopened if it is found that there is omission to deal with an important ground urged by a party. A perusal of the application further shows that it is contended that even prior to the decision of the apex court the petitioner had returned the income for and on behalf of the other legal heirs. The decision of the apex court has been quoted ad verbatim to urge that the Indian Succession Act, 1925, became effective from 1951 onwards leading to the submission that the property as well as the income gets vested in the legal heirs and they have no right thereof with effect from 1951 onwards.

11. When such clear statement of law was placed on record and in addition thereto even earlier this court (exhibit P-4) had taken the importance of the situation that with regard to the earlier years the legal heirs were treated as tenants-in-common, the rectification application came to be rejected by the order, exhibit P-7. It is observed therein that the contents do not come under the

purview of Section 42 of the Agricultural Income Tax Act, 1991. This was because, it is observed, that the contentions are already considered in the order dated August 1, 1990 (exhibit P-5).

12. In my judgment, the situation is a specimen of incongruity especially when with regard to all the assessment years (see exhibits P-8 to P-12) the legal heirs are treated as tenants-in-common, leaving aside the solitary assessment year 1985-84 in the context of the present petitioner, to the contrary treating one of the heirs as an individual. There is no dispute as regards the facts. There is also no dispute with regard to the position of law.

13. The learned Government Pleader was more than emphatic to draw from the contents of the rectification application (exhibit P-6). To be precise he referred to the following paragraph of exhibit P-6 :

"However, while disposing of the revision petition, this status was not assigned on the ground that the decision was reported in 1986 and till that date the properties were enjoyed by your petitioner only. In the return filed, the status is claimed as individual. So far as agricultural Income Tax levy is concerned it is the person who actually possesses the land and receives income from the land. The Supreme Court decision relied on by your petitioner is not directly applicable to the facts of the case."

14. He strenuously contended that the statement of fact to the effect that till the decision was reported in 1986 the property was enjoyed by your petitioner only, has to be understood in determination of the status of the present petitioner as an individual. Learned counsel contended that when this is emphatically to be found in the rectification application itself, treating it as not falling in the pattern of earlier years will have to be understood in its above context.

15. In my judgment, there are several instances of the proceedings being conducted by one of the legal heirs. This situation also gets more than fortified if orders for the earlier assessment years at exhibits P-8 to P-12 are seen, showing that one of the legal heirs prosecuted the proceedings. The name is none other than the present petitioner who prosecuted the assessment proceedings for other assessment years. In my judgment, it is also to be kept in mind that the rights that flow from the legal situation cannot be allowed to be disturbed, may be because the proceedings are prosecuted by one of the legal heirs, leaving aside the staring features of the position of tenancy in common with regard to all the assessment years other than the assessment year in question.

16. For all the above reasons, the petition succeeds in terms of prayers (i) and (ii) thereof. Ordered accordingly.