
(1979) 03 MAD CK 0025

In the Madras High Court

Case No : T.C. No"s. 356 to 358 of 1975 (Revision No"s. 70 to 72 of 1975)

P.R. Ramasubramania Raja

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 13-03-1979

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 9(2)

Citation : (1980) ILR (Mad) 435 : (1980) 121 ITR 879

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : S. Padmanabhan, for the Appellant; Additional Government Pleader, for the Respondent

Judgement

Sethuraman, J.—These are revision petitions filed u/s 54(1) of the Tamil Nadu Agricultural Income Tax Act, 1955, hereinafter referred to as

the Act "", to revise the order of the Board of Revenue dated 14th December, 1974, for the assessment years 1971-72, 1972-73 and 1973-74.

The assessee had 53.87 standard acres during the previous assessment years. During the year 1968, he purchased 1998 ordinary acres and

disposed of 34.35 ordinary acres by way of gift to his minor daughters and mother, and also by way of sale to three persons. After deducting the

lands, which were given away by the assessee by way of gift and which were sold, and after adding the lands purchased by him, he had 40.19

standard acres. He applied u/s 65(1)(a), (b) and (c) of the Act for permission to compound the agricultural Income Tax payable by him and to pay

in lieu thereof a lump sum at the rates specified in the Schedule to the Act. The Agrl. ITO accepted the compounding application as in earlier years,

on the basis that the assessee had 40.19 standard acres.

2. The Board found that the assessee had gifted 23.83 acres of lands to his minor daughters on 29th January, 1970, and that out of the lands deducted from his holding for the assessment year 1971-72, these gifted lands also formed a part. The reason given for effecting the settlement was to cover the marriage and other expenses of the daughters. The Board was of the opinion that the Agri. ITO was not correct in excluding the lands settled by the assessee on his minor daughters which attracted Section 9(2) of the Act, and, therefore, proposed to set aside the erroneous orders of the Agri. ITO. Suo motu revisions were taken u/s 34 of the Act and a show-cause notice was issued. In reply to this show-cause notice, the learned counsel for the assessee stated that the gift was made only in accordance with their community and family customs, and that it was obligatory on the part of the parent to make provision for his daughter, and that the gift had been duly recognised by the I.T. department.

3. At the oral hearing, the assessee's representation was that the gift had not been made in his individual capacity, but only in his capacity as karta of a HUF and that, therefore, there was no question of applying Section 9(2)(a)(iv) of the Act as proposed by the Board. The second contention was that the settlement was made in accordance with the custom of the family and community. The Board rejected both these contentions and held that Section 9(2)(a)(iv) was attracted. The orders of the Agri. ITO were set aside and he was directed to pass fresh orders including the lands settled in the names of his daughters in the assessment. It is this order of the Board that has given rise to the present revisions.

4. u/s 9(2)(a)(iv) the assets transferred directly or indirectly to the minor children had to be included in the assessment of the assessee for the purpose of assessment. The case of the assessee was that the lands belonged to the HUF of which the assessee was the karta, and that as the gift or settlement had been made by the HUF, there was no question of any asset being transferred directly or indirectly to the wife or the minor children of the assessee. In the submission of the learned counsel, the section would apply only to an individual and not to a HUF. The additional Government pleader submitted that in the document dated 29th January, 1970, there is no mention that the lands were being transferred by the assessee in his capacity as the karta, that, in any event, the lands belonged to him, as he was the sole coparcener and that, therefore, the provisions

of Section 9(2)(a)(iv) were attracted as a result of the transfer of the lands.

5. Section 9(2)(a)(iv) runs as follows :

In computing the total agricultural income of any individual for the purpose of assessment, there shall be included,--

(a) so much of the agricultural income of a wife or minor child of such individual as arises directly or indirectly--...

(iv) from assets transferred directly or indirectly to the minor child not being a married daughter by such individual otherwise than for adequate consideration.

6. In the context of this provision, it is necessary to find out as to who is the owner of the lands that were transferred, and the capacity in which the

lands were transferred whether as representing a HUF or as an individual. There is no dispute about the fact that if an individual had transferred the

lands belonging to him in favour of his minor daughters, then Section 9(2)(a)(iv) would be attracted.

7. Though the order of the Board is not clear on the point, still it is not in dispute that the assessee obtained the lands under a partition between

himself and his brothers. At the time of partition, the family of the assessee consisted of himself and his two minor daughters. The first point to be

examined is whether more than one male member is required for the constitution of the HUF, which is an assessee under the Act. As early as

1936, the Privy Council in *Kalyanji Vithaldas v. CIT* [1937] 5 ITR 90 noticed a decision in the case of *Raja Bhunesh Pratap Namin Singh* [1932]

6 ITC 175 (All) and pointed out that their Lordships did not agree that a Hindu joint family necessarily consisted of male members only. The

distinction between a HUF and a Hindu coparcenary, was pointed out.

8. This case, decided by the Privy Council, was considered by the Supreme Court in *Gowli Buddanna Vs. Commissioner of Income Tax, Mysore,*

Bangalore, . In the case before the Supreme Court, one Buddappa, his wife, his two unmarried daughters and his adopted son, Buddanna,

constituted a HUF. Buddappa died in 1952 and the question was whether Buddanna, the sole surviving co parcener, his widowed mother and

sisters could constitute a HUF within the meaning of the I.T. Act. The Supreme Court held that the plea that there must be at least two male

members to form a HUF as a taxable entity had no force, and that there might

be a HUF consisting of only one male member and other female members, like widows of the deceased male members, and that the assessee in that case was a HUF. Therefore, in the light of this decision, it has to be held that there was a HUF in the present case, even though there was only one male member, as there were other female members in the family. .

9. The next question for consideration is whether the property obtained under a partition belongs to a HUF of which the executant is the karta or the individual. While the assessee placed great reliance on the decision of the Supreme Court in *N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh*, , reliance was placed on behalf of the respondent. State of Tamil Nadu, on another decision of the Supreme Court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*, .

10. In considering the question whether the property belonged to the HUF or the individual, we shall first refer to the decision of the Privy Council in *Kalyanji Vithaldas v. CIT* [1937] 5 ITR 90. That was a case where super-tax was sought to be charged on the six partners of a firm. The

question that arose for consideration was whether each one of the six partners of a firm should be assessed to super-tax upon his share of the

profits from the firm as an individual or as a HUF. The family had a higher exemption limit as regards super-tax. Out of the six partners, Moolji,

Purshottam and Kalyanji were each the head of his joint family which included in every case a son or sons. However, the income received from the

firm was the separate or self-acquired property, which had not been thrown into the common stock. Therefore, in these cases the assessments had

to be made on the individuals. In regard to another partner, by name Chaturbhuj, it was found that he had no son. But that fact was taken to be

irrelevant, because his interest in the firm was self-acquired or separate property in which the son could have taken no interest by birth. In the case

of the two other partners, Kanji and Sewdas, their interest in the firm was obtained under a gift from their father. Neither of them had a son.

Without deciding the question whether the property derived by them under the gift was ancestral property or not, it was assumed that their interest

was ancestral property, so that, if either had a son, the son would have taken an interest therein by birth. But as no son was born at the relevant

time, the Privy Council held that no. interest had arisen to qualify or diminish the interest given by Moolji to Kanji and to Sewdas. In the course of

the judgment, it was observed at page 95 as follows :

In an extra legal sense, and even for some purposes of legal theory, ancestral property may perhaps be described, and usefully described, as

family property ; but it does not follow that in the eye of the Hindu law it belongs save in certain circumstances,, to the family as distinct from the

individual. By reason of its origin a man's property may be liable to be divested wholly or in part on the happening of a particular event, or may be

answerable for particular obligations, or may pass at his death in a particular way ; but if, in spite of all such facts, his personal law regards him as

the owner, the property as his property and the income therefrom as his income, it is chargeable to Income Tax as his, i.e., as the income of an

individual. In their Lordships' view it would not be in consonance with ordinary notions or with a correct interpretation of the law of the

Mitakshara, to hold that property which a man has obtained from his father belongs to a Hindu undivided family by reason of having a wife and

daughters.

11. On the facts it was held that the income in question should not be treated as the income of the family, but only as the income of the individual

for levying super-tax.

12. This question as to the legal character of the property arose in two other cases before the Privy Council on appeal from the judgment of the

Supreme Court of Ceylon, and these decisions are *Attorney-General of Ceylon v. AR. Arunachalam Chettiar* [1958] 34 ITR (ED) 20 and in

Attorney-General of Ceylon v. AR. Arunachalam Chettiar [1958] 34 ITR (ED) 42 . The first of the two cases arose out of the estate duty

proceedings on the death of the son of a Hindu. The father and the son constituted a HUF. The son was married. The father, on the son's death,

became the sole surviving coparcener. The question for decision was whether estate duty was exigible on the son's death. The contention for the

assessee was that since the deceased co-parcener could not be said to have any share in the family properties, there was no passing of property

on his death. This contention was accepted. Soon thereafter, the father also died, and on his death another estate duty assessment came to be

made in Ceylon. In this assessment, the contention urged for the assessee was based on Section 73 of the Estate Duty Ordinance of Ceylon, which

provided that where a member of a HUF died, no estate duty shall be payable on any property proved to the satisfaction of the Commissioner to

be the joint property of the HUF. The point for consideration was whether the deceased having become the sole surviving coparcener, the

property which devolved on him by survivorship could be treated as the property of a HUF to which Section 73 applied. The Privy Council held

that the father at the time of his death was a member of the HUF and that the property of which he was the sole coparcener was the property of

that HUF. At page 45, Viscount Simonds, speaking for the Judicial Committee, observed as follows :

But though it may be correct to speak of him (sole surviving coparcener) as the "owner", yet it is still correct to describe that which he owns as

the joint family property." (Underlining* ours)

13. Their Lordships quoted, from the judgment of one of the learned judges of the Supreme Court of Ceylon, the following passage :

To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary unit to a single individual were

to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener.

14. Commenting on the submission that the sole surviving coparcener had plenary powers of disposition or alienations, it was observed in the same

page as follows :

But it appears to their Lordships to be an irrelevant consideration. Let it be assumed that his power of alienation is unassailable ; that means no

more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it and, if he does not

alienate it, that is what it remains. The fatal flaw in the argument of the appellant appeared to be that, having labelled the surviving coparcener "

owner", he then attributed to his ownership such a congeries of rights that the property could no longer be called " joint family property ". The

family, a body fluctuating in numbers and comprised of male and female members, may equally well be said to be owners of the property, but

owners whose ownership is qualified by the powers of the coparceners. There is

in fact nothing to be gained by the use of the word " owner " in this connection. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as " joint property " of the undivided family. Judging by that test their Lordships have no doubt that the Supreme Court came to the right conclusion." (that the property belonged to the Hindu undivided family so as to be exempted u/s 73(3)). (Underlining* ours).

15. Though the Privy Council pointed out, expressly in the first of the two cases and implicitly, in the second case, that the question being one of foreign law was a question of fact, still having regard to the fact that the Privy Council had examined some of its earlier decisions in coming to this conclusion, these cases have been treated as having been pronounced on the Hindu Law, and as being authoritative to serve as precedents.

16. Both Kalyanji Vithaldas's case [1937] 5 ITR 90 and Arunachalam Chettiars's case [1958] 34 ITR (ED) 42 were considered by the Supreme

Court in Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, already referred to. As seen earlier Buddanna was the only male

member of the family consisting of himself, his wife and his two unmarried daughters. The question that arose for consideration by the Supreme

Court was whether this family was liable to be assessed as a HUF. We have already seen that the Supreme Court pointed out that the existence of

at least two male members to form a HUF was not the desideratum. At page 302, after referring to the Privy Council's decisions, the Supreme

Court observed as follows ;

Property of a joint family, therefore, does not cease to belong to the family merely because the family is represented by a single coparcener who

possesses rights which an owner of property may possess. " In the case in hand the property which yielded the income originally belonged to a

Hindu undivided family. On the death of Buddappa, the family which included a widow and females born in the family was represented by

Buddanna alone, but the property still continued to belong to that undivided family and income received therefrom was taxable; as income of the

Hindu undivided family.

17. There would, thus, be a family in the present case, and the property would

belong to that family even independently of N.V. Narendranath Vs.

Commissioner of Wealth-tax, Andhra Pradesh, , which arose under the W.T. Act. The Supreme Court, in this case, went into the question

whether the property obtained by a coparcener on a partition between himself and his father and brothers constituted a HUF property so as to be

assessed to wealth-tax as such. At page 193, the question formulated was whether the assets, which came to the share of the assessee on

partition, ceased to bear the character of a joint family property and became his individual property. The distinction between the two classes of

cases where an assessee was sought to be assessed in respect of the ancestral property held by him was pointed out. The first class of cases was

where property not originally joint was received by the assessee, and the question to be asked in such a case was whether it had acquired the

character of the joint family property in the hands of the assessee. In the second class of cases, where the property already impressed with the

character of joint family property came into the hands of the assessee as a single coparcener, the question to be asked was whether it had retained

the character of joint family property in the hands of the assessee or was converted into absolute property of the assessee., Kalyanji Vithaldas v.

CIT [1937] 5 ITR 90 comes under the first category and A. R. Arunachalam Chettiar's case [1958] 34 ITR (ED) 42 was taken as coming under

the second category. In dealing with the facts of the particular case before the court at page 74 ITR 198, it is stated as follows :

It is no doubt true that there was a partition between the assessee, his wife and minor daughters on the one hand and his father and brothers on

the other hand. But the effect of partition did not affect the character of these properties which did not cease to be joint family properties in the

hands of the appellant. Our conclusion is that when a coparcener having a wife and two minor daughters and no son receives his share of the joint

family properties on partition, such property in the hands of the coparcener belongs to the Hindu undivided family of himself, his wife and minor

daughters and cannot be assessed as his individual property.

18. Property obtained on partition would be joint family property and that is the position here.

19. During the course of arguments, there was some debate before us as to

whether the latest decision of the Supreme Court in Surjit Lal Chhabda

Vs. The Commissioner of Income Tax, Bombay, laid down any contrary proposition to what had been laid down in N.V. Narendranath Vs.

Commissioner of Wealth-tax, Andhra Pradesh, so that there is need for some reconciliation. In the latest decision the Supreme Court was

concerned with the assessment to Income Tax in respect of a property which belonged to one Chhabda. The property was self-acquired. He

threw it into the family hotchpot, intending to impress it with the character of joint family property. He declared that he would be holding the

property as the karta of the joint Hindu family consisting of himself, his wife and his two unmarried daughters. The question was whether the

income received from the property after the said declaration should be assessed to Income Tax in the hands of the individual or the HUF.

Chandra-chud J,, as he then was; speaking for the Supreme Court, examined in detail the decision in Kalyanji Vithaldas v. CIT [1937] 5 ITR 90

and also the other cases noticed earlier, and considered that the case before the Supreme Court came within the ratio of the Privy Council decision

in Kalyanji Vithaldas's case [1937] 5 ITR 90, particularly in relation to the cases of the two partners, Kanji and Sewdas. At page 788, the

following passage occurs :

On this point (whether Kathoke Lodge which was once the separate property was thrown in the common stock, which raised the question

whether that circumstance was sufficient to justify the assessment of the income from that property as that of a Hindu undivided family) the cases of

Kanji and Sewdas furnish a near parallel. They did not have to throw their interest in the firm in the common stock because that interest was, on

assumption, their ancestral property. But, even though the property was ancestral, the income which they received from it was treated as their

separate property as neither of them had a son who could take interest in the ancestral property by birth. Applying that analogy, even if Kathoke

Lodge (the self-acquired property impressed with joint family character) were to be an ancestral asset, its income would still have to be treated as

the appellant's separate property as he has no son who could take interest in the property by birth. On this reasoning, the effect of the appellant

throwing Kathoke Lodge into the family hotchpot could not be more telling than if

that property was his ancestral property.

20. Again, at page 791, in describing the similarity between the case of Kanji and Sewdas on the one hand, and of the assessee before the

Supreme Court on the other, it was observed :

As in the cases of Kanji and Sewdas, so here, the property of which the income is to be brought to tax was not the joint family property of a

subsisting Hindu undivided family which had devolved on a sole surviving coparcener.

21. At page 793, the two classes of cases indicated by the Supreme Court in N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra

Pradesh, was referred to and it was observed as follows :

There are thus two classes of cases, each requiring a different approach. In cases falling within the rule in Gowli Buddanna Vs. Commissioner of

Income Tax, Mysore, Bangalore, , the question to ask is whether property which belonged to a subsisting undivided family ceases to have that

character merely because the family is represented by a sole surviving coparcener who possesses rights which an owner of property may

possess..... In cases falling within the rule in Kalyanji's case [1937] 5 ITR 90, the question to ask is whether property which did not belong to a

subsisting undivided family has truly acquired the character of joint family property in the hands of the asses-see. In this class of cases, the

composition of the family is a matter of great relevance for, though a joint Hindu family may consist of a man, his wife and daughter, the mere

existence of a wife and daughter will not justify the assessment of income from the joint family property in the status of the head as a manager of the

joint family.

22. The case of Kalyanji [1937] 5 ITR 90 was taken as signifying a category where the property, before it came into the hands of the assessee,

had not the character of joint family property. The following passage at page 795 sums up the decision of the question in that case :

Kathoke Lodge was not an asset of a pre-existing joint family of which the appellant was a member. It became an item of joint family property

for the first time when the appellant threw what was his separate property into the family hotchpot. The appellant has no son. His wife and

unmarried daughter were entitled to be maintained by him from out of the

income of Kathoke Lodge while it was his separate property. Their rights in that property are not enlarged for the reason that the property was thrown into the family hotchpot. Not being coparceners of the appellant, they have neither a right by birth in the property nor the right to demand its partition nor indeed the right to restrain the appellant from alienating the property for any purpose whatsoever. Their prior right to be maintained out of the income of Kathoke Lodge remains what it was even after the property was thrown into the family hotchpot : the right of maintenance, neither more nor less. Thus, Kathoke Lodge may be usefully described as the property of the family after it was thrown into the common stock, but it does not follow that in the eye of Hindu law it belongs to the family, as it would have, if the property were to devolve on the appellant as a sole surviving coparcener.

23. There is no anomaly in treating the sole surviving coparcener as the owner of the property having absolute powers of alienations, while the property continued to be joint family property. The extent of the power of alienation is one thing, and the character of the property is another. On this aspect the Privy Council had pronounced in Arunachalam Chettiar's case [1958] 34 ITR (ED) 42 as follows :

Let it be assumed that his power of alienation is unassailable ; that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it and, if he does not alienate it, that is what it remains. The fatal flaw in the argument of the appellant appeared to be that, having labelled "½ the surviving coparcener " owner ", he then attributed to his ownership such a congeries of rights that the property could no longer be called " joint family property ". The family, a body fluctuating in numbers and comprised of male and female members, may equally well be said to be owners of the property, but owners whose "ownership is qualified by the powers of the Coparceners. There is in fact nothing to be gained by the use of the word " owner " in this connection. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as " joint property " of the undivided family. Judging by that test their Lordships have no doubt that the Supreme Court came to the

right conclusion.

24. Though it may be correct to treat the sole surviving coparcener as the "" owner "", yet it is still correct to treat the property, which he holds as the joint family property. Thus, there is no anomaly in treating this property as the joint family property.

25. There are two classes of cases," -one exemplified by Arunachalam's case [1958] 34 ItR (ED) 42 , Gowli Buddanna Vs. Commissioner of

Income Tax, Mysore, Bangalore, and N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, and another class exemplified by

Kalyanji Vithaldas's case [1937] 5 ITR 90 and Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, . If the true distinction that

exists between these two classes of cases is borne in mind, then it will be clear that there is no conflict at all between Surjit Lal Chhabda Vs. The

Commissioner of Income Tax, Bombay, and N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, . The present case falls

within N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, , where the character of the property as joint family property was in

issue. The property in this case, having been obtained on partition, belongs to"" the HUF of which the assessee was the karta. Though he had

plenary powers of alienation, still what he could alienate was only joint family property. The gift or settlement was, in legal effect, the act of the joint

family of which the assessee was the karta. There was no transfer of any property in favour of a minor child by the joint family as such, as it cannot

have a minor child, though the minor child may form part of it,

26. To a similar effect is the decision of a learned single judge of this court in K. ARUNACHALAM MUDALIAR Vs. COMMISSIONER OF

AGRICULTURAL Income Tax, MADRAS, AND ANOTHER., . In that case, the settlement was in favour of the wife ; but, as the property was

the joint family property, the provisions of Section 9(2)(a) were held to be inapplicable. Section 9(2) would apply only to an individual and not to a

joint Hindu family and it would apply only to a transfer of the individual's own separate property and not to the transfer by him of joint family

property.

27. For these reasons, the provisions of Section 9(2)(a)(iv) cannot be applied and the order of the Board is set aside. The tax cases are allowed

with costs. Counsel's fee, Rs. 250 one set.