

(1970) 10 KL CK 0018
In the High Court Of Kerala
Case No : Income Tax R. No. 28 of 1968

R. Radhakrishna Reddiar

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 27-10-1970

Acts Referred:

Estate Duty Act, 1953 — Section 24, 5
Hindu Succession Act, 1956 — Section 14(1), 14(2)

Citation : AIR 1971 Ker 202 : (1971) 81 ITR 521

Hon'ble Judges : T.C. Raghavan, J; E.K. Moidu, J

Bench : Division Bench

Advocate : K.V.R. Shenoy, P.K. Kurian, V. Desikan and K.A. Nair, for the Appellant; P.K. Krishnankutty Menon, for the Respondent

Judgement

Raghavan, J.—A Mitakshara Hindu by name Rajagopala Reddiar of erstwhile Travancore died on 15th May 1950 leaving his widow Nagammal two sons and two daughters. On 16th December 1953, the properties left by Rajagopala Reddiar were partitioned by the widow and her children into four schedules, the two sons taking absolutely schedules A and B respectively and the widow taking schedule C with the restriction that, on her death, the properties would revert to the sons and the daughters, the sons taking equal shares and the daughters taking shares equal to half that of the sons. The widow was also given a right to reside in one of the houses called Rajagopala Mandiram during her life. And the daughters were given the properties in Schedule Equally and absolutely out of love and affection for them.

2. Nagammal died on 1st May 1959; and the question for us to consider is as to what was the estate left by Nagammal. On this question, the Assistant Controller of Estate Duty held in a Particular manner, the Appellate Controller of Estate Duty varied it and the Income Tax Appellate Tribunal varied it still further. (These variations and decisions are not material for the reference before us.) Subsequently, the Assistant Controller of Estate Duty filed a petition before the

Appellate Tribunal to review its order; and the Appellate Tribunal reviewed the order and held that the estate left by Nagammal was the absolute and whole estate in the properties in schedule C. Thereafter, at the instance of the accountable persons, the following question has been referred to this Court;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the full value of the C schedule properties in the partition deed dated 16-12-1953 could be included in the dutiable estate of the deceased-"

3. If the case arose in British India where the Hindu Women's Rights to Property Act was in force, the widow would have been entitled u/s 3(3) of the Act to claim partition of her husband's share as a male owner in the non-agricultural properties left by him. And the right she would have obtained in the properties so obtained on partition would have been a Hindu Woman's Estate or a Widow's Estate as contemplated by the Hindu Mitakshara law. Then, on the coming into force of the Hindu Succession Act in 1956, u/s 14(1) thereof, the limited Woman's Estate which she would have obtained on partition would have been enlarged into an absolute and full estate. We may also add that, in this respect, there was no substantial difference in principle between a Woman's Estate acquired by inheritance and one acquired by partition (vide *Kamala Devi Vs. Bachu Lal Gupta*, . The question we have to consider in this case is whether the position was the same or different in the erstwhile Travancore State.

4. No decision has been brought to our notice to show that the position of a Mithakshara Hindu widow in Travancore was materially different from the position of a Mithakshara widow in British India. On the other hand, decisions like *Arumugham Shunmughathavi Am-mal v. Sebastian Nadar Devasahayam Nadar*, 1954 Ker LT 448 = AIR 1954 Trav 497, indicate that the rule of Hindu law that prevailed in Travancore was the same as the rule laid down by the Privy Council in *Moniram Kolita v. Kerry Kolutani*. (1880) 7 Ind APP 115, The estate a widow took was not strictly a life estate, she being the absolute and full owner of the estate during her life. She had also rights of alienation in certain cases; and until the widow died, the reversionary was not certain and the reversioner had no title either to the estate. The theory of Mithakshara Hindu law was that, when a woman in possession of a Woman's Estate died, the propositus was supposed to have died a second time and his heirs at that moment were the heirs who succeeded to the estate left by the widow.

5. On the question of the right of the widow to claim partition also, the law in Travancore was not so much different. On this question, the Division Bench ruling of this Court in *Saraswathi Ammal v. Anantha Shenai*. AIR 1966 Ker 66 has been brought to our notice. *Madhavan Nair J.* who wrote the judgment for the Division Bench, has extracted from *Yag-navalkya Smrithi*, *Mithakshara*, etc. and has come to the conclusion that the widow was entitled, at a partition of the joint family estate among the sons, to a share equal to that of a son or a moiety thereof as the case might be. Under the *Sastrie* law the widow had no right to claim partition (to this extent the law might be different from the Hindu Women's

Rights to Property Act); but, in case the sons partitioned, the widow had also the right to claim her share (might be equal to that of a son or a moiety thereof). In the case before the Division Bench, it has also been held that, to such a share taken by the widow on partition. Section 14(1) of the Hindu Succession Act applied and the said provision enlarged her limited estate into a full and absolute estate. This decision, therefore, indicates that a Mithakshara Hindu widow in Travancore had, in the event of a partition of her husband's estate by her sons, the right to claim her share, and on taking her share, the estate she took was a Hindu Woman's Estate or a Widow's Estate as contemplated by the Mithakshara law and such restricted or limited estate, on the coming into force of the Hindu Succession Act, was enlarged into a full and absolute estate.

6. The question for us to consider then is as to the nature of the estate taken by Nagammal in the properties in schedule C allotted to her in the partition of 16th December 1953. The partition deed is annexure A in the case; and there is a crucial and clinching recital in the partition deed, which indicates the nature of the estate that Nagammal took in schedule C. When a person takes properties under a document the initial and the normal presumption is that he takes them under a legal right, unless the recitals in the document or at least the circumstances indicate otherwise--indicate that what is being given to him is a gift or a bequest. Therefore, even if no indication is available in the partition deed, the initial presumption is that Nagammal took schedule C under or as the result of a legal right in her to the properties.

In this case, however, there is a further circumstance too viz., that the recital in the partition deed indicates the nature of the right of Nagammal. The partition deed says that the sons take schedules A and B respectively in absolute right, the widow takes schedule C with the restriction that on her death the properties would revert to the sons and daughters in the proportion therein mentioned, and the daughters take Schedule D equally in absolute right, since the properties were allotted to them out of love and affection for them. The sons took schedules A and B absolutely, because in law they were so entitled; the widow took schedule C with the restriction attached--a limited estate, because she was entitled only to a limited estate, under the Hindu law which applied to her; and the daughters, who had no right under the Mithakshara Hindu law in the estate left by their father in the presence of their brothers, were given their share absolutely out of love and affection for them. This recital, as we have already stated, indicate clearly that the widow took Schedule C in pursuance or by virtue of her pre-existing right to claim a share in the estate left by her husband.

It must then follow that the estate she took was the estate as contemplated by the Mithakshara Hindu law that conferred on her the right to claim her: share--the Hindu Woman's Estate: it must also follow that Section 14(1) of the Hindu Succession Act applied to that estate and enlarged it to an absolute estate when the Act came into force. Since the widow died only after 1956 --after the Hindu Succession Act came into force, the estate left by her was the full estate in

schedule C.

7. The attempt of the counsel of the accountable persons is naturally to contend that the estate left by Nagammal was not the Widow's Estate or the Hindu Woman's Estate as contemplated by the Hindu Women's Rights to Property Act or by the Hindu law but was only a restricted estate limited by reason of her contract with the sons, in which case Section 14(2) of the Hindu Succession Act would alone apply. We do not think there is anything wrong in this proposition, because the scheme of Section 14 -- the intention of the legislature in enacting Section 14 -- is only to enlarge the limited estate (the Hindu Woman's Estate) into an absolute estate and not to do away with the sanctity of contract, which is still recognised by us. See in this connection the latest Division Bench ruling of this Court in *P.S. Krishna Iyer v. P.K. Saraswathi Ammal* (A. S, No, 307 of 1964 (Ker)). But, as already indicated, the recital in the partition deed indicates fairly clearly that the estate Nagammal took was only the limited estate known in Hindu law as the Hindu Woman's Estate or the Hindu Widow's Estate. And naturally Section 14(1) of the Hindu Succession Act applied to the case.

8. The counsel of the accountable persons has also made an attempt to claim that the case came within Section 24 of the Estate Duty Act. Section 24(1) provides that where, by a disposition of any property, an interest is conferred on any person other than the owner for the life of such person or determinable on his death, the remainder being conferred upon the owner absolutely, and such person enters into possession of the interest and henceforward retains possession of it, then, on the death of such person, the property shall not be deemed to pass by reason only of its reverting to the owner in his lifetime. Sub-section (2) of the Section is not relevant for the purpose of this argument: and the portion of the section relevant is the proviso, which provides that Sub-section (1) shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property. The argument of the counsel of the accountable persons is that the proviso does not apply to the present case, because a Hindu widow is not a person who had, prior to the disposition, been herself competent to dispose of the property. And his further argument is that in Section 24(1) the word "disposition" should be given the widest connotation to include a case like the one before us--a case of partition among sons where a share is allotted to the widow too.

9. This argument can hold good only if Section 14(1) of the Hindu Succession Act did not apply. Now that we have held that Section 14(1) applied, this argument cannot hold water. In this connection, the counsel of the accountable persons has drawn our attention to the Division Bench ruling of the Andhra Pradesh High Court in *Kancharla Kesava Rao Vs. Controller of Estate Duty*, . What happened in that case was that a Hindu widow, Kotamma, took in exchange for her share in non-agricultural properties a life estate in 25 acres of agricultural land agreeing that the said 25 acres would revert to the sons on her death. After the death of

Kotamma the Estate Duty authorities claimed that the value of the 25 acres of agricultural land should also be treated as part of the estate left by her on the reasoning that the said 25 acres she took were in exchange for her share in the non-agricultural properties so that the 25 acres also constituted part of her share. It may be remembered that the Hindu Women's Rights to Property Act applied only to non-agricultural properties and not to agricultural land, so that the estate the widow had in the 25 acres of agricultural land could not have been treated as Woman's Estate which was enlarged into full and absolute estate by Section 14(1) of the Hindu Succession Act.

The Andhra Pradesh High Court held In that case that the word "disposition" in Section 24 must be given a wide connotation and the allotment of 25 acres of agricultural land to the widow in exchange for her right in the non-agricultural properties must also be construed as a disposition coming within the mischief of Section 24(1) of the Estate Duty Act. Naturally, since the widow has no right to claim partition of agricultural lands under the Hindu Women's Rights to Property Act, the proviso to Section 24 could not apply. And consequently, the allotment of 25 acres of agricultural land, over which the widow had no right to claim partition, was a disposition, as distinct from the case before us where the widow took her share in schedule C by virtue of her pre-existing right to take a share in partition. Therefore, the decision of the Andhra Pradesh High Court cannot avail to the accountable persons in the case before us.

10. Incidentally, another decision, has also been brought to our notice --the Division Bench ruling of the Madras High Court in Alladi Kuppuswami Vs. Controller of Estate Duty, . The late Alladi Krishnaswami Iyer, before his death, gave a portion of his estate to his wife, Alladi Venkalakshamma. and declared the other portion as joint family estate. The widow died on 5th January 1956; and the Estate Duty authorities included, in the estate left by her her share in the joint family properties which she could have claimed u/s 3 (3) of the Hindu Women's Rights to Property Act. The accountable persons objected and claimed that, since their mother did not, in fact, take a share in the joint family properties, on her death, no estate in her share therein passed to them, so that her share in the joint family estate could not have formed part of the estate left by her.

This contention was accepted by the Madras High Court; and a Division Bench held that, until a share was taken u/s 3(3) of the Hindu Women's Rights to Property Act, the widow had no estate in such share which she could have left on her death. Since the widow in that case did not take her share before she died, the mere right to claim a share given to her under the Hindu Women's Rights to Property Act did not confer any estate on her which she could have left, on her death, for her sons to succeed to. How this decision can help the accountable persons in the present case we are not able to understand-

11. The discussion hereinbefore clearly shows that Nagammal took her share, the properties in schedule C. in accordance with and in pursuance of her right in

Mithakshara Hindu law; and that the estate she took was also (again, in accordance with the Mithakshara law) a limited estate, a Hindu Woman's Estate or a Hindu Widow's Estate. Since the Hindu Succession Act came into force after she took her share and before she died, her limited estate, the Hindu Woman's Estate or Widow's Estate, was enlarged by the said Act into a full and absolute estate, so that, when she died, she left that absolute estate, to be shared by the sons and the daughters in terms of the partition deed. The estate left by her was thus the full and absolute estate in schedule C.

12. Our answer to the question referred is in the affirmative, i.e., the Tribunal was right in including the full value of the properties in schedule C in the dutiable estate of tax deceased (against the accountable persons). In the circumstances, we do not pass any order regarding costs.

13. The answer will be sent to the Tribunal.