
(1974) 11 MAD CK 0003
In the Madras High Court
Case No : Writ Appeal No. 18 of 1972

The Assistant Controller of Estate Duty	APPELLANT
Vs	
R. Sarangapani Chettiar	RESPONDENT

Date of Decision : 02-11-1974

Acts Referred:

Estate Duty Act, 1953 — Section 2(19), 5, 58(4), 6, 7
Hindu Womens Right to Property Act, 1937 — Section 3(2)

Citation : (1975) ILR (Mad) 119

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : V. Balasubrahmaniyan and J. Jayaraman, for the Appellant; S. Rajagopalan, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—This is an appeal against the judgment of one of our learned brothers in Writ Petition No. 516 of 1966. The said

petition was filed by the Respondent herein for the issue of a writ of certiorari to quash the proceedings of the Appellant herein R. No, 143-C, No.

6566, dated 31st December 1965.

The facts leading to the filing of the writ petition were these--One Gopalasami Chettiar died on 19th September, 1908, leaving a Will dated 8th

September 1908. Under the Will, he bequeathed a life estate in favour of his wife Seshammal with reference to his properties. After the death of

Seshammal, Ramathilakam, the daughter of the testator, was to enjoy the properties for her life. The Will proceeded further to state that on the

death of Ramathilakam the estate was to devolve on her putra Pouttrathi Santhathi, and in default of such heirs, to her female descendants, and in

default of such heirs also, to her husband Sethu Chetty and his descendants. Sethu Chetty died on 28th October, 1919 and Seshammal died in the year 1938. The Writ Petitioner, who is the Respondent herein, was adopted by Ramathilakam on 10th October 1953. On the death of Ramathilakam on 4th November 1962, the Respondent as the accountable person filed a return under the Estate Duty Act, 1953, in which he had disclosed that the principal value of the estate of Ramathilakam was Rs. 44,560, but contended that, that was not liable for any estate duty on the ground that on his adoption in September 10th, 1953 the properties had been vested in him and there was no passing of any property consequent upon the death of Ramathilakam. Apart from filing the return and producing the judgment of this Court in Appeal Suit No. 80 of 1960, the Respondent did not appear before the Assistant Collector of Estate Duty in order to substantiate his legal contention. After considering the objections raised by the accountable person, the assessing officer was of the view that the estate duty was leviable u/s 7. He further considered that the principal value given by the accountable person is not correct and, therefore, he completed the assessment u/s 58 (4) of the Estate Duty Act. The Respondent-accountable person filed in appeal to the Appellate Controller of Estate Duty against this order of the Assistant Controller of Estate Duty. Pending this appeal, he also filed a writ petition in this Court seeking to quash the order of assessment itself. The question of maintainability of this writ petition was not raised and the matters dealt with on merits by the learned Judge. The learned Judge held that, on adoption, Ramathilakam the widow of Sethu Chetty was divested of all her interest in the properties including the life estate she had in the same and that, therefore, she was not at the time of her death competent to dispose of the properties within the meaning of Section 6 and there was also no passing or deemed passing within the meaning of Section 5 or Section 7 of the Estate Duty Act.

2. In this appeal, the learned Counsel for the Revenue did not seek to support the assessment on the basis of Section 6 of the Estate Duty Act, but the learned Counsel contended that this is a case which will come under the provisions of Section 5 as settled property passing on death. In any case the deceased had a life estate during her life time and that interest ceased on her death and, therefore, the estate shall be deemed to pass u/s

7, of the Estate Duty Act. In fact this is the basis on which the Assistant Controller of Estate Duty made the assessment order. On the other hand,

the learned Counsel for the Respondent submitted that on adoption of the Respondent by Ramathilakam, whatever interest Ramathilakam had over

the estate was completely divested including her life estate and that no property passed on her death and no interest also ceased on her death.

Before dealing with these rival contentions, it is necessary to set out certain findings given by this Court relating to the validity of the adoption and

the disposition made in the Will,

3. One Appasami Chettiar and another claiming to be the legal heirs of the testator Gopalasami Chettiar, filed Original Suit No. 13 of 1958, in the

Subordinate Court of Kumbakonam, against Ramathilakam and the writ Petitioner herein. The Plaintiffs in that suit not only questioned the validity

of the adoption made by Ramathilakam but also the right of the adopted son to the properties of Gopalasami Chettiar under the provisions of the

Will. In the appeal against the decree in Original Suit No. 13 of 1958, a Division Bench of this Court in Appeal Suit No. 80 of 1960 held that the

adoption was legally and validly made by Ramathilakam. It was argued before the Bench that even if the adoption was valid it should be declared

that the adopted son could not be a legatee under the Will of Gopalasami Chettiar. This Court considered that the adopted son occupied two-fold

position with reference to Gopalasami Chettiar, one as the adopted son of Ramathilakam the daughter of Gopalasami Chettiar and the other as the

adopted son of Sethu Chetty. Under the Will the estate was directed to be taken after the life time of Ramathilakam by the putra pourathi santhathi

and failing that by her female children and failing that also it would go to Sethu Chetty and his descendants. The Division Bench held that this

expression putra pourathi santhathi in the context in which it was used would not include the adopted son and that, therefore as the adopted son of

Ramathilakam he could not take the bequest under the Will. They then went to consider the question as to whether the adopted son would take the

estate under the bequest made in favour of Sethu Chetty and his descendants. It was held since the bequest in favour of Sethu Chetty was a vested

remainder that interest bequeathed to him was heritable and on the death of Ramathilakam therefore, the legacy would devolve on the adopted son

of (1) Sethu Chetty in the result it was held that the adopted son could take the estate of Gopalasami Chettiar under his Will. The resultant position

of these findings may be stated thus.--Under the Will of Gopalasami Chettiar after the death of Seshammal the life estate will be vested in

Ramathilakam and on her death, as a descendant of Sethu Chetty, the property will devolve on the adopted son of Sethu Chetty.

4. u/s 5 of the Estate Duty Act, the estate duty is to be levied and paid upon the principal value of all properties settled or not settled which passes

on the death of a person. Settled property is defined in Section 2 (19) as meaning among others the property which has been limited to any person

by way of succession, whether the settlement took effect before or after the commencement of the Estate Duty Act. The words passing on death is

not defined in the Act. But we find the following useful passage in Green's Death Duties (seventh edition), at page 231:

It was said that the expression "'passing on the death'", which is not further defined, is evidently used to denote some actual change in the title or

possession of the property as a whole which takes place at the death.

In general "'passes"' may be taken as meaning "'change hands"'. To ascertain whether property has passed, a comparison had to be made between

the persons beneficially interested the moment before the death and the persons as interested the moment after the death. If, after such a

comparison, it appeared that the beneficial enjoyment of the property or a definite part thereof was, in substance and in events, unaffected by the

death, the property or that part thereof did not pass on the death merely because, as a matter of terminology, one set of limitations then ceased to

have effect and another became operative.

5. During the life-time of Ramathilakam she was entitled to be in possession of the property and enjoy the whole of the income as life estate holder,

though the title to the property had not been vested in her absolutely. On her death, Sethu Chetty, if he had been alive would have been entitled to

take possession of the estate and enjoy the income therefrom. Though Sethu Chetty died during the life time of Ramathilakam by reason of the

adoption and the adoption taking effect under the Hindu Law from the date of death of Sethu Chetty, the adopted son, becomes entitled to take

possession of the estate on the death of Ramathilakam. There was therefore,

clearly a passing of the property, on death of Ramathilakam which would attract the provisions of Section 5 of the Estate Duty Act. A similar view was taken in Baidyanath Banerjee v. Assistant Controller of Estate Duty. 55 ITR 31.(E.D.) The facts of that case as summarised in the head-note are as follows--One Narendra Nath Banerjee died in 1930, leaving a Will by which he bequeathed a life estate in respect of certain items of property to his wife Sudhir Bala, and an absolute estate in such property on the death to the accountable person and his brothers. Sudhir Bala died in 1960 and, in proceedings for the recovery of estate duty on her death the accountable person contended that there was only a change of possession and no passing of property on the death of Sudhir Bala and no estate duty was payable. It was held that the property passes within the meaning of Section 5 of the Estate Duty Act, 1953, when property changes hands. It is not necessary that there should be passing of title in such property, and estate duty was properly leviable on the death of Sudhir Bala. The facts in our case are almost identical and the ratio of the decision in Baidyanath Banerjee v. Assistant Controller of Estate Duty 55 ITR 31 (E.D.) would apply. The estate would be liable to duty u/s 5 of the Estate Duty Act.

6. We are of opinion that the instant case will also fall u/s 7 of the Estate Duty Act. As already stated after conferring the life estate on Ramathilakam the testator bequeathed the vested remainder on Sethu Chetty and his descendants. The life interest created in favour of Ramathilakam is a right to possession of the estate and enjoy the entire income arising therefrom. This life interest created in favour of the deceased . Ramathilakam ceased on her death and Sethu Chetty and his descendants became entitled to the possession of the estate and enjoyment of the income. Thus what was merely the vested remainder enlarged into an absolute estate and that can be only by the life interest created in favour of the deceased ceasing and the corresponding benefit accruing to the remainderman. In other words the right to the entire income on the property which was enjoyed by the deceased had ceased and that right to derive that income and enjoy the same had accrued to the adopted son. This would clearly attract the provisions of Section 7 of the Estate Duty Act. Thus both u/s 5 and Section 7 of the Estate Duty Act, the estate duty was

leviable.

7. The entire argument of the learned Counsel for the Respondent proceeded on a wrong assumption that the property belonged to Sethu Chetty

and he died possessed of the entirety of the interest. As already stated, the property originally belonged to Gopalasami Chettiar and his

testamentary capacity is not in dispute. Sethu Chetty was only a legatee under the Will and his interest could be ascertained and determined only as

per the terms of the Will. Whatever interest Sethu Chetty died possessed of was inherited by the adopted son and this inheritance dates back to

the date on which Sethu Chetty died. The fact of giving such a retrospective succession to Sethu Chetty is only to deface whatever that happened

to his estate in between the date of death of Sethu Chetty and the adoption ; but it will have no effect on any interest which was not Vested in

Sethu Chetty or that had to devolve subsequent to his death. Seering these principles in mind, let us consider the decisions cited by the learned

Counsel for the Respondent.

8. Erram Reddy Ckenchu Krishnamma v. Naram Reddy Lakshminarayana 1927 M.W.N. 625 was a case where a Hindu by his Will left his

properties to his widow absolutely and also gave her authority to adopt and the widow in pursuance of such authority made an adoption (sic) to

the death of the Hindu. It was held that since the adoption dates back to the date of the death of the Hindu widow could not have derived any

interest in the properties under the Will. This was for the reason that an adopted son becomes a coparcener with the deceased and since the

adoption dates back to the date of death, the deceased becomes incompetent to dispose of the property by Will. It may be seen from this case

that the decision related to the property of the deceased who is an adoptive father and not any property which belonged to a third party. In

Sukadevdoss Ramprasad v. Musamat Choti Rai (1928) M.W.N. 32 it was held that the adoption would have the effect of vesting the estate in the

adopted son even though the widow was holding the property of her husband subsequent to his death as an absolute owner as the effect of

adoption would divest her of any estate held by her. Seeni Chettiar v. Muthia Chettiar ILR (1945) Mad 638 relating to the fact of adoption by the

husband after the death of the wife with reference to her Sridhanam property. It

was held that by adoption he becomes not only the son of the adoptive father but also that of the adoptive father's deceased wife and that in this respect there was no distinction between adoption by a widow and adoption by a widower. The doctrine of relation back will have an effect of disentitling the heirs of his mother in preference to the adopted son.

These decisions in no way support the proposition of the learned Counsel for the Respondent that the adoption completely divested the life interest of Ramathilakam which she got under the Will of her father Gopalasami Chettiar. As regards cesser of interest and the applicability of Section 7, the learned Counsel for the Respondent relied on a case in *Kuppuswamy v. Controller, Estate Duty* AIR (1970) Mad 365 In that case the deceased was entitled to a 1/4th share in the properties of a joint Hindu family consisting of herself and her three sons by virtue of the provisions of Section 3 (2) of the Hindu Women's Rights to Property Act, 1937. It was contended on behalf of the Revenue that her interest in the joint family property was in the nature of coparcenary interest in the same and as such the provisions of Section 7 would be applicable. A full Bench of this Court, after a review of the earlier decisions, held that the interest of the deceased, derived by her by virtue of Section 3 (2) of the Hindu Women's Rights to Property Act 1937, was not a coparcenary interest but it was a statutory interest of an undefined character. So long as she had not asked for a partition and secured separate possession, her right in the joint family property on her death would lapse resulting in no change in the coparcenary property. The statutory interest was also not an interest in property within the meaning of Section 7 (1). In that view the learned Judges have held that Section 7 (1) was not applicable. The Revenue in this case did not rely on Section 7 (1) on any basis that the interest of Ramathilakam was an interest in any joint family property of which the adopted son was a coparcener. We do not find, therefore, any relevancy of this decision on the facts of this case. The decision in *Yelukuru Satyanarayana Vs. Assistant Controller of Estate Duty, Kurnool*, also related to a case where the estate was that of the adoptive father and the question for consideration was the applicability of Section 6 which related to the competence of the deceased to dispose of the property. That question does not arise for consideration here as the Revenue did not rely on Section

6. DWARAKA PRASAD Vs. CONTROLLER OF ESTATE DUTY, ANDHRA PRADESH., was a case similar to Yelukuru Satyanarayana

Vs. Assistant Controller of Estate Duty, Kurnool, and has no application to the present case.

9. We must observe that the decision of the learned Judge under appeal proceeded on the assumption that the adopted son was not a legatee

under the Will and that Sethu Chetty the adoptive father had already inherited the entire estate of Gopalasami Chettiar even before the death of

Ramathilakam. But we have already pointed out, the Division Bench of this Court held in Appeal Suit No. 80 of 1960 that the adopted son could

inherit the estate of Gopalasami Chettiar under his Will though he might not have come under the expression putra poutrathi santhathi of

Ramathilakam. In the circumstances, therefore, with great respect to the learned Judge we are unable to agree with his conclusions.

10. In the result, the writ appeal is allowed and the assessment order of the Assistant Controller of Estate Duty is restored. The Appellant will be

entitled to his costs.