(1971) 01 MAD CK 0017

In the Madras High Court

The Radhaswami Charitable Society and Another — APPELLANT

Vs

The Authorised Officer Land Reforms — RESPONDENT

Date of Decision : 06-01-1971

Acts Referred:

Income Tax Act, 1922 — Section 4(3)
Transfer of Property Act, 1882 — Section 6(4)

Citation : (1971) 84 LW 379 : (1971) 2 MLJ 35

Judgement

1. Both the above revisions are inter-linked and as such they are dealt with together.

2. One Venugopal Naidu executed a will dated 5th February, 1943 whereby all his lands were to be enjoyed by his wife, Aparanji Ammal for her lifetime, and after her death one Radhaswami Charitable Society, Dayalbagh, Agra is to enjoy the same with absolute rights. The will had been duly registered. Venugopal Naidu died on 2nd April, 1945. His wife, Aparanji Ammal was in possession and enjoyment of the properties as per the terms of the said will on 6th April, 1960. The Authorised Officer calculated the total extent of the lands in the hands of Aparanji Ammal as 44. 30 standard acres. Though the said Aparanji Ammal filed a return on 5th June, 1963 u/s 8 (1) of the Madras Act LVIII of 1961 furnishing a list of surplus lands, she at a later stage while preferring objections u/s 10 (5) of the Act, put forward a contention that the entire lands possessed by her under the terms of the will would not come under the provisions of the Act as the absolute title in the same had vested with the said Radhaswami Charitable Society, a public religious trust. The Society to whom the properties have been given under the will after the lifetime of Aparanji Ammal also filed objections claiming that the properties will not come within the purview of the Act as they have been dedicated to a religious trust.

3. The Authorised Officer considered the objections filed by Aparanji Ammal and the Society in proceedings u/s 10 (5) and held that the properties are (not) exempt from the provisions of the Act, that Aparanji Ammal being entitled to a life estate over the entire property as per the will, she will, come within the

definition of "limited owner" an defined in Section 3 (28) of the Act, and that as such the lands in question which are possessed by her as such "limited owner" will be governed by the provisions of the Act. This view of the Authorised Officer was also accepted by the Tribunal. The authorities below have taken the view that the definition of "limited owner" in Section 3 (28) cannot be restricted to a person having a ''widow''s estate'' alone as contemplated under the Hindu Law, that once Aparanji Ammal comes under the definition of "limited owner", her holding will be governed by the Act, and that the excess lands in her possession have to be dealt with under the provisions of the Act. Aggrieved against the decision of the authorities below. Aparanji Ammal has filed C.R.P. No. 2328 of 1966 and the Society has filed C.R.P. No. 2286 of 1966. Subsequent to the filing of these revisions it seems that Aparanji Ammal had surrendered her life interest in favour of the society, and that all the lands covered by the will had been physically handed over to the society on the date of the said surrender. In these circumstances, the question is whether the properties possessed by Aparanji Ammal as on 6th April, 1960 are exempted from the provisions of the Act as contended for by the petitioners.

4. It is contended on behalf of the petitioners that the definition of" limited owner" u/s 3 (28) will take in only persons who have a life estate analogous to women''s estate known to Hindu Law, and not every person who has a limited or a life interest, that except in a case of Women''s estate the other limited or life estate holders cannot part with the property by alienation or otherwise, nor have they any alienable interest in the estate, as there is a vested interest created in favour of the remainderman, and that in such cases the limited or life estate holder cannot be asked to surrender the excess lands to the prejudice of the remainderman. It is also pointed out that the definition of "limited owner" in Section 3 (28) itself suggests that the life estate holder should have an alienable interest, and reliance is placed on the words "includes persons deriving rights through him" occurring in the latter part of the definition, as indicating that the person contemplated under the definition is one who can pass title to others and not one who has no power of disposal over the properties.

5. The learned Government Pleader, on the other hand, contends that a conjoint reading of the definition "to hold land" in Section 3 (19) the definition of owner'' in Section 3 (33), the definition of "full owner" in Section 3 (16) and the definition of "limited owner" in Section 3 (28) suggests that "limited owner" will cover not only persons having a woman''s estate as understood under the Hindu law, but all life estate holders including persons whose enjoyment of the properties is restricted personally to their lives, and that the word "limited owner" has not been used in a narrow sense so as to attract only such estates as are known as ''women''s estate'' under the Hindu law.

6. From the facts set out above it is seen that the properties in question have to be enjoyed by the wife of the testator during her lifetime without any power of alienation except to the limited extent of discharging a particular debt mentioned

under the will, that all the properties covered by the will except the properties sold by the testator''s wife for discharging the debt as directed should vest in and belong to Radhaswami Charitable Society absolutely to be utilised for any of its charitable purposes, and that the Society should become absolute owner of the properties after the death of the testator''s wife. The testator had specifically created a life estate in favour of his wife and an absolute estate in favour of the Society after the termination of that life estate. The question is whether the ceiling can be fixed in respect of the property covered by the will on the basis that the property is the holding of the testator''s widow.

7. The definition of the words "to hold land" u/s 3 (19) indicates that a person must own land as owner or possess or enjoy lard as possessory mortgagee or as tenant or as intermediary or in any one or more of those capacities. "Owner" has been defined in Section 3 (33) to include a full owner or a limited owner. "Full owner" has been defined u/s 3 (16) as a person entitled to the absolute proprietorship of land, and a limited owner has been defined u/s 3 (28) to mean any person entitled to a life estate including persons deriving rights through him. The definitions of '' full owner" and "limited owner" throw some light as to what is contemplated by the definition of '' limited owner'' in the Act. While by the definition of "full owner" the Act contemplates a person with absolute and proprietory rights in the land, the definition of "limited owner" appears to contemplate a person with alienable rights in the land, though on a plain and literal reading of the definition of ''limited owner'', even persons having right of enjoyment during their life in the lands will come under the definition. It is well established that the real intent of the statute must be gathered from the words in the statute itself and that if the expression used in the statute read in the context of the entire enactment is capable of two constructions the construction which is in consonance with the aim and object of the Act should be adopted. Here having regard to the provisions for notice, etc., at the time of the enquiry Under Sections 10, 12 and 18 and the provisions for claims to the compensation, it appears to be clear that the rights of the holders of vested interests in the lands generally do not seem to have been affected by the definition. Having regard to the scheme of the Act, it appears to me that the words ''limited owner'' have been used in a restricted sense so as to refer to a person who has got alienable rights over the lands and whose rights are not restricted to enjoyment alone. When a property has been given to a person to be enjoyed for life without any power of alienation, leaving the remaindermen to take over the property absolutely after the intermittent life interest, can it be said that the life interest holder becomes the owner during his lifetime? In such case the property vests in the ultimate donee to whom the absolute estate has been given after the life interest and he has a present right of future enjoyment. If the interest given is in the nature of women''s estate as understood in Hindu Law, then the remainderman takes only a contingent interest. Section 119 of the Indian Succession Act, 1925, says that where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive

it at the proper time shall normally become vested in the legatee on the testator''s death and such interest is made heritable. Section 19 of the Transfer of Property Act also lays down that where, On a transfer of property, an interest therein is created in favour of a person specifying that it is to take after the termination of a prior interest in the same property given to some other person, such interest vests on the date of the transfer and such vested interest is made heritable. In cases of vested interests, the gift is complete and immediate but only the enjoyment is postponed. It is well known that a vested interest is both transferable and heritable. Estates may either vest in possession as where there is a present right to the immediate possession and enjoyment, or vest in interest as where there is a present indefeasible right to the future possession and enjoyment. When a property is given to A for enjoyment for life without a power of alienation and then to B absolutely, then the property is said to vest in possession in A and vest in interest in B on the date of the gift itself. While A has no power to alienate the property B can deal with it by sale or otherwise subject to A''s right of enjoyment for life. From the moment the property vests the legatee or the donee can deal with it by sale, gift or will as he pleases irrespective of the question whether or not he had received the same. (Vide Bhagavati Bramanya v. Kalicharan Singh 38 Cal. 468, and Ramanuja Ammal v. Sami Pillai 31 M.L.J. 228.)

8. Section 6 (4) of the Transfer of Property Act, provides that where a person''s interest is restricted to his personal enjoyment such an interest cannot be transferred. An interest restricted to personal enjoyment for life without any power of alienation cannot naturally be transferred inasmuch as if such transfer were to be allowed, it might defeat the object underlying the grant of such an interest and will be quite inconsistent with the intention of the testator. Having regard to the definition of ''to hold land'' the right of ownership for the duration of one''s life seems to have been contemplated by the definition of ''limited owner'' as a person entitled to a life estate. The word ''estate'' seems to imply full estate and partial interest therein. It is difficult, therefore, to comprehend that the definition of "limited owner" is intended to attract all persons to whom a right to enjoy the income of the properties without any power of alienation has been given.

9. Mr. Vedanthachari, learned Counsel for the petitioner in one of the revisions, contends that ''owner'' normally means a person having a vested interest and not a person who is entitled to some enjoyment for a period limited to the duration of his life, that mere possession or enjoyment without title cannot amount "to hold" under the definition that property never vests in a holder for life without any power of alienation and that in such cases the life interest is restricted to personal enjoyment only. The learned Counsel refers to Talla Pragada Subba Rao v. Gopisetti Narayanaswami Naidu Garu 31 M.L.J. 339, where while deciding the question whether a lessee from a landholder who is not himself cultivating the land comes within the definition of a ''ryot'' in Section 3 (15) of Madras Act I of 1908, the Court held that if the lessee has taken from the lands themselves

kudiwaram interest and paying the melwaram to the landlord, then whether he cultivates the lands himself or he is compelled by circumstances to have it cultivated for him, he will be a ryot under the definition. Section 3(15) defines "ryot" as a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landlord the rent which is legally due upon it. It is pointed out by the learned Counsel that the word ''holds'' in the definition has been understood by the Court in that case to mean not the person in actual cultivation but the person who is entitled to the kudiwaram interest of the land and that this decision supported his plea that "holding" does not merely mean possession without any right of ownership or proprietorship. The above decision in a way supports the contention of the learned Counsel. Rajendra Narain Singh v. Sunder Bibi 49 M.L.J. 244, has also been relied on. In that case in a compromise decree certain villages were granted to a person without power of transfer during his lifetime, in order that he should possess and enjoy the income thereof in lieu of his maintenance. When the decree-holder who obtained a decree against that grantee proceeded against his interest in the village, it was held by the Judicial Committee that the interest conveyed in favour of the grantee in the villages in question was, u/s 60 (n) Civil Procedure Code, neither attachable nor saleable and that even though the villages had been given for enjoyment, he had no saleable or transferable interest. In Beni Madho v. Bagwan Prasad 33 All. 556, one S, executed a will whereby he gave all his property after the death of himself and his wife M to his daughter B and his nephew D. D., survived the testator but predeceased M. In those facts the Court held that there was a vested and transmissible interest given to D on the death of the testator though his possession and enjoyment was postponed till the lifetime of the widow, M. In Basantha Coomer Goswami v. Kumudini Dassee 38 Cal. 408, the Judicial Committee construed a will which provided that the testator''s mother and wife were to succeed to his property for life and on their death the sons of his sisters who were then in existence as also those who may be born thereafter shall take in equal shares absolutely with rights of inheritance, and held that the nephews took a vested interest on the death of the testator and the vesting is not postponed until after the lifetime of the mother and wife of the testator.

10. Lakshmana v. Ramier AIR 1953 S C. 1304, was a case where a testator died leaving him surviving a widow and a married daughter having a number of children. By this will the testator directed that after his lifetime his wife shall enjoy his entire properties till her lifetime, that after her lifetime his daughter and her heirs shall enjoy them with absolute rights and powers of alienation. While construing the effect of the said directions by the testator in that case, their Lordships of the Supreme Court expressed that the widow took a limited estate in the English sense of the term than like a full Hindu widow''s estate, that the limited powers of alienation given to her fell short of a widow''s estate, that she had complete control over the income of the property during her lifetime but she had no power to deal with the corpus of the estate, that though the daughter was not entitled to immediate possession of the property, she got a vested

interest in it on the testator''s death and that the daughter had a present right of future enjoyment in the property. It is material, according to their Lordships, to find out whether the life estate holder had an alienable interest or not, and if he has no such alienable interest, his interest is only a limited interest and not an estate as contemplated in a woman''s estate. The definition of ''limited owner'' uses the word life estate and life estate is normally used to mean a freehold interest in lands the duration of which is confined to one''s life.

11. "Life estate" has been explained by Ramanatha Iyer in his Law Lexicon as "freehold interest in lands, the duration of which is confined to the life, or lives of some particular person or persons, or to the happening or not happening of some uncertain event" and "estates for life" has been explained as an estate capable of subsistence for the term of a life and they are said to arise by act of parties or by operation of law. ''Limited interest'' has been defined as a duration or extent of the property less than that of the absolute property. In Rangammal Vs. Marudamuthu Muthuraja, , this Court, while construing the scope of Section 14 (1) of the Hindu Succession Act had expressed the view that "the words ''possessed by'' in that section are not intended to apply to a case of mere possession without title." The Supreme Court also had expressed the view in Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others, , that "possession in Section 14 is used in a broad sense and in the context means the state of owning or having in one''s hand or power." In the case in Rangammal Vs. Marudamuthu Muthuraja, , a Hindu widow who inherited the property from her husband executed a settlement deed under which she merely retained a right to enjoy the income till her lifetime jointly with the settlee without any power of alienation but granted an absolute interest in the properties to the settlee after her lifetime and it was held that the possession of the properties by the widow during her lifetime will not attract the provisions of Section 14 (1) on the ground that mere possession after parting with title will not attract that section. The learned Counsel for the petitioner also submits that though the words "limited owner" are wide enough to cover all life estate holders, it should be interpreted in the light of the other provisions of the Act and if so done, it will only refer to such life estate holders who are capable of, or empowered to dispose of the property, and that the latter portion of the definition clearly brings out that intention. The words ''life estate'' in Section 3 (28) has to be interpreted to refer to ''full estate for life'' and not ''a limited estate for life.''

12. My attention also is invited to Section 50 which provides for the determination of compensation for lands acquired by the Government u/s 18, and Section 52 providing for the disposal of the claims of limited owner in respect of surplus land. Section 50 provides for payment of compensation for the surplus land, and Section 52 provides for the method of determination of compensation for the surplus land acquired by the Government. Section 52 states that where any surplus land is acquired from a limited owner, the amount of compensation payable in respect of such surplus land u/s 50 shall be kept in deposit with the prescribed authority, and that the limited owner is entitled only

to the payment of interest therefrom, and that the amount of compensation has to be ultimately paid out to the person becoming absolutely entitled to the lands. Section 52 (2) uses the words "person or persons becoming absolutely entitled thereto" and this contemplates devolution of interest after the death of the limited owner and does not seem to provide for cases where the property had vested on the death of the testator or the date of the gift the property on persons who had become absolutely entitled to even on the death of the testator or on the date of gift, but whose possession and enjoyment also being postponed till the lifetime of the life interest holder. Further, Section 51 which provides for disposal of claims of usufructuary mortgagee in respect of lands declared surplus and acquired u/s 18 provides for the excess lands reverting to the mortgagor if he has got lands less than the ceiling limit. Similarly in case of leases also the excess lands from the lessees'' holding is made to revert to the lessor if he held land less than the ceiling limit, u/s 17 of the Act. But no such provision is made in case of persons in whom a property is vested on the death of the testator and whose right of enjoyment is only postponed till the lifetime of the limited owner, if he holds less than the ceiling limit. All these point out that the intention of the Legislature in defining "limited owner" is to take in only such persons who held lands with powers of alienation etc., for a duration of their life and not any life interest whatever be its character. In this view it has to be seen whether the interest acquired by the petition in G.R.P. No. 2328 of 1966 is sufficient to attract the definition of "limited owner" u/s 3 (28) : It is true, the will gives a right of alienation but such rights of alienation is only limited to the disposal of the property for discharging the debt referred to in the will. Such a limited power of alienation falls short of a full estate, and she had no power to deal with the corpus of the estate except to the limited extent indicated above. Subject to the right of the testator''s widow to enjoy the property during her lifetime, the property has vested in favour of the society even on the death of the testator and it has become the owner of the property, subject to the rights of enjoyment etc., granted in favour of the testator''s widow. The directions given by the testator under the will in this case attract the principle of the decision in Lakshmana v. Rama Iyer AIR 1953 S.C. 1304, and therefore, it has to be held that the interest conferred on Aparanji Ammal, the testator''s widow is more like a limited estate known to English law then like a widow''s estate, known to Hindu law. It has, therefore, to be held in this case that Aparanji Ammal, who is entitled only to a right of enjoyment over the income of the properties and not entitled to any portion of the corpus, which stands vested with the society as on the date of death of the testator, is not a limited owner as defined in the Act and as such she cannot be held to be a person "holding" the lands in question as contemplated in the definition to "hold".

13. The learned Government Pleader would further contend that, though the wife of the testator is not entitled to full interest in the property but only a life interest as understood in the English sense, still her limited interest in the surplus lands can be acquired by the Government u/s 18 without prejudice to the

right of the person in whom the property has vested, and that it has been made clear u/s 5 (6) that in calculating the extent of land held or deemed to be held by any person, the extent of land which may revert to such person immediately, after the death of any limited owner shall during the lifetime of the limited owner, be excluded. The contention is that so long as the limited owner is alive the property cannot be taken to be the holding of the person in whom the property has vested but that it should be treated as being included in the holding of the limited owner. It is not possible to accept this contention for Section 18 does not contemplate acquisition only of a partial interest in property. Section 18 (3) states that on the publication of the notification under Sub-section (1), the lands notified shall vest in the Government free from all encumbrances with effect from the date of such publication and all right, title and interest of all persons in such lands shall be deemed to have been extinguished from the said date. This provision cannot comprehend an acquisition of a partial interest in the property as contended for on behalf of the State.

14. Besides, it has been held in Commr. of Income Tax, U.P., Lucknow Vs. Radhaswami Satsang Sabha, , that the Radhaswami Charitable Society to whom ultimately the property has been given absolutely is a religious and charitable trust entitled to get exemption u/s 4 (3) of the Indian Income Tax Act of 1922. In view of the said decision it was not disputed on behalf of the State that the Radhaswami Charitable Society is a religious Trust. u/s 2, the provisions of the Act will not apply to the lands held by such a religious trust. Even if the said society is not treated as a religious trust as coming u/s 2, it can be treated as a charitable trust entitled to be exempted u/s 73 (ii) (a). As there has been a vesting of the properties in the Society on the testator''s death as per the terms of the will it can be said that the lands have to be treated as the lands of the society and if so treated, they will stand exempted from the provisions of the Act.

15. In the result, both the civil revision petitions are allowed and the orders of the authorities below are set aside. There will be no order as to costs.