

(1989) 01 MAD CK 0045
In the Madras High Court
Case No : Tax Case No. 1001 of 1979

V.R. Rajendran

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 20-01-1989

Acts Referred:

Estate Duty Act, 1953 — Section 21

Citation : (1989) 177 ITR 61

Hon'ble Judges : V. Ratnam, J; Bhakthavatsalam, J

Bench : Division Bench

Advocate : Janarthana Raja, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

Ratnam, J.—At the instance of the accountable person, the following questions of law have been referred for the opinion of this court u/s

64(2) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act")

1. Whether, on the facts and in circumstances of the case, the Tribunal had valid and justifiable materials to hold that the deceased was a domicile

of India at the time of his death ?

2. whether, on the facts and in the circumstances of the case, the exemption u/s 21 of the Estate Duty Act was not available to the deceased in

respect of his movable properties in Ceylon ?

2. M. T. Veerappq Pillai, with whose estate we are concerned in this reference, was born in 1895 in Omandur Village, Lalgudi taluka, Truchy

District, in India. He married Akilandathammal in India. In 1939, he left India for Galaha in Ceylon. In Ceylon he acquired certain properties and

also married one Aravammal, a resident of Ceylon, on September 17, 1940, and through her, he had a daughter, Vijayalakshmi, and two sons,

Viswanathan and Rajendran. He was earning some income from some estates in Ceylon. The income earned by him from the assets in India were assessed in his hands as a non resident. On July 23, 1951, he filed an application under the Indian and Pakistani Residents Citizenship Act, 1949, for registration as a citizen of Ceylon. But, this application was not granted till he died on March 7, 1965. However, his Ceylonese wife and children were later granted citizenship on the basis of the application filed by the deceased, M T Veerappa Pillai. He also left a will dated February 18, 1959 under which he bequeathed lifetime annuities of Rs. 1,000 each for both his wives, Akilandathammal and Aravammal, and the other properties in favour of his children. On his death, Akilandathammal filed an account of the estate of the deceased, M. T. Veerappa Pillai, and, in that, she claimed that the value of the movable properties in Ceylon could not be included as properties passing on his death on the ground that the deceased, M. T. Verrappa Pillai, was domiciled in Ceylon and in terms of section 21(1)(b)(i) of the Act, the movable properties situate outside India were exempt from estate duty. Before the assessment could be completed, Akilandathammal died and Rajendran son of the deceased, M. T. Veerappa Pillai adopted the return filed by Akilandathammal and reiterated the claim for exemption as the accountable person. The Assistant Controller of Estate duty, Thanjavur, found that the deceased, M. T. Veerappa Pillai, had a wife and also owned properties in India and had been visiting India from Ceylon frequently and that he had also remitted cash to India and merely on the basis of the application for securing citizenship, it cannot be taken that he had abandoned the domicile of origin and acquired a domicile of choice. In that view, the value of the movables in Ceylon was included in the principal value of the estate and the duty payable was determined on that footing. On appeal by the accountable persons to the Appellate Controller of Estate Duty, he took the view that, all material times, the deceased, M. T. Veerappa Pillai, thought himself to be a citizen of Ceylon and this was also clearly manifested by the application made by him on July 23, 1951, and that the circumstances that he had a wife and other properties in India and had also been visiting India frequently would not establish that the deceased had not forsaken his domicile of origin. Finally, he concluded that the deceased, M. T. Veerappa Pillai, had abandoned his domicile of origin and had acquired a domicile of choice in

Ceylon and, therefore, the value of the movable assets in Ceylon cannot be included in the computation of the principal value of the estate of the deceased and directed the deletion of the value of the movable s in Ceylon. Aggrieved by this, the Revenue preferred an appeal before the Tribunal and the Tribunal took the view that abandonment of domicile of origin cannot be a matter of assumption and that the circumstance that the deceased, M. T. Veerappa Pillai, had applied for acquiring citizenship, which, however, was not granted when he was alive, would not establish abandonment of connections with India by the deceases, M. T. Veerappa Pillai, and there was also no intention made out to abandon the domicile of origin. In that view, the Tribunal concluded that the deceased M T Verrappa Pillai, continued to be domiciled in India and the movable properties belonging to him situate in Ceylon were properly included in the principal value of he estate for the purpose of levy of estate duty. On the view so taken by the Tribunal, the two questions of law set out earlier have been referred to this court.

3. Learned counsel for the accountable person, inviting attention to sections 3(1) (d) and 21(1)(b)(i) of the Act and strongly relying upon the circumstances that the deceased, M. T. Veerappa Pillai, had lived in Ceylon for nearly a period of 25 years and had also made an application for acquiring citizenship, contended that there was a clear manifestation of an intention on the part of the deceased, M. T. Verrappa Pillai, to abandon his domicile of origin and to acquire a domicile if choice in Ceylon and, therefore, the value of the estate. Our attention was also drawn in this connection to the decision reported in CED v. Dr. Ida Bella Scudder [1981] 123 ITR 104 . Per contra, learned counsel appearing for the Revenue contended that the domicile of origin continued and that the onus of proving that a domicile has been chosen in substitution of the domicile of origin is upon the person who asserts that the domicile of origin had been lost and that, in this case, the loss of domicile of origin and the acquisition of domicile of choice has not been clearly made out. Learned counsel further submitted that mere length of residence without any evidence of an intention to abandon the domicile of origin would not be of any significance and that the circumstance that the deceased made an application for acquiring citizenship in Ceylon, which

however, was not granted would not also avail the accountable person to claim that the domicile of origin has been lost and a domicile of choice in

Ceylon had been acquired. The decisions reported in *Kedar Pandey v. Narain Bikram Sah*, AIR 1965 SC 160 and *Controller of Estate Duty Vs.*

V. Melnikoff, (Bom were also relied on in support of the submissions.

4. Before going into the rival contentions thus advanced, it will be necessary to briefly refer to the relevant provisions of law. Part III of the Act

deals with exemptions from the charge of estate duty and sub section (1) of section 21 of the Act runs as follows:

(1) There shall not be included in the property passing on the death of the deceased -

(a) immovable property situated outside India.

(b) movable property situated outside India at the time of the death, unless -

(i) in the case of any property, whether settled or not, the deceased was domiciled in India at the time of his death; or

(ii) in the case of settle property of which the deceased was a life tenant, the settler was domiciled in India at the date the settlement to effect.

Section 3(1)(d) of the Act provides as follows:

(d) the domicile of a person shall be determined as if the provisions of the Indian Succession Act, 1925 (39 of 1925), on the subject applied to

him and as if the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry had always been part of India.

5. Section 6 of the India Succession Act, 1925, provides that a person can have only one domicile for the purpose of the Succession of his

movable property. Section 7 runs as follows:

The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciles; or, if he is a

posthumous child, in the country in which his father was domiciled at the time of the father's death.

6. Section 9 provides that the domicile of origin prevails until a new domicile has been acquired. Section 10 states that a man acquires a new

domicile by taking up his fixed habitation in a country which is not that of his domicile or origin and the Explanation to section 10 states that a man

is not be deemed to have taken up his fixed habitation in India merely by reason of his residing there in the civil, military, naval or air force service

of Government, or in the exercise of any profession or calling. Section 13 provides that a new domicile counties until the former domicile has been resumed or another has been acquired.

7. We may observe that there is no dispute that the father of the deceased, M. T. Veerappa Pillai, when he was born, was domiciled in India and,

therefore, the domicile of origin of the deceased, M. T. Veerappa Pillai, was in India. The question is, whether the deceased, M. T. Veerappa

Pillai, abandoned the domicile of his origin in India and secured the domicile of choice in Ceylon. That would depend upon the state of mind or

animus minuend of the deceased, M. T. Verrappa Pillai, apart from his mere personal appearance in locality in Ceylon. We may usefully refer in

this connection to the decision of the Supreme Court in Kedar Pandey Vs. Narain Bikram Sah, . Though the question that arose for decision

before the Supreme Court was whether the respondent before it was a citizen of India regarding his qualification under article 173 of the

Constitution of India to contest the Legislative Assembly elections in Bihar. The deciding that question, the Supremn Court had to consider the

principles governing the change of domicile. The following observations at pages 163, 164 would be relevant:

The law attributes to every person at birth a domicile which is called a domicile of origin. This domicile may be changed, and a new domicile,

which is called a domicile of choice, acquired; but the two kinds of domicile differ in one respect. The domicile of origin is received by operations

of law as birth; the domicile of choice is acquired later by the actual removal of an individual to another country accompanied by his animus

manendi. The domicile of origin is determined by the domicile, at the time of the child's birth, of that person upon whom he is legally dependent, a

legitimate child born in wedlock to a living father receives the domicile of the father at the time of the birth; a posthumous legitimate child receives

that of the mother at that time. As regards change of domicile, any person under disability may at any time change his existing domicile and acquire

for him-self a domicile of choice by the fact of residing in a curtly other than that of his domicile of original with the intention of continuing to reside

there indefinitely. For this purpose residence is a mere physical fact, and means no more than personal presence in a locality, regarded apart from

any of the circumstances attending it. If this physical fact is accompanied by the required state of mind, neither its character nor its duration is in required demands that the person whose domicile is the object of the inquiry should have formed a fixed and settled purpose of making his principal residence permanent home in the country of residence, or, in effect, he should have formed a deliberate intention to settle there. It is also well established that the onus of proving the domicile has been chosen in substitution for the domicile of origin lies upon those who assert that the domicile of origin has been lost. The domicile of origin continues unless a fixed and settled intention of abandoning the first domicile and acquiring another as the sole domicile is clearly shown..... We are of the view that the only intention required for a proof of a change of domicile is an intention of permanent residence. In other words, what is required to be established is that the person who is alleged to have changed his domicile of origin has voluntarily fixed the habitation of himself and his family, in the new country not for a mere special or temporary purpose, but with a present intention making it his permanent home.

8. Against the background of the aforesaid observations of the Supreme Court, we have to consider the facts in the present case for deciding whether the deceased, M. T. Veerappa Pillai, had adopted Ceylon as his permanent residence with the intention of making a domicile of choice there and abandoning his domicile of origin in India. We may now refer to the two circumstances relied on by learned counsel for the respondent person. The first was that the deceased had stayed in Ceylon for nearly 25 years. Merely on the basis of the length of the stay of the deceased, M. T. Veerappa Pillai, in Ceylon, it is not possible to infer that the deceased had abandoned the domicile of his origin in India. The residence and thereby personal presence in Ceylon would be in the nature of a physical fact, as pointed out by the Supreme Court in the decision referred to earlier. What is, however, required is that the physical fact should be accompanied by required state of mind to have fixed and settled abode in Ceylon with the intention of making Ceylon the principal or sole permanent home. On an examination of the several circumstances available in this case, it is seen that the deceased, M. T. Veerappa Pillai, did not entertain any intention of residing permanently or even indefinitely in Ceylon. The

length of his residence in Ceylon can certainly be attributed to his carrying on business in Ceylon or even to his marriage to a Ceylonese lady. The residence of the deceased, M. T. Veerappa Pillai, in Ceylon has thus not been established to a pursuant to a deliberate intention formed with fixed and settled purpose of making Ceylon his principal or sole permanent home. This is clearly established by the fact that the deceased continued to won agricultural lands in Omandur, Revettukudi and Thuruvasi village in India. We are unable to appreciate that a person manifesting deliberate or sealed intention to change his domicile of origin would have continued to hold properties and other asset in India. Further, the deceased had been frequently visiting India and that showed that he had still entertained an intention returning to India, which he had considered a permanent home and which was also his domicile of origin. Earlier, it had been noticed that the deceased, M. T. Veerappa Pillai, had a wife, Akilandathammal, in India. By the frequent visits made by the deceased, M. T. Veerappa Pillai to India to visit his wife, we are led to hold that the deceased, M. T. Veerappa Pillai, had divided his attention and affection between the wife in India and also the other wife and children in Ceylon by visiting them and had not manifested a fixed or settled intention to live permanently in Ceylon with his other wife and children, but had continued to consider Akilandathammal also as his wife and had visited her in India, which was the domicile of his origin. It is further established by the record that under his will, the deceased, M. T. Veerappa Pillab had bequeathed annuities in favour of Akilandathammal in India. The cumulative effect of these facts, viz., his continuing to own properties in India, his visits to Akilandathammal in India and the bequests in favour of the wife in India, is that the deceased, M. T. Veerappa Pillai, had always thought of his domicile of origin as continuing and not having been substituted by the acquisition of a domicile of choice in Ceylon.

9. We may now refer to the other circumstances strongly relied on by learned counsel for the accountable personal namely, the making of an application by the deceased, M. T. Veerappa Pillai, for securing citizenship. We have not had the benefit of ascertaining the considerations under which citizenship could be granted under the Indian and Pakistani Residents Citizenship Act, 1949. The application stated to have been made by

the deceased, M. T. Veerappa Pillai, has been placed before us and there is, therefore, no knowing whether the deceased, M. T. Veerappa Pillai, had made any clear and unequivocal declaration under his hand to acquire citizenship to totally severing all his ties and connections with India including his domicile of origin. What is, however, significant is that the application stated to have been made by the deceased, M. T. Veerappa Pillai, had not been granted during his lifetime and, therefore, the fact remains that the deceased, M. T. Veerappa Pillai, died as an Indian citizen. Merely, therefore, on the basis of the applications stated to have been filed by the deceased, M. T. Veerappa Pillai, it is difficult to draw the inference that he had abandoned the domicile of origin. Earlier it has been seen that the onus of proving that a domicile of choice has been acquired in substitution of the domicile of origin is upon him who asserts that the domicile of origin had been lost and in this case. There is absolutely no material whatever to show that the deceased, M. T. Veerappa Pillai, had abandoned his domicile of origin and had acquired a domicile of choice by a clear and fixed manifestation of settling down permanently in Ceylon, totally severing all his connections with the country of his birth and in fact nurture. We hold that, on the available materials, it has not been established by the accountable person that the deceased, M. T. Veerappa Pillai, had abandoned his domicile of origin and has acquired a domicile of choice by a clear and fixed manifestation of settling down permanently in Ceylon, totally severing all his connections with the country of his birth and infant nurture. We hold that, on the available materials, it has not been established by the accountable person that the deceased, M. T. Veerappa Pillai, had abandoned the domicile of origin by the acquisition of a domicile of choice.

10. It now remains to consider the decision relied on by learned counsel for the accountable person reported in *Controller of Estate Duty Vs. Dr.*

Ida Bella Scuddar, . We are of the view that that decision does not in any manner assist the accountable person, for, only the general principles applicable to the ascertainment of the domicile of choice by displacing the domicile of origin have been stated and applied to the facts of that particular case. That decision cannot therefore, be of any assistance to the accountable person. *Controller of Estate Duty Vs. V. Melnikoff*, , relied

on by learned counsel for the Revenue, lays down that the ties which bind a person to the country of his domicile of origin are extremely strong and there must be content and reliable evidence to show that he intended to settle in some to her country before he can be said to have given up his domicile of origin and applying this to the facts of the present case, on the available evidence, the irresistible conclusion is that the accountable person has not clearly established that the deceased, M. T. Veerappa Pillai, acquired a domicile of choice in Ceylon in manifesting a clear and settled intention to live permanently and forever in Ceylon abandoning his ties and connections with India and not to return here. We therefore, answers the questions referred to us in the affirmative and against the accountable person. The Revenue will be entitled to costs of this reference, counsel's fee Rs. 500.