N. Krishna Prasad Vs. Assistant Controller of Estate Duty

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Court : Andhra Pradesh

Decided On : Jun-24-1971

Reported in : [1972]86ITR332(AP)

Judge : Vaidya and ;Sriramulu, JJ.

Acts : Constitution of India - Article 14; Estate Duty Act, 1953 - Sections 34(1)

Appeal No. : Writ Petition No. 4038 of 1969

Appellant : N. Krishna Prasad

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : K. Srinivasa Murthy, Adv.

Advocate for Pet/Ap. : A. Siva Rao, Adv.

Judgement :

Sriramulu, J.

1. Nagavarapu Cheuchaiah and his son, Krishna Prasad, constituted members of a Hindu undivided family, governed by Mitakshara school of Hindu law. Chenchaiah, as the karta of the Hindu undivided family, died on 21st Aagust, 1966, Under Section 53(3) of the Estate DutyAct (hereinafter called 'the Act'), Krishna Prasad, the accountable person, filed before the Assistant Controller of

Estate Duty, an account of the estate of the deceased. The value of the estate was determined by the Assistant Controller of Estate Duty at Rs. 3,32,814 and the half share of the deceased at Rs. 1,66,407. A sum of Rs. 1,000 was allotted for funeral expenses under Section 44 of the Act, and the value of the chargeable estate was determined at Rs. 1,65,407. For the purpose of determining the rate of estate duty, the Assistant Controller of Estate Duty aggregated the same with the value of the interest o! the lineal descendant, Krishna Prasad, so as to form one estate and on the value of the estate so determined at (Rs. 1,65,407 plus Rs. 1,66,407), i.e., Rs. 3,31,814. levied estate duty after allowing rebate on the lineal descendant's share under Section 34(2) of the Act. The estate duty that was payable was determined at Rs. 8,442'59 after deduction of the provisional duty already paid.

2. Krishna Prasad, the accountable person, challenged the legality and the validity of the assessment so made by the Assistant Controller of Estate Duty, on the following; two grounds : (1) Section 34(2) is beyond the competence of the legislative power of the Central Legislature, and (2) Section 34(2) prescribing a different and unique procedure for imposing tax on the share of the deceased in the coparcenary of the Mitakshara joint family is discriminatory and repugnant to Article 14 of the Constitution of India.

3. In support of the above contentions, the learned counsel appearing for the petitioner invited our attention to entry No. 87 in List I, and the definition of estate duty found in Article 366(9) of the Constitution of India and submitted that estate duty is payable, on the property passing on the death of the deceased. Instead of levying estate duty on the value of the half interest of the deceased in the estate that passed on his death, Section 34(2) brought in the principle of aggregation of the estate of the lineal descendant, over which no estate duty is payable. Parliament is not competent to levy estate duty on the property of the lineal descendant, which did not pass on the death of the coparcener of the Mitakshara Hindu undivided family.

4. Section 34(2) makes an infoad into the property of another, i.e., the lineal descendant of the deceased, although such property did not pass on the death of the deceased.

5. The origin and source of the principle of aggregation is the English law. But the. principle of aggregation stated in Section 34(2) of the Act is something different from the one found in the English law.

6. In applying the principle of aggregation to the case of the death of a coparcener in a Hindu undivided family of Mitakshara law, Marumafc-kattayam law and Aliyasantana low and not to the member of a Hinduundivided family in Dayabhaga school of law, amounts to an invidious discrimination. There is no reasonable classification and the application of the principle of aggregation to a member of one undivided family in one school of Hindu law and not to such a member belonging to another school of Hindu law, has absolutely no nexus or relation to the object sought to be achieved. The classification is arbitrary and not reasonable. There is no basis for making such an invidious discrimination. Section 34(2) of the Act is, therefore, repugnant to Article 14 of the Constitution and is void.

7. The learned counsel, Sri Srinivasa Murthy, appearing for the revenue contended to the contra. According to him the word 'assessment' is used in taxing statutes as meaning sometimes computation of income, some-times determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing the liability upon the taxpayer. In this connection the learned counsel relied upon the decision in Commissioner of Income-tax v. Khemchand Ramdas, [1938] 6 I.T.R. 414(P.C.).. Under entry 87 in the Union List, Parliament has got power to legislate on estate duty. For the imposition of estate duty, rates have to be prescribed and for that purpose there must be a provision of law in the Act. That is provided in the instant case under Section 34(2) of the Act. The aggregation is only for the purpose of fixing the rate and it does not levy estate duty on the pro-perty of a person, other than the person whose property passed on the death. The section does not make an inroad into the property of another. The power to make law with regard to estate duty carried with It the power to legislate the manner in which the rates of estate duty are fixed for the purpose of computation of such estate duty imposable on a taxpayer. Section 34(2) of the Act is not discriminatory aad violative of Article 14 of the Constitution. In support of this argument, the learned counsel relied upon the decision of the Madras. High Court

in Ramanathan Chettiar v. Assistant Controller of Estate Duty, : [1970]76ITR402(Mad) . A Hindu undivided family governed by Mitakshara Law, Marumakkattayarn or Aliyasantana law is distinct and a different class from the Hindu undivided family governed by Dayabhaga school of law. The impugned section cannot foe struck down merely because varying rates of tax are imposed on different classes of people. In this connection the learned counsel relied upon the decision of the Supreme Court in Venugopala Ravi Varma Rajah v. Union of India, : [1969]74ITR49(SC) .

8. Parliament has got exclusive power to make law with regard to any of the matters named in List I, in the 7th Schedule of the Constitution of India, i.e., Union List. Entry No. 87 in the Union List reads as follows :

'Estate duty in respect of property other than agricultural land.'

9. The expressisn 'estate duty' has been given the following meaning under Article 366(9) of the Cpnstitution :

'Estate duty means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass.'

10. From entry No. 87 in the Union List, it is obvious that Parliament is competent to legislate any law imposing estate duty in respect of properties other than agricultural land. In enacting a law for imposition of estate duty, the legislative authority must make provisions for ascertaining the value of the estate or the property, which passed on the death of the deceased, and also a provision relating to the rate at which the said value of the property has to be subjected to tax. Unless the law deals with those two matters, it cannot be said that a complete law on estate duty has been enacted. In the Income-tax Act, 'assessment' sometimes means computation of income, sometimes determination of the amount of tax payable and sometimes the procedure laid down in the Act for imposing the liability on the taxpayer. (See Commissioner of Income-tax v. Khemchand Ramdas). Similar meaning should be given to an estate duty assessment.

Assessment of estate duty must necessarily mean, (1) determination of the property passing on the death or deemed to pass on the death, (2) determination of the amount of tax payable, and (3) the whole procedure laid down for imposing tax liability on the taxpayer. Thus, a power given to Parliament to make law with regard to estate duty necessarily, in our opinion, includes power to fix the rates of estate duty. Section 34(1)(c) of the Act is a section which fixes the rates of estate duty payable in a given case where the property passing on death consists of a coparcenary interest in the joint family property of a Hindu family governed by Mitakshara, Marumakkattayam or Aliyasantana law.

11. There is no force in the argument of the learned counsel appearing for the petitioner that the power to make law in regard to estate duty did not include the power to fix the rate. When Parliament is competent to make law on estate duty, it can and should make the law regarding the rate of tax and the manner in which such tax is to be computed. Section 34(1)(c) of the Act does not make an inroad into the property of the lineal descendant, but only takes it into consideration for the purpose of fixing the rate of estate duty, on the value of the property passing on the death of the coparcener by aggregating it with the value of the property of the share of the lineal descendant. There is also equally no forcein the argument of the learned counsel that by enacting Section 34(1)(c), the legislature has reduced the property which has been inherited by the lineal descendant. Estate duty is payable on the property of the deceased as at the death of the deceased. The lineal descendant takes the property of the deceased, minus the tax that is leviable on it. That would in fact be the property inherited by the lineal descendant. Tax is paid out of the property of the deceased and not out of the property of the lineal descendant after he has inherited the same.

12. There is no doubt that the Estate Duty Act owes its origin to the English law. When our Parliament has got the power or competency to enact a law on estate duty it has also competence to depart from the principles found in English law. The mere fact that the principle of aggregation enunciated by Parliament in Section 34(1)(c) is a slight departure from the principle of aggregation as found in the English law, is no reason why Section 34(1)(c) should be struck down, or be thought of that the legislature did not intend to or cannot make such departure.

We, therefore, find no force in the first ground of attack on the validity of Section 34(1)(c) of the Act and and accordingly reject it.

13. We will then proceed to consider whether Section 34(1)(c) of the Act is discriminatory and violative of Article 14 of the Constitution of India. Article 14 of the Constitution of India provides that the 'State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike, i.e., equal protection of all alike in the same situation and under like circumstances. A tangible distinction between the two doctrines, i.e., 'equality before the law', and 'equal protection of the laws' for the first time was pointed out by Subba Rao J. in State of U. P. v. Deoman, A.I.R. 1960 S.C. 1124, 1134.:

'All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept ; equal protection of laws is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and thai all classes are equally subjected to the ordinary law of the land ; the latter postulates an equal protection of all alike in the same situation and undey like circumstances.'

14. According to the learned counsel appearing for the petitioner Section 34(1)(c)prescribes a unique procedure for imposing tax on the share of the deceased in the coparcenary of the joint family governed by Mitakshara law, Marumakkattayam law or Aliyasantana law, different from the procedure prescribed for one governed by Dayabhaga school of law. Thisdifferent treatment accorded to the members of a Hindu undivided family of different schools of Hindu law is, according to him, discriminatory and offends Article 14 of the Constitution. According to him, this discrimination is not based upon reasonable classification and that such discrimination has no nexus or relation to the object sought tp be achieved.

15. There is no doubt that 'equal protection of laws' means right to equal treatment in similar circumstances both in the privileges conferred and liabilities imposed by the law. No one can be subjected to any burden or charge than such as are

imposed upon all others under the like circumstances. In other words, there should be no discrimination between one person and another if, as regards the subject-matter of the legislation, their position is the same. A person or class of persons cannot be singled out as a special subject for discriminatory and hostile legislation. The principle of equality does not mean that every law must have universal application for all persons, who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. The State has thus the; power to classify persons for legislative purposes.

16. When a particular provision of law is attacked or challenged as violative of Article 14, it is necessary for the court to ascertain the policy underlying the statute and the object intended to be achieved by it. The object behind the enactment of the Estate Duty Act has been stated to be :

'To impose an estate duty on property passing or deemed to pass on the death of a person. Though the levy and collection of income-tax at high rates since the war and the investigations undertaken by the Income-tax Investigation Commission in a number of important cases of tax evasion have, no doubt, prevented to some extent the further concentration of wealth in the hands of those who are already wealthy, yet these do not amount to positive steps in the direction of reducing the existing inequalities ia the distribution of wealth. It is hoped that by the imposition of an estate duty such unequal distributions may be rectified to a large extent.'

17. The entire problem under the equal protection clause under Article 14 is one of classification or of drawing lines. A classification is reasonable when it is not an arbitrary selection, but rests on differences, pertinent to the subject in respect of which classification is made. Permissible classification must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis. Classification must be rational. It must not only be based on some qualities or characteristics which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation, that is to say, the

classificationmust be founded on an intelligible differentia which distinguishes those that are grouped together from others and that the differentia must have a rational relation to the object sought to be achieved by the Act.

18. The doctrine of equal protection of laws in the field of taxation has been considered by the Supreme Court in Venugopala Ravi Varma Rajah v. Union of India. That case arose under the Expenditure-tax Act. The contention raised in that case was that the law which enables the Expenditure-tax Officer to assess tax on the expenditure of all members of a Hindu undivided family governed by the Marumakkattayam law discriminates on the ground of religion between the Hindu undivided family and a Mappilla undivided family governed by Marumakkattayam law, resident in North Malabar. Under the Expenditure-tax Act, the charging section imposes tax on individuals as well as Hindu undivided families. An undivided family, which consisted of Hindus, was treated as a unit of assessment, whereas an undivided family, whose members are not Hindus, was assessed to tax as an individual. In a Hindu family governed by Marumakkattayam law, the total expenditure incurred by all the members of the undivided family was clubbed together for the levy of expenditure-tax, because the unit of tax under Section 3 was a Hindu undivided family. A Mappilla, on the other hand, is an undivided family governed by the same Marumakkattayam law and was liable to be assessed to tax as an individual and on that account at a lower rate.

19. Dealing with the contention raised, Shah J., speaking for the Supreme Court, explained thus :

'Equal protection clause of the Constitution does not enjoin equal protection of the laws as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system

of taxation in all proper and reasonable ways ; the legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification : it is not a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classificationis rational, the legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. A taxing statute may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions, or occupations similarly situate, incidence of taxation, which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects.

It is for the legislature to determine the objects on which tax shall be levied, and the rates thereof. The courts will not strike down an Act as denying the equal protection of laws merely because other objects could have been, but are not, taxed by the legislature : (Raja Jagannath Baksh Singh v. State of Uttar Pradesh, : [1962]46ITR169(SC) .

'.....A classification must not be arbitrary, artificial or evasive andthere must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates. In respect to such distinction, a legislative body has a wide discretion and an Act will not be held invalid unless the classification is clearly unreasonable and arbitrary.'.....But the mere fact that the law could have been extended toanother class of persons, who have certain characteristics similar to a section of the Hindus but have not been so included, is not a ground for striking down the law. In treating a Hindu undivided family as a unit of taxation under the Expenditure-tax Act and not a non-Hindu undivided family, Parliament has not attempted an 'obvious inequality'.'

20. After explaining the doctrine of equal protection of the laws, the learned Judge pointed out at page 56, that the Mappilla families governed by the Marumakkattayam law reside in a small part of the countty and form numerically a small community. Parliament has again been accustomed in enacting tax laws to make a distinction between a Hindu undivided family consisting of Hindus and undivided families of Mappillas. By the taxing Acts Parliament could have treated Mappilla tarwads as units of taxation. But the mere fact that the law could have been extended to another class of persons, who have certain characteristics similar to a section of the Hindus but have not been so included, is not a ground for striking down the law. In treating a Hindu undivided family as a unit of taxation under the Expenditure-tax Act and not a non-Hindu undivided family, Parliament has not attempted an 'obvious inequality'.

21. The same contention which is now put forward by the petitioner's counsel before us was also raised before the Madras High Court in Ramanathan Chettiar v. Assistant Controller of Estate Duty. In that case the validity of Section 34(1)(c) of the Estate Duty Act was challenged as being violative of Article 14 of the Constitution. A Division Bench of the Madras High Court rejected that contention.

22. There are basic differences in the incidents attached to a joint Hindu family in the Mitakshara and the Dayabhaga schools of Hindu law. In the Mitakshara school of Hindu law a son acquires at his birth an equal interest with his father in all the ancestral property held by the father and on his death the son takes the property not as his heir, but by survivorship.

23. According to the Dayabhaga school of Hindu law, the sons do not acquire any interest at birth in the ancestral property. Their rights for the first time arise on the father's death. On the death of their father, sons take such of the property as is left by their father, whether separate or ancestral, as heirs and not by survivorship. Since the sons do not take any interest in the ancestral property in their father's lifetime, there can be no coparcenary in the strict sense of the word, between a father and the sons according to the Dayabhaga law as regards the ancestral property. Sons under the Dayabhaga law have no right of ownership in the wealth of their living parents, but only in the estate of both when deceased.

24. The vital distinction between Dayabhaga and Mitakshara schools of Hindu law, in the rights possessed by the fathers in the ancestral property, establishes that the fathers in one school of law belong to a class different from the fathers in the other school of law. Section 34(1)(c) of the Act applies to one and not to the other. Is it discriminatory and violative of Article 14 of the Constitution, is the question that arises for consideration. The classification is not arbitrary, but based on a rational and substantial basis depending upon the incidents attached to the joint families in the respective schools of law. The principle of aggregation provided in Section 34(1)(c) cannot be applied to the property passing on the death of a father of a Hindu undivided family governed by Dayabhaga school of law. An illustration will make it clear. A joint Hindu family consists of a father and son. The family possesses ancestral properties of the value of rupees one lakh. In Mitakshara school of Hindu law, the son acquires a right by his birth along with his father in all the ancestral properties worth one lakh. On the death of the father the soil does not take those properties of rupees one lakh, or any portion thereof, by inheritance as the heir of his father, but by survivorship. The coparcenary interest of the father ceases on his death and the son acquires it by survivorship. The value of the coparcenary interest of the father ceasing on his death would be Rs. 50,000.

25. In Dayabhaga school of law the father during his lifetime is the owner of the property worth rupees one lakh. The son does not possess any interest in all or any of those properties during the lifetime of his father. He gets the right of ownership to the entire property on the death of his father as his heir and not by survivorship.

26. The value of- the properties that passed on the death of the father would be Rs. 50,000 if he was a member of the Hindu undivided family under Mitakshara law and rupees one lakh if he was a member of the Hindu undivided family of Dayabhaga school of law.

27. The estate duty is levied on Rs. 50,000 in the case of the deceased who died as a member of the Hindu undivided family governed by Mitakshara school of law, but on rupees one lakh, if the father died as a member of the Hindu undivided family governed by Dayabhaga school of law. It, therefore, follows that the estate

duty is levied on Rs. 50,000 or rupees one lakh as the father who died, belonged to the Mitakshara or the Dayabhaga school of law. If the principle of aggregation was not made applicable to a deceased father of Mitakshara school of Hindu undivided family, he would have paid only half the estate duty, which would have been paid, if he had belonged to Dayabhaga school of law. It is only to remove this obvious inequality that Parliament has in its wisdom enacted Section 34(1)(c) and made the principle of aggregation applicable to the death of a coparcener of a Hindu undivided family governed by Mitakshara school of law.

28. By reason of these basic differences in the incidents attached to joint Hindu family under the Mitakshara and Dayabhaga schools, it is evident that a father in the Hindu undivided family in Mitakshara school of law belongs to a class different from the father in the Hindu undivided family under Dayabhaga school of law. The classification, as has already been stated above is based on substantial and reasonable grounds.

29. The classification has also a nexus and reasonable relationship with the object for which the Estate Duty Act has been enacted. One. of the objects for enacting the Estate Duty Act was to reduce the existing inequalities in the distribution of wealth. If the principle of aggregation for fixing the rate of estate duty was not made applicable to the father in a Hindu undivided family governed by Mitakshara school of law, the net wealth which would have been acquired by the sons would have been more than the net wealth which they would have acquired in the case of the Dayabhaga school of law. Precisely, in order to get over this inequality, Section 34(1)(c) of the Act has been enacted.

30. The classification is based upon intelligble differentia which distinguishes one group of fathers from another group of fathers under the two , schools of Hindu law, i.e., Mitakshara and Dayabhaga.

31. We respectfully agree with the decision of the Madras High Court in Ramanathan Chettiar v. Asst. Controller of Estate Duty, and hold that Section 34(1)(c) of the Act is neither violativc nor repugnant to Article 14 of the Constitution.

32. Both the contentions raised by the petitioner fail and are rejected. The writ petition is accordingly dismissed with costs. Advocate's fee Rs. 100.