K.K. Unni Nayar and anr. Vs. Union of India (Uoi) Represented by the Asst. Controller of Estate Duty, Ernakulam

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Court : Kerala

Decided On : Jun-28-1965

Reported in : AIR1966Ker99

Judge : V.P. Gopalan Nambiyar, J.

Acts : Estate Duty Act, 1953 - Sections 6 and 57; Hindu Succession Act, 1953 - Sections 7(3); Constitution of India - Article 226

Appeal No. : O.P. No. 77 of 1964 and C.M.P. 5086 of 1964

Appellant : K.K. Unni Nayar and anr.

Respondent : Union of India (Uoi) Represented by the Asst. Controller of Estate Duty, Ernakulam

Advocate for Def. : C.T. Peter, Adv.

Advocate for Pet/Ap. : K.V. Surianarayana Iyer,; Vellore Karunakara Menon and;

Disposition : Petition allowed

Judgement :
ORDER

V.P. Gopalan Nambiyar, J.

1. The first petitioner is the Receiver appointed by the Sub Court. Ottappalam, in O.S. No. 65 of 1956 on the Ale of that Court, in respect of the sthanam properties of the Mannarghat Moopil Nayar. Subsequent to the filing of the O. P. there was a change in the personnel of the Receiver, and the present Receiver by C. M. P. No. 5086 of 1964, has petitioned this Court to be impleaded as supplemental second petitioner in the O. P. The aid C. M. P. has to be allowed and I do so.

2. By this O. P. the Receiver abovenamed seeks to quash the notices evidenced by Exts. D and E by which the Estate Duly payable in respect of the estate of late. Sri. Mannarghat T. Moopil Nayar was determined (provisionally) at Rs. 37,1913.71 under Section 57 of the Estate Duty Act, XXX. IV of 1953. There is a further prayer for a writ of prohibition restraining the respondent. His Assistant Controller of Estate Duty, from taking any action or initialing any proceedings to enforce the demand made by the notices evidenced by Exts. D and E.

3. The Mannarghat Moopil Nayar in respect of whose estate the impugned proceedings have been taken, died on 3-l-1960, after the passing of he Hindu Succession Act, 90 of 1956. The petitioner's case is, that by reason of Section 7(3) of the Hindu Succession Act 30 of 1956, there was a statutory disruption of the sthanam properties immediately before the death of the sthanamdar, and a devolution of the same upon the members of the family of the sthanamdar and his heirs. Therefore, according to the petitioner, the respondent had no jurisdiction to assess the entire estate of the late Moopil Nayar, but could at best assess only the share of the sthani that got statutorily fractioned under Section 7(3) of the Hindu Succession Act and passed on his death to his heirs. In reply to the notice evidenced by Ext. A, issued by the respondent the petitioner submitted his return along with a covering letter evidenced by Ext. C. In paragraph 11 thereof the petitioner had slated his contention that in view of the Section 7(3) of the Hindu Succession Act, no estate duty would be leviable.

4. Sections 5(1) and 6 of the Estate Duty Act, XXXIV of 1953 read as follows:

5(1) In the ease of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all properly, settled or not settled, including agricultural land situate in the territories which immediately, before the 1st November 1956, were comprised in the States specified in the First Schedule to this Act. which passes on the death of such person, a duty called 'estate' duty' at the rates fixed in accordance with Section. 35.'

'6. Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.'

Section 7(3) of the Hindu Succession Act 30 of 1956 reads:

'7(3) Notwithstanding anything contained in Sub-section (l), when a sthanamdar dies after the commencement of this Act. the sthanam property held by him shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar as if the sthanam property had been divided per capita immediately before the death of the sthanamdar among himself and all the members of his family then living, and the shares falling to the members of his family and the heirs of the sthanamdar shall be held by them as their separate property '

Explanation-- For the purposes of this subsection, the family of a sthanamdar shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of sthanamdar if this Act had not been passed.'

Having regard to the above provisions it seems to me clear that the entire estate of the Moopil Nayar in the hands of the Receiver cannot be assessed to Estate Duty under the provisions of the Estate Duty Act.

5. There is, so to say, a statutory fragmentation of the sthanam property immediately before the death of the sthanamdar, under Section 7(3) of the Hindu Succession Act. If so, the shares statutorily devolving on all the members of the family of the sthanamdar cannot be regarded as property, which the sthanamdar

at the time of his death was competent to dispose of within the meaning of Section 6 of the Estate Duty Act.

6. It follows that the demands made by the notices evidenced by Exs D, and E are illegal and have to be quashed 1 do so. A position similar to this, was considered by the Madras High Court in K.C. Manavedan v. Deputy Controller of Estate Duty, Southern Zone. Madras. (1966) 55 ITR 36 It was held that on the death of a sthani after the passing of the Hindu Succession Act, his entire estate cannot be assessed to estate duty. The same conclusion was reached by my learned brother Govindan Nair, J. in 'the decision in O. P. No. 1323 of 1903 (Ker).

7. It seems to me to be no answer to state that the demands evidenced by Exs. D. and E are only in pursuance of provisional orders of assessment, contemplated under Section 57 of the Estate Duty Act, and that it is open to the petitioner to urge his contentions before the finalisation of the assessment. Under Section 57(2) of the Estate Duty Act, the person assessed is bound to pay to the Controller the estate duty assessed, or to furnish security to his satisfaction for payment of the same. Under Section 57(4) of the Act no appeal lies against the provisional assessment. The imminent threat to the petitioner and his properties of an illegal assessment and the absence of adequate alternative remedy seem to me to be sufficient to invoke the jurisdiction of this Court under Article 226 of the Constitution.

8. 1 therefore allow this O. P., quash the demand made by the respondent evidenced by Exs. D. and K. and prohibit (he respondent from taking any action in pursuance of the said demands.

9. The O. P. is allowed as above. There will be no order as to costs.

10. C. M. P. No. 5086 of 1964 is allowedas prayed for.