

T.R. Jayasankar Vs. Assistant Controller of Estate Duty

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Court : Kerala

Decided On : Apr-07-1971

Reported in : [1972]83ITR445(Ker)

Judge : M.U. Isaac, J.

Acts : [Estate Duty Act, 1953](#) - Sections 5, 34(1), 34(2) and 35; [Constitution of India](#) - Articles 14, 19 and 31

Appeal No. : O.P. No. 2392 of 1969

Appellant : T.R. Jayasankar

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : P.K. Krishnankutty Menon, Adv.

Advocate for Pet/Ap. : T.R. Govinda Warriar, Adv.

Judgement :

Isaac, J.

1. One Sreemathi Amini Bhavani Varasiyar and her two minor children formed a Marumakkathayam tarwad. She died on March 7, 1964. The petitioner is her brother; and he is the accountable person for the estate duty payable under the [Estate Duty Act, 1953](#), on the principal value of all property passing on the death

of Smt. Varasiyar. In the matter of assessment under the Act, the petitioner contended before the respondent, the Assistant Controller of Estate Duty, Ernakulam, that the deceased had only one-third right in the tarwad property, and that he was not liable to estate duty as the principal value of the said one-third right was below the taxable limit of Rs. 50,000. The respondent, by his order, exhibit P-1, dated March 31, 1969, rejected the above contention, and assessed the petitioner to pay a duty of Rs. 711.27 including interest payable under Section 53 of the Act. Accordingly, he issued a notice of demand, exhibit P-2, dated March 31, 1969, to the petitioner calling upon him to pay the above amount. In making the above assessment he fixed the value of the whole property belonging to the tarwad of the deceased at Rs. 1,05,012 and the value of the one-third share which the deceased would have got on a partition at Rs. 35,004. He, apparently, took the view that Sub-sections (1)(c) and (2) of Section 34 of the Act applied to the case, and on that basis he levied duty on the one-third share at the rate applicable to the aggregated value of the property belonging to the deceased and her lineal descendants, namely, her two minor children. This writ petition has been filed to quash Section 34 of the Act, particularly Sub-section (2) thereof as unconstitutional and void and to quash exhibits P-1 and P-2.

2. Section 34 of the Act reads:

'34. (1) For the purpose of determining the rate of estate duty to be paid on any property passing on the death of the deceased,--

(a) all property so passing other than property exempted from estate duty under Clauses (c), (d), (e), (i), (j), (l), (m), (mm), (n), (o) and (p) of Sub-section (1) of Section 33 ;

(b) agricultural land so passing, if any, situate in any State not specified in the First Schedule; and

(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkathayam or Aliyanalana law, also the interests in the joint family property of all the lineal descendants of the deceased member; shall be

aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof.

(2) Where any such estate as is referred to in Sub-section (1) includes any property exempt from estate duty, the estate duty leviable on the property not so exempt shall be an amount bearing to the total amount of duty which would have been payable on the whole estate, had no part of it been so exempt, the same proportion as the value of the property not so exempt bears to the value of the whole estate.

Explanation.--For the purpose of this sub-section, ' property exempt from estate duty ' means-

(i) any property which is exempt from estate duty under Section 33;

(ii) any agricultural land situate in any State not specified in the First Schedule;

(iii) the interests of all coparceners other than the deceased in the joint family property of a Hindu family governed by the Mitakshara, Marumakkathayam or Aliyasantana law.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), any property passing in which the deceased never had an interest, not being a right or debt or benefit that is treated as property by virtue of the Explanations to Clause (15) of Section 2, shall not be aggregated with any property, but shall be an estate by itself, and the estate duty shall be levied at the rate or rates applicable in respect of the principal value thereof.

(4) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(5) For the purposes of this section, no property shall be aggregated more than once nor shall estate duty in respect thereof be levied more than once on the same death.'

3. Three points were raised by counsel for the petitioner. One is that Sub-section (1)(c) is violative of Articles 14, 19 and 31 of the Constitution.

4. The second point is that Sub-section (1)(c) does not apply to a Marumakkathayam tarwad; and the third point is that the estate of the deceased is not liable to duty, as its principal value does not exceed the chargeable limit of Rs. 50,000 fixed in Schedule II of the Act. I shall consider these points in seriatim.

5. There is no substance in the contention that aggregation of the interests of the lineal descendants of the deceased in the joint family property for the purpose of determining the rate of duty is violative of Article 19 or Article 31 of the Constitution. Such a contention was not also seriously put forward by counsel. What was seriously urged was that the said provision is violative of Article 14 of the Constitution, as it treats persons or groups of persons differently situated in the same manner, with the result that it affects some of them in a most irrational way. The argument was illustrated by counsel thus. In the case of a Marumak-kathayam tarwad consisting of three sisters, A, B and C, A having 10 children, B having two and C having no children, each member of the tarwad would have on partition $1/15$ share in the tarwad property ; and if A dies, her estate would be assessed to duty at the rate applicable to the principal value of $11/15$ of the tarwad property ; whereas if C dies, her estate would be assessed only at the rate applicable to the principle value of $1/15$ of the tarwad property, though in both cases the principal value of the property passing on the death may be the same. Counsel submitted that that is a differentiation without any rational basis. He also cited the case of a similar Mitakshara family consisting of three brothers, P, Q and R, P having 10 children, Q having 2 and R having no children. The brothers take equally on partition under the Mitakshara law ; and, therefore, the rate of duty will be the same in the case of the property passing on the death of any one of them. Counsel for the petitioner submitted that, in the case of A, following the Marumakkathayam law, her $1/15$ share is assessed to estate duty at the rate applicable to the principal value of $11/15$ of the tarwad property, while in the case of P, Q or R, who follow the Mitakshara law, his $1/3$ share is assessed to duty only at the rate applicable to the principal value of $1/3$ share in the family property; and that this amounted to discrimination.

6. I am unable to accept the above argument. It is true that Article 14 of the Constitution applies also to taxation law ; but in view of the inherent complexity of

fiscal adjustment of diverse elements in the matter of taxation, the legislature has a large discretion in picking and choosing the districts, objects, persons, methods and even the rates of taxation, so long as it adheres to the fundamental principles underlying the doctrine of equality before law and equal protection of the laws enshrined in Article 14 of the Constitution. If a taxation law is based on a general classification, it cannot be attacked on the ground that it would affect discriminately on some persons or group of persons who would fall into a class on a further sub-classification, on account of certain special features attached to them. The principle underlying the provision for aggregation contained in Sub-section (1)(c) of Section 34 is that the rate of duty payable on the property passing on the death of a Hindu whether governed by the Mitakshara, Marumakkathayam or Aliyasanthana law, is fixed on a common basis, namely, the interest in the joint property of all lineal descendants of the deceased member would be aggregated with the property of the deceased passing on his death. The fact that the interest of a deceased person following the Marumakkathayam law in the family property may be comparatively small, when compared to that of a person following the Mitakshara law in a family, both having the same number of members and assets, due to the different personal laws applicable to them and the number of children they have got, is not the result of any discriminatory treatment by law, but it is the result of operation of the same law on the differing facts of the particular cases.

7. The contention that Sub-section (1)(c) is not applicable to a Marumakkathayam tarwad was based on the use of the words 'coparcenary interest' in the said provision. From that, it was argued that the term 'coparcenary' is a well-known term in Hindu law, that it means a body of persons in a Hindu joint family who acquire by birth an interest in the joint or coparcenary property, and it consists of a Hindu male, his sons, grandsons and great-grandsons. In that case, Sub-section (1)(c) can have no application not only to a family governed by the Marumakkathayam law, but also to a family following the Aliyasanthana law. I am unable to accept this contention. It is obvious from a reading of the said sub-section that it is not in that sense that the words 'coparcenary interest' have been used in that provision. These words have been used there in relation to all Hindu families governed by any one of the three systems of law expressly mentioned therein. Therefore, in the context these words appear, they can mean only 'joint

interest' or 'undivided interest'. The use of the word ' coparcenary ' is inappropriate and confusing. All the same, the object of the provision is clear; and the words 'coparcenary interest' should be so interpreted as to give effect to the legislative object of the provision, and a sensible meaning to it.

8. It is necessary to refer to some of the provisions of the Act, in order to appreciate the arguments of the petitioner's counsel on the third point. The charging provision is contained in Section 5(1) of the Act, which reads:

' 5. Levy of estate duty.--(1) In the case 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 property, settled or not settled, including agricultural land situate in the territories which immediately before 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.'

9. This section imposes the duty on the principal value of all property which passes on the death of every person; and it provides that the rate of duty shall be in accordance with Section 35. ' Property passing on the death ' is defined in Section 2(16). Sections 21 to 33 of the Act deal with property exempted from inclusion in the property passing on death. Section 34 provides for aggregation of certain classes of property for the purpose of determining the rate of estate duty. Section 35 fixes the rates of duty ; and it reads:

'35. Rates of estate, duty on property including agricultural land.--(1) The rates of estate duty shall be as mentioned in the Second Schedule.

.....

(3) Notwithstanding anything contained in Sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land and the principal value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate-

(a) in the case of an estate which consists wholly of agricultural land, a sum representing one-fourth of the estate duty payable; and

(b) in the case of an estate which consists in part only of agricultural land, a sum representing one-fourth of the estate duty payable on that part of the estate which consists of agricultural land, the duty on such part being a sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate.'

10. The Second Schedule is as follows:

' THE SECOND SCHEDULE

(See sections 5, 20-A and 35)

Rates of Estate Duty

PART I.

In the case of any property which passes or is deemed to pass on the death of the deceased--

Rate of duty

(1) On the first Rs. 50,000 of the principal value of the estate.

Nil.

(2) On the next Rs. 50,000 of the principal value of the estate.

4 per cent.'

11. It is not necessary to read the remaining part of the Schedule. Counsel for the petitioner submitted that, on a reading of Sections 5 and 35 and the Second Schedule of the Act, it shows that the estate of a deceased person is not chargeable to duty, if its principal value does not exceed the chargeable limit of Rs. 50,000 fixed in the Second Schedule, and that Section 34 of the Act does not affect the said position. I am inclined to accept this submission. The Second

Schedule fixes the rates of duty, and the rates are related to the principal value of the estate, in other words, to the principal value of the property which passes on the death of the deceased. Under the Schedule there is no charge on the first Rs. 50,000 of the principal value of the estate. Section 34 is a provision for aggregating certain classes of properties ' for the purpose of determining the rate of estate duty to be paid on any property passing on the death of the deceased '. If the property passing on the death of the deceased is not chargeable under the Act, as its principal value falls below the chargeable limit, there is no question of the rate of duty. Section 34 only deals with a case of a chargeable estate; and it provides for fixation of a higher rate of duty in the case of properties liable for aggregation under the said provision.

12. In the present case, the principal value of the estate is admittedly far below Rs. 50,000. The assessment made on the petitioner cannot, therefore, be sustained. I, therefore, quash the order of assessment, exhibit P-1, and the notice of demand, exhibit P-2, and allow this writ petition. There will be no order as to costs.

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