

In Re: Dasu Manavala Chetty

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Court : Chennai

Decided On : Aug-20-1909

Reported in : 4Ind.Cas.1064

Judge : Ralph Benson, Offg., C.J., ;Miller and ;Sankaran Nair, JJ.

Appellant : In Re: Dasu Manavala Chetty

Judgement :

Ralph Benson, Offg., C.J.

1. In this case one Manavala Chetty prayed for Letters of Administration in respect of property standing in the name of his deceased father, Emberumanar Chetty, but forming the joint ancestral property of the undivided Hindu family of which, the petitioner and his late father were the only members. He stated that though his father's share in the property passed to him by survivorship, he was obliged to take out Letters of Administration because part of the property consisted of shares in certain companies which in accordance with their articles of Association, refused to recognise his title to the shares unless he obtained such letters. He claimed to be exempt from payment of stamp duty on the Letters on the ground that his father was in possession of the property and held it as manager of, and trustee for the family. The learned Judge who heard the application decided that Letters of Administration could be granted only on payment of the ordinary duty. Against this decision this petitioner appeals.

2. Section 191(1) of the Court Fees Act, 1870, as amended by Act XI of 1899, provides, that 'no order entitling the petitioner to the grant of Probate or Letters of Administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule; and the 'Court is satisfied' that the proper fee has been paid' on such valuation.

3. That form consists of an affidavit with two annexures, in one of which, Annexure A, is to be specified the property and credits of the deceased, and in Annexure B is to be set forth the items which the applicant 'is by law allowed to deduct.' Among these items are 'property held in trust not beneficially or with general power to confer a beneficial interest, and other property not subject to duty.' The question is, whether the property for which the petitioner seeks Letters of Administration can be said to come under either of these categories, and, if so, whether wholly or partially. The petitioner contends that the property was trust property in the hands of the deceased; and he relies on the decisions in the cases of *In the goods of Pokurmull Augur Wallah* 23 C.k 980 and *Collector of Kairu v. Chunilal* 29. B.k 161 and also on two unreported decisions of this Court. It is to be observed that in the Calcutta cases there was no argument and the decision proceeded on a statement drawn up by the taxing officer in which great stress was laid on the fact that under the Mitakshara Law (as administered in Bengal) 'an undivided co-parcener cannot dispose of his share in the joint property, unless in case of necessity without the consent of his co-parceners.' In neither the note of the taxing officer nor in the order of the Court, is there any reference to the words 'not beneficially or with general power to confer a beneficial interest' which follow the words 'Property held in trust,' in Annexure B. In the case of *Collector of Kairu v. Chunilal* 29. B.k 161 the chief question considered was whether the limited grant sought for in that case could be granted at all. The character of the property as trust property was not discussed in the judgment, but was held to be concluded by the decision in *In the goods of Pokurmull Augur Wallah* 1 C.W.N. 31. In neither of the unreported cases in this Court was the question argued. In the earlier of them *In re T. Swaminatha Aiyar* (deceased) the question was raised by the taxing officer in a 'note for order' in which he referred to *In the goods of Pokurmull Augur Wallah* 1 C.W.N. 31 as supporting the contention that the ancestral joint property was held by the

deceased as trust property and, therefore, not liable to duty on taking out Letters of Administration, and the learned Chief Justice accepted the suggestion of the taxing officer. In the latter case, 'no note for orders' is forthcoming, but Wallis, J. seems to have followed the precedent 'In re Swaminatha Aiyar.' Thus it would seem that the two precedents in this Court, and also the Bombay case, followed the decision in *In the goods of Pokurmull Augur Wallah* 1 C.W.N. 31. But in this Presidency differing from Bengal it has long been held that under the Mitakshara Law as administered in this part of India an alienation by sale or mortgage by an undivided member of his interest in the joint family property, is valid. *Aiyyagari Venkataramayya v. Aiyyagari Ramayya* 25 M.k 690. He can also at any time enforce partition of his own share. That being so, it seems impossible to hold that the property in the present case was held by the deceased, so far at least as his own share in it was concerned, 'as trust property, not beneficially or with general power to confer a beneficial interest in it.' He could have claimed partition, or he could have sold or mortgaged his undivided share and have applied the proceeds to any purpose he pleased. In my opinion, therefore, the interest of the deceased in the joint family property in the present case, does not come within the category of 'property held in trust, not beneficially or with general power to confer a beneficial interest,' nor do I think it is possible to hold that it comes within the only other category in Annexure B which the Vakil for the petitioner argues is applicable; viz., 'other property not liable to duty.' These words must refer to some exemption from liability enacted by the Statute Law, as, for example, under Section 9 C. of the Court Fees Act, or under an authority conferred by the Statute Law, as, for example an exemption by Government under the authority conferred by Section 35 of the Court Fees Act; but no such exemption is alleged in the present case. In the goods of Brindabhun Ghose, deceased 11 B.L.R. 39 two brothers were the only co-parceners in a joint Hindu family; one of them Brindabhun, died; and the other Bristodoss applied for and obtained Letters of Administration in respect of Brindabhun's half share in the joint family property on payment of ad valorem duty on such half share, and Sir R. Couch, C.J. held that Bristodoss's half share 'should be treated as trust property and be exempted from the two per centum ad valorem 'fee.'

4. A similar view was taken by Petheram, C.J., in the case of property held in common by Europeans with right of survivorship [In the goods of J.T. Fooschman 20 C. k 574. I think that the view taken in these cases is that which we should follow. The deceased Emberumanar Chetty, cannot be said to have held his own share of the joint family property in trust and not beneficially though he may be said to have held his son's share in that way. If, therefore, the son desires Letters of Administration to the joint family property he must pay the ad valorem duty on so much of the property as was not 'property held on trust not beneficially or with general power to confer a beneficial interest,' that is, on the father's share in the property or to be more exact, on the share which his father was entitled to claim at the moment before his death. This interpretation of the words is not, I think open, to any objection on principle; nor will its adoption entail any practical difficulty at least in this Presidency. I would, therefore, modify the order of the learned Judge, and with reference to Section 19, I (1) of the Court Fees Act (as amended by Act XI of 1899), I would inform the appellant, that no order entitling him to Letters or Administration will be made on his application until he shall have filed in Court a valuation of property corrected in accordance with the view stated above and has paid the proper fee on such valuation. If this is done an order will issue for the grant of Letters of Administration to the petitioner.

Miller, J.

5. I have no doubt that the applicant is a person to whom Letters of Administration may be granted under Section 23 of the Probate and Administration Act. He is a person, who by the personal law of the deceased and himself, would be entitled to the whole or part of the estate of the deceased. He would take his father's property if his father died intestate leaving property.

6. And it seems clear to me that the ancestral joint family property passing to the applicant by survivorship, is 'property of the deceased,' within the meaning of the Act, (section 4) and, therefore, included in the 'property and credits' of Section 77, that is to say, in the estate' of the definition of Administrator in Section 3. Inasmuch then as this property does not in the present case 'pass by survivorship' to any one other than the applicant, there seems to be no doubt that the applicant is entitled

to Letters of Administration, which will vest in him.

7. As to the question whether he is entitled to deduct this property before valuing the estate for duty, both parties seem to be content to take it that the applicant's share of it is exempt from duty, as being property held by the deceased in 'trust not beneficially'; the share of the applicant is one-half; that is what he would have got, if the property had been divided just before the death of the deceased; and the contest between the Advocate-General and Mr. Sundara Aiyar is as to the other half which on the supposed division would have become the separate property of the deceased. Both sides, as I understood the argument, accepted Annexure B. in Schedule III of Court Fees Act as containing an exhaustive description of the classes of property on which duty is not leviable; it was not suggested that there exists any notification under Section 35 of the Court Fees Act, which could affect the decision in this case.

8. Mr. Sundara Aiyar contends that the share in dispute is either 'property held in trust not beneficially' or else 'other property not liable to duty.'

9. It is, he argues, other property not liable to duty, because (1) under the Act there is nothing else which that description can properly be made to include, and (2) it will not in all cases vest in the Administrator. If it does not vest in the Administrator, it is unreasonable to levy duty on it, and if duty is not leviable in that case, uniformity requires that it should not be leviable where it does vest in the Administrator.

10. As to the first argument, even within Section 35 which seems to give power to the Government to declare any class of property 'property not liable to duty.' I do not think we should be justified in reading the heading in Annexure B as declaring the existence of property not described in the other headings, and yet not liable to duty. The existence of the heading does not involve the existence of any class of property which can fall under it.

11. As to the 2nd argument, it is Mr/ Sundara Aiyar's contention that property of the deceased will vest or will not test in the Administrator according as he is or is not a person to whom the property passes by survivorship. If that is not

unreasonable, I fail to see why it is unreasonable to levy duty on all that vests in the Administrator, though that may differ with the person entitled to administer. I accept Mr. Sundara Aiyar's contention that the former proposition is the law, and I fail to see why I should hold that the latter is not.

12. Then remains the question whether the property is 'property held in trust not beneficially.' In the earlier cases in the Calcutta High Court the share of the deceased seems to have been treated with our argument as not exempt [vide In the goods of Brindabhun Ghose 11 B.L.R. 39 but later in Calcutta [In the, goods of Pokurmull Augur Wallah 1 C.W.N. 31 and in Bombay Collector of Kairu v. Chuni Lal 29. B. 161 the whole property seems to have been treated as exempt, no question being argued as to the share of the deceased himself; and in this Court the Chief Justice has decided, apparently without contest, in accordance with this view, and has been followed by Wallis, J., also in a case in which Government was not represented.

13. I prefer the older view; I take it that one principal reason for the exemption, from duty, of property vested in the deceased as a trustee is, that the beneficiary out of whose pocket the payment would come, acquires nothing by the trustee's death. That consideration certainly does not apply to the applicant in the present case. However, the test laid down by the Act is, whether or not the property was held 'beneficially' by the trustee. The deceased could use his share as security on which to borrow money for himself, and could at any time demand that it be carried out of the whole and placed at his disposal by a partition. A trustee cannot as Such do these things with trust property, and in so far as the deceased was able to do them, he can, I think, properly be considered to hold 'beneficially.'

14. It was suggested that the heading in the annexure should be read as meaning property, which taken as a whole is held 'not beneficially;' for instance if the deceased held land of which 99/100ths belonged to himself, and 1/100th was held for the benefit of another so long as the 1/100th is not divided off from the rest, the whole property is held 'as a trustee not beneficially.' I see nothing in the language of the schedule to require this construction, and there is no more difficulty in entering in the annexure 'one undivided half share in such and such lands and

houses,' and in calculating its value for duty, than there is in making a similar entry and calculation in, say, a Proclamation of Sale.

15. I agree, therefore, in the order which the learned Chief Justice proposes to make.

Sankaran Nair, J.

16. I agree with the conclusion that the deceased did not hold the property as a trustee and that the appellant can obtain Letters of Administration only on paying the proper fee on the share of the deceased which he got by survivorship.

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