

**Pl. S. Rm. Ramanathan Chettiar Vs. Assistant Controller of Estate Duty**

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**Court :** Chennai

**Decided On :** Oct-17-1968

**Reported in :** [1970]76ITR402(Mad)

**Judge :** Veeraswami and ;Ramaprasada Rao, JJ.

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

**Appeal No. :** Writ Petition No. 58 of 1965

**Appellant :** Pl. S. Rm. Ramanathan Chettiar

**Respondent :** Assistant Controller of Estate Duty

**Advocate for Def. :** V. Balasubrahmanyam and ;J. Jayaraman, Advs.

**Advocate for Pet/Ap. :** M.R.M. Abdul Karim, ;P.M. Jummakhan and ;P.L. Meyyappan, Advs.

**Judgement :**

**Veeraswami, J.**

1. One PL. S. RM. Sivaswamy Chettiar died on November 30, 1963, leaving two sons, two daughters and his widow. The Assistant Controller of Estate Duty, Coimbatore, made a provisional order under section 57 of the [Estate Duty Act, 1953](#), and called upon the petitioner, who is one of the sons of the deceased, to

pay the tax. This petition is to quash the order.

2. It is urged in support of the petition that the respondent was wrong in applying Section 34(1)(c) to the facts of the case. Reference is made to the proviso to Section 6 of the Hindu Succession Act, 1956, and Explanation 1 to that section and it is said that, in view of those provisions, there will be no question of devolution by survivorship, but only by succession in this case. That is a question which is entirely within the competence of the respondent to decide. The petitioner has still an opportunity to urge this point before him, since, as we said, the order the respondent has made is only a provisional order. In our view, any question which the respondent is competent to decide cannot be urged and had decided by means of a petition under Article 226 of the Constitution. The Act is a self-contained one providing as it does for matters not in common law but for obligations created by it, and a hierarchy of remedies is provided to deal with grievances. In the first instance the party aggrieved should be left to seek his remedies within the framework of the Act. It is not stated that, so far as this particular question raised before us is concerned, the remedy provided by the Act is not adequate. We may point out on that question, if the petitioner felt aggrieved, he could eventually come to this court by way of reference. On that view of the matter, we decline to go into this question.

3. It is next contended that Section 34(1)(c) is violative of Article 14 of the Constitution and is therefore void. Though there is a basic difference in the concept of the Dayabhaga law and the Mitakshara law in relation to a joint Hindu family, nevertheless, so it is argued, the difference has been removed by reason of the proviso to Section 6 of the Hindu Succession Act, and that being the case, the principle of aggregation is applied only to cases of joint family governed by Mitakshara law and not to families governed by the Dayabhaga law. It seems to us that the entire argument is misconceived. In the case of a member of a Dayabhaga family dying, no question of aggregation can arise at all, for, the member of such a family dying possessed by reason of his personal law a defined share in the assets of the family, unlike a deceased member belonging to a joint Hindu family governed by the Mitakshara law. It is precisely for that reason that in the case of a member belonging to a joint Hindu family governed by the

Mitakshara law dying, the principle of aggregation has been embodied in Section 34(1)(c). But for the principle of aggregation, the rate applicable to such a case will be the rate corresponding to the value of the benefit that can be regarded as having accrued to each of the lineal descendants of the deceased. Whereas, in the case of a Dayabhaga family, in view of the fact that the share of the deceased member is a crystallised one, the rate applicable in that case would be a rate corresponding to the value of the share of the deceased member. It may be seen, therefore, that, but for the principle of aggregation envisaged by Section 34(1)(c), there would be discrimination. In fact, Section 34(1)(c) avoids such a discrimination. To illustrate, suppose there is a Hindu joint family governed by the Mitakshara law consisting of two brothers and one of them dies leaving two sons. Had it not been for Section 34(1)(c), each of the sons would be entitled to insist that the rate applicable to the value of the benefit accrued to him would be that corresponding to such value. But, in view of Section 34(1)(c), the value of the benefit accruing to each of the two sons would be aggregated and the rate applicable to the aggregated value as ascertained under Section 39 would be applied to the value of the benefit accruing to one of the sons of the deceased. By this process precisely the same result is achieved as in the case of a member of a Dayabhaga Hindu family dying, assuming that the family consisted of members as we have assumed in the case of the Mitakshara Hindu joint family.

4. It would follow, therefore, that there is no discrimination whatever brought about by Section 34(1)(c) between members of a Mitakshara joint Hindu family and of a Dayabhaga family in the matter of application of rates of taxation.

5. The writ petition is dismissed, but with no costs.

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