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Court : Chennai

Decided On : Apr-21-1971

Reported in : (1972)1MLJ135

Appellant : S. Sarangapani Chettiar

Respondent : Assistant Controller Estate Duty-cum-income-tax

Judgement :

T. Ramaprasada Rao, J.

1. The petitioner, as accountable person, is aggrieved against the order of assessment made by the respondent on 31st December, 1965, under the Estate Duty Act, 1953, hereinafter referred to as the Act. The petitioner has availed himself of the alternative statutory remedy available to him under the Act and. the appeal is reported to be still pending. He has come to this Court also for the issue of a writ of certiorari to quash the order of assessment as above on the ground that he is not liable in law to account or pay the duty as assessed. The relevant facts are as follows.

2. Gopalaswami Chettiar, the propositus, died leaving a will dated 8th September, 1908. The will is not challenged. Under the will he created a scheme of testate succession in respect of certain properties of his. His wife Seshammal was to have

a life estate therein. Thereafter his daughter Ramathilakam was to enjoy the properties for her life. After Ramathilakam's death, the estate was to devolve on her putra poutradi santhathi, and in default of such heirs to her female descendants, and in default of such heirs also, to her husband Sethu Chetty and his descendants. Sethu Chettiar died on 28th October, 1919, without leaving a male or a female issue through Ramathilakam. Seshammal, wife of Gopalasami Chettiar, died in 1938. On 10th September, 1953, Ramathilakam adopted the petitioner, but lived up to 4th November, 1962. On the date when the petitioner was adopted, Ramathilakam had a life estate over the properties secured by her as legatee under the will of Gopalasami Chettiar. It is to be stated that the properties held by her on the date of adoption were not the properties of her husband Sethu Chettiar over which Sethu Chettiar secured any interest on the properties as on the date of his death. After the death of Ramathilakam on 4th November, 1962, after the coming into force of the Estate Duty Act, 1953 (XXXIX of 1953), the petitioner, as the accountable person under the Act, filed, pursuant to a notice under Section 55 of the Act from the appropriate authority, the estate duty returns showing the principal value of the estate of Ramathilakam at Rs. 44,560, but contended that after the adoption on 10th September, 1953, the properties vested in him and that there was no passing of any property consequent upon the death of Ramathilakam. He therefore disclaimed any liability to pay estate duty. The Assessing Officer granted sufficient opportunity to the petitioner to substantiate his contention. But the accountable person did not explain his stand. With the result, the assessment was completed under Section 58(4) of the Act to the best of information of the Assessing Officer.

3. The respondent, however, dutifully considered the objections as found on the record. He had occasion to refer to the judgment of this Court in *Srimathi Ramathilakam Ammal and Anr. v. G. Appasami Chettiar and 3 Ors.* A.S. No. of 1960 That was a suit in which the petitioner's status as adopted son of Sethu Chettiar was questioned. This Court found that the adoption was valid and they also went into the question whether the intestacy occurred with reference to the estate of Gopalasami Chettiar, and even if the adoption was valid, a declaration that the petitioner could not be the legatee under the will of Gopalasami Chettiar was also considered. They held, after scrutinising and analysing the recitals in the

will of Gopalasami Chettiar, that the petitioner, as adopted son of Rama-thilakam, could not take the bequest under the will. In this connection, they observed as follows :

Therefore, granting that the 'santhathi' of Ramathilakam, mentioned in the will, could include terminologically an adopted son, still the question arises whether in the context in which that word is used in the will of Gopalasami Chettiar, it will include an adopted son. We agree with Mr. Ramaswami Ayyangar that analysing the scheme of gift-over after the lifetime of Ramathilakam indicated by the testator, an adopted son of Ramathilakam would not be comprised in the expression 'puthra puthrathi santhathis' occurring immediately after the gift for life to Ramathilakam. On the failure of male issue of Ramathilakam the estate was directed by the testator to go to her female issue. On the failure of such female issue also the testator directed the estate to go to Sethu Chettiar and his santhathis. Obviously the testator could not have intended an adopted son of Ramathilakam to take after her as her santhathi because, in such a case, it would not be necessary to give the estate to Sethu Chettiar, the husband of Ramathilakam. The indication of the daughters of Ramathilakam as the next line of heirs after the failure of her male issue points to the anxiety of the testator to give the estate after the life of Ramathilakam to the children born of her body. We, therefore, agree with Counsel for the respondents that the second defendant as the adopted son of Ramathilakam could not take the bequest under the will.

They further went into the question as to the status of the petitioner vis-a-vis his adoptive father Sethu Chettiar. The observations of the learned Judges of the Division Bench in the above appeal are :

Consequently, even though Sethu Chettiar died during the life time of his wife Ramathilakam, he took a vested interest in the bequest which would descend by the law of inheritance as also by reason of the words in the will, giving the estate to Sethu Chettiar and his santhathis... This flows from the principle that adoption takes effect from the date of death of the adoptive father even though it is made long after his death.

In conclusion, the Bench observed :.we do not agree that the second defendant (petitioner) could not take the estate of Gopalasami Chettiar under his will.

On the strength of these observations it is strenuously contended by Mr. Rajagopalan, that as the adoption dates back to the date of death of Sethu Chettiar, and as there is a finding that the bequest became vested in the petitioner, on the death of Sethu Chettiar, as the adoption relates back to that date, the passing. of any interest in the properties on the death of Ramathilakam does not arise and a fortiori no obligation to pay estate duty is cast on the petitioner under the provisions of the Act. On the other hand, the Revenue contends that the Estate Duty Act, 1953, being operative on its own and as Ramathilakam was admittedly the accredited life estate holder of the property, on her death on 4th November, 1962, the petitioner cannot escape the liability under the Act to pay estate duty in connection with such passing of property to him.

4. The obvious and difficult question is whether the petitioner could be deemed to have secured the property only under the will of Gopalasami Chettiar or under the provisions of the Hindu Law. The finding of the Division Bench is that the petitioner, as adopted son of Ramathilakam, could not take the bequest under the will of Gopalasami Chettiar. This therefore binds me.

5. The next question is whether by reason of the finding of the Division Bench that the petitioner took a vested interest in the bequest which would descend by the law of inheritance as also by reason of the words in the will giving the estate of Sethu Chettiar and his santhathis, there could be a passing or a deemed passing of the estate in question on the death of Ramathilakam.

6. The word 'passes' cannot be equated to a term of art, but has to be understood in its popular sense. As pointed out by Green in his book on 'Death Duties', Sixth Edition, "passes' may be taken as meaning 'changes hands'. 'To ascertain whether property has passed, a comparison must be made between the persons beneficially interested the moment before the death and the persons so interested the moment after the death. If, after such a comparison, it appears that the beneficial enjoyment of the property was. in substance and in effect, unaffected by the death, the property did not pass on the death merely because, as a matter of

terminology, one set of limitations then ceased to have effect and another became operative'. In this view of the matter it is to be considered whether the limitations which were apparent before the death of Ramathilakam, did undergo effectively any change thereafter and whether on a comparison between the estate which Ramathilakam had the moment before her death remained unaffected after her death, and whether the petitioner acquired interest in the property only at the moment, after her death. Under Section 6 of the Act, the property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. The poser that looms large, therefore, is whether Ramathilakam, at the time of her death, was competent to dispose of the property in question without reference to the petitioner. The normal answer is in the negative, because Ramathilakam, if at all she had any disposing capacity over the property, had only a life interest. Though life interest also can be the subject-matter of disposition, yet in the peculiar circumstances of this case, when the petitioner was adopted by her and the adoption is retrospectively effective from the date of death of Sethu Chettiar, can she be still said to be a person who had the disposing capacity over the property in question so as to make the property as passable property under Section 6? No doubt, under Section 7 of the Act, the property in which the deceased had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the case of such interest. The point therefore is whether the petitioner secured an interest in the property by reason of the death of Ramathilakam or such event de hors of death. It is in this context the impact of personal law of the parties has a decided voice in the determination of the poser before us. The Division Bench of this Court expressed the view in uncanny terms that even though Sethu Chettiar died during the lifetime of Ramathilakam, the petitioner took a vested interest in the bequest which would descend by the law of inheritance as also by reason of the words in the will of Gopalasami Chettiar. This finding of fact, which is equally binding on me, is expressive and has to be implemented. Though the petitioner could not take the bequest under the will as a matter of course, as a matter of right under the personal law of the parties he took a vested interest in the bequest prior to the death of Ramathilakam herself. In these circumstances, the fact that Ramathilakam was a life estate holder would

not make any difference. There is no cessation of such interest and a fresh accrual of a contemporaneous interest in the estate in favour of the petitioner as is contemplated in Section 7 of the Act. The bequest has become vested in the petitioner and as found by the Division Bench of this Court has a special signification and it is in this context that the words 'passing' in Section 6, or 'deemed passing' in Section 7 have to be understood.

7. As pointed out by Jaganmohan Reddy, J., as he then was, in *Yelukuru Satyanctrayana v. Assistant Controller of Estate Duty* (1961) 2 A.W.R. 108:

It is a well-accepted principle of Hindu Law that whether in respect of coparcenary property or separate property of a Hindu joint family or an individual that it devolves by survivorship or succession, as the case may be, upon surviving members of the coparcenary or heirs. If the deceased has no sons or there are no coparceners of the joint family, the widow takes a life-interest. As long as there is a widow, there is always a prospect of an heir to the deceased by a subsequent valid adoption made by her in exercise of an authority given to her by the husband. The result of adoption would be to relate back the vesting of the estate in the adopted son from the date of the death of the deceased. A widow, once she has adopted, has no right to alienate property of her deceased husband as under the Hindu Law that property vests in the adopted son. The widow has no disposing power over the property on and from the date of adoption. Therefore, it could not be said that such property is one which the widow was competent to dispose of or had interest therein, and that passed on her death within the meaning of the Estate Duty Act, and is therefore not liable to Estate Duty.

Under similar circumstances, Jaganmohan Reddy, C. J., as he then was, in *Dwaraka Prasad V. Controller of Estate Duty* (1968) 1 A. W.R. 396 was considering the question whether the mere act of adoption did amount to a voluntary transfer of property in favour of the adopted son within the meaning of Section 9 of the Act. Negating the contention as posed, the learned Chief Justice, speaking for the Bench, said that by adoption a coparcener is introduced which halves the interest of the sole surviving coparcener and the joint family in turn is expanded. The learned Judges also held that an adoption by a Hindu does

not amount to a surrender or a voluntary transfer or gift of any part of the adoptive father's property and a levy of duty as if the estate has passed on to the adopted son's share is not legal. This decision again supports the view that the factum of adoption is an event of importance having certain special significance of its own under the personal law of the parties. Once there is a valid adoption by a widow, it relates back to the date of death of the deceased husband and once it relates back to that date, the adoptive son secures an interest in the property of the deceased, whether existing or expected, and in that light there cannot be said to be a passing or a deemed passing in the instant case when Ramathilakam died. This conclusion is fortified by the fact as found by the Division Bench of this Court in the appeal referred to above that the bequest in favour of the petitioner became vested in him by reason of the adoption and therefore the intermediary life estate of Ramathilakam cannot legally divest such a vested interest so as to project a case of a 'deemed passing' within the meaning of Section 7. The theory of 'deemed passing' depends upon an unequivocal finding of fact that the interest of the beneficiary who claims an interest in the property accrued to him only after the death of the previous holder. It cannot be said in the instant case that the interest so accrued to the petitioner consequent upon or after the moment of the death of Ramathilakam. This is all the more so because the binding finding of this Court in the appeal was that the bequest became vested in the petitioner eo instanti the adoption has been made. The proposition that adoption divests the widow of the estate of her husband is no doubt unchallengeable. But the circumstances in this case do not compel me to refer to the various authorities cited by Mr. Rajagopalan, which laid down the above proposition, which is practically an accepted doctrine in the Hindu Law, namely, *Erram Reddy Chenchu Krishnamma v. Maram Reddy Lakshminarayana* : AIR1928 Mad271 . *Sukadevdoss Ramprasad v. Mussamat Choti Bai* : AIR1928 Mad118 and *Subramanian alias Senni Ohettiar v. M. P. P. Section P. L. Muthiah Ghettiar* : (1945)2MLJ337 .

8. As already stated, there were two channels through which the petitioner could gain an interest in the estate in question. One was under the will which was negatived by the Division Bench and the other was by reason of his adoption. Whilst considering the latter aspect it was found that the bequest in his favour, though not as the puthra pouthrathi santhathi of Sethu Chettiar, but as his adopted

son became vested in him the moment the valid adoption was made. As the adoption is not challenged in the instant case and as I am bound by the finding of fact of the Division Bench that such a bequest became vested in him even under the terms of the will, it appears to me that this is not a case where there was a passing of property over which the deceased Ramathilakam had a disposing capacity or property which accrued to the petitioner by reason of the death of the previous holder. A Full Bench of this Court in A. Kuppuswamy v. Controller of Estate Duty : (1970)2MLJ140 presided over by my Lord the Chief Justice, makes the position very clear under very similar circumstances. There the learned Judges were considering the interest of a widow under Section 3 (2) of the Hindu Women's Rights to Property Act, 1937. The learned Chief Justice, speaking for the Full Bench, observed:

The interest of a widow under Section 3(2) of the Hindu Women's Rights to Property Act, 1937 is not coparcenary interest within Section 7 (1) of the Estate Duty Act. Her statutory interest is of undefined character before partition. Therefore on the widow's death there is no cesser of any interest she had in the joint family property and her interest being undefined lapses at her death resulting in no change in the coparcenary property as such and her interest cannot be regarded as an interest in property within Section 7(1).

On the death of a widow who has not asked for partition, her interest merges ; in the coparcenary of which her sons Were coparceners. Merger cannot be termed as passing of property on the death of the widow.

9. While respectfully adopting the principle in the above case and applying it to the facts in the instant case, it is clear that the mere fact that Ramathilakam had a life interest in the estate by reason of the will, the position is not in any way different. By reason of the adoption, she inducted a coparcener into the family. On her death there is a merger of her interest in the coparcenary. By such an event of merger after her death the position is unaffected because the adoptive son as the surviving coparcener in the family becomes entitled to the property as a matter of right and since such adoption relates back to the date of death of his adoptive father. Having regard to the peculiar circumstances of this case I am of the view

that on a comparison between the state of affairs which existed prior to the death of Ramathilakam and soon after her death there is no conceivable difference at all which could be taken advantage of by the Revenue to project the theory of passing of property from one to the other, as if it changed hands. 'Passing' implies movement of the estate from one dying to another and means changing hands. This event has not occurred in the instant case.

10. In the view I hold that in the hands of the petitioner as accountable person, the estate in question is not exigible to estate duty under the Act as there has not been a 'passing' of the estate in accordance with the prescriptions of the Act. It therefore follows that notwithstanding the fact that the petitioner has availed himself of the alternative remedy by filing an appeal before the appropriate authority against the order impugned, the challenge against the order is well founded and the rule nisi has to be therefore made absolute. The writ petition is therefore allowed, but in the peculiar circumstances of this case there will be no order as to costs.

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