

Radha Gajapathi Raju Vs. Assistant Controller of Estate Duty

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Court : Chennai

Decided On : Jun-12-1998

Reported in : [1999]239ITR620(Mad)

Judge : N.V. Balasubramanian, J.

Acts : [Estate Duty Act, 1953](#) - Sections 5 and 55; [Evidence Act, 1872](#) - Sections 108; Indian Succession Act

Appeal No. : W.P. No. 4616 of 1988

Appellant : Radha Gajapathi Raju

Respondent : Assistant Controller of Estate Duty

Advocate for Def. : S.V. Subramaniam, Adv. for; C.V. Rajan, Adv.

Advocate for Pet/Ap. : V. Ramachandran, Adv. for K. Mani, Krishnakumar and C.R. Varalakshmi

Judgement :

N.V. Balasubramanian, J.

1. This is a petition to quash the proceedings of the respondent in G. I. R. No. G. 964, dated February 3, 1988, and to forbear the respondent from making assessment under the [Estate Duty Act, 1953](#), in respect of the estate of P.V.

Gajapathi Raju.

2. The petitioner is one Radha Gajapathi Raju. The matter arises under the provisions of the [Estate Duty Act, 1953](#) (hereinafter to be referred to as 'the Act'). According to the petitioner, her husband, P.V. Gajapathi Raju, was regularly assessed to income-tax and wealth-tax and there is no dispute that he was a resident of Madras. The petitioner averred that on August 2, 1975, the petitioner's husband went to Tiruvanmiyur Beach for a swim, but he did not return and was missing ever since. The petitioner had lodged a police complaint immediately and the police also made a detailed enquiry and search. The police were also not able to secure any information as to his whereabouts. According to the petitioner, he could not be traced in spite of persistent search enquiry until the date of filing of the writ petition. There was no information regarding Gajapathi Raju and he was not seen by any person who in the normal course would have seen him or heard about him, if he were alive or received any information about him. The petitioner has stated that she was not able to understand what happened to her husband and according to her, she was expecting that he might return, if he was alive.

3. The Assistant Controller of Estate Duty, Chennai, on March 25, 1982, issued a notice under Section 55 of the Act stating that P.V. Gajapathi Raju died on or about August 2, 1975, and directed the petitioner to file the accounts within 30 days from the date of the service of the notice. Along with the notice, a letter was also enclosed stating that the whereabouts of Gajapathi Raju were not known for the past seven years and he is presumed to have had a watery grave. The respondent desired to know whether the petitioner had moved the High Court in the matter and whether Gajapathi Raju was pronounced to be dead in any court of law. According to the petitioner, she sent a reply informing the respondent that Gajapathi Raju had not been pronounced dead by the High Court and she was not aware of the procedure with regard to the aforesaid matter. The petitioner sent a further complaint on March 3, 1983, to the Inspector of Police, Tiruvanmiyur Police Station seeking further information and there was no information from the Police. A letter was issued on September 14, 1983, by the respondent directing the petitioner to furnish the value of the house property which belonged to the deceased Gajapathi Raju. He also referred to the estate duty accounts filed by the

petitioner and directed the petitioner to produce a copy of the order of the High Court pronouncing P.V. Gajapathi Raju as dead. A letter was issued by the petitioner on October 19, 1983, stating that since Gajapathi Raju was missing from August 2, 1975, and was not heard for more than seven years, he was deemed to be dead. The petitioner has also stated that she filed estate duty accounts and the court has not passed any order in this regard since no proceeding was pending before the court on that issue. A letter was issued on June 7, 1985, by the respondent, followed by other letters dated February 7, 1986, and January 22, 1987. According to the petitioner, she informed the respondent that there was no valid proceeding under the Estate Duty Act and consequently, no further action would be called for. The petitioner also referred to the subsequent notices dated October 13, 1986, and January 22, 1987. Meanwhile, the petitioner approached this court for the grant of letters of administration in respect of the assets of P.V. Gajapathi Raju. This court passed an order on January 30, 1987, holding that the court was satisfied that from August 2, 1975, the whereabouts of P.V. Gajapathi Raju were not known and he was presumed to be dead under Section 108 of the Evidence Act and the court granted the letters of administration as prayed for. The respondent issued notices dated August 4, 1987, August 26, 1987, October 27, 1987 and January 5, 1988, in connection with the estate duty assessment proceedings of P.V. Gajapathi Raju. The petitioner approached this court stating that Gajapathi Raju should be deemed to have died on the date of the order of this court dated January 30, 1987. According to the petitioner, after March 16, 1985, the Estate Duty Act was inapplicable in the case of a person who died thereafter and since this court pronounced that P.V. Gajapathi Raju was presumed to have died on January 30, 1987, the provisions of the Estate Duty Act are not applicable to the death of P.V. Gajapathi Raju. According to the petitioner, the provisions of Section 108 of the Evidence Act are applicable only on the date of the order passed by this court in the Application No. 378 of 1987, and the liability for estate duty would arise only in the event of the death of the person whose property had passed or was deemed to have passed on his death and since P.V. Gajapathi Raju was presumed to have been dead only on the date of the order, viz., January 30, 1987, the provisions of the Estate Duty Act are not applicable. According to the petitioner, the provisions of Section 5 of the Act are not applicable. Since the

factum of death was proved only on January 30, 1987, the presumption is that Section 108 of the Evidence Act would apply only on the date of the order of the court. The petitioner also states that there is no presumption as to the date of death under Section 108 of the Evidence Act and the consequential proceeding under the Act is without jurisdiction.

4. Mr. V. Ramachandran, learned senior counsel for the petitioner, submitted that there was no presumption as to the death of P.V. Gajapathi Raju and Section 108 of the Evidence Act deals with the presumption of death and it is only from the orders of the court, the date of death can be fixed and if that date is taken into account, the Estate Duty Act, as repealed, is inapplicable to deaths occurring after March 16, 1985, and, therefore, the proceedings of the respondent are illegal. Further, according to learned senior counsel for the petitioner, Section 5 of the Act is not applicable in the case of death arising on the presumption under Section 108 of the Evidence Act. According to him, Section 5 of the Estate Duty Act would apply only in the case of natural death and he referred to several provisions of the Act and submitted that the charge to estate duty depends upon several factors and, therefore, unless the date of death is fixed, the proceedings initiated by the respondent are without any jurisdiction. Learned senior counsel reiterated several grounds raised in the affidavit filed in support of the writ petition.

5. Learned senior counsel for the respondent, Mr. S.V. Subramaniam, submitted that the provisions of the Estate Duty Act would equally apply to a case of civil death and they are not limited to the case of natural death alone. Learned senior counsel for the respondent also submitted that the respondent has drawn a presumption as to the factum of death and when he initiated and continued with the estate duty assessment proceedings, he has drawn a presumption as to the date of death also. Learned senior counsel for the respondent also submitted that the estate duty assessment proceedings are quasi-judicial proceedings and the decisions relied upon by learned senior counsel for the petitioner are not fully applicable to the facts of the case and on the date when the estate duty assessment proceedings were initiated, there was a presumption as to the factum of death as well as to the date of death and it is for the petitioner to dispute the same and in the absence of any evidence by the petitioner, the respondent was

justified in proceeding with the estate duty assessment proceedings. He also submitted that the order of this court passed at the time of obtaining letters of administration is not conclusive and it is not established that the death had occurred after the Estate Duty Act was amended.

6. Both learned senior counsel for the parties relied upon several decisions in support of their respective submissions.

7. I am not able to accept the submissions of learned senior counsel for the petitioner. Section 5 of the Estate Duty Act is the charging section and the charge is attracted when a person dies after the commencement of this Act and the property has passed on his death. Section 5 of the Act provides for levy and payment of estate duty on the property passing on the death of a person. The expression 'death' is not defined under the Act, but, in my opinion, it is not limited to a natural death. In my opinion, the provisions of Section 5 of the Act are attracted in the case of civil death where the provisions of Section 108 of the Evidence Act operate. In my opinion, when the presumption of civil death operates, there is no question of any artificial death of a person. The presumption is that the person has died naturally, and, therefore, the death contemplated is also a natural death, though the presumption may operate after a particular point of time prescribed in the Evidence Act. It is, no doubt, true that the provisions of Sections 7 to 17 of the Act may not, in full force, strictly apply, but the non-applicability of those provisions would not prevent the operation of the charging section, namely, Section 5 of the Act. The provisions of Section 21 of the Act to which a reference has been made would be applicable as the domicile of the person who disappeared, would continue to remain the same where presumption under Section 108 of the Evidence Act is drawn. Learned senior counsel refers to the form of accounts stating that it is necessary to declare that the person died on such and such date and he was domiciled in a particular country. But, the inability to fill up a particular column in the form would not prevent the operation of the charging section of the Act. The Orissa High Court in the case of *Parikhit Muduli v. Champa Dei*, : AIR1967 Ori70 , held that once the presumption under Section 108 of the Evidence Act is applied, then, the missing person would be taken to be dead in the eye of law, and such presumption of civil death amounts to physical death.

Therefore, the contention of learned senior counsel for the petitioner that the provisions of the Act are not applicable in cases where the presumptions are drawn under Section 108 of the Evidence Act is bereft of force and is rejected.

8. The next question that arises is whether the respondent has jurisdiction to proceed with the estate duty as per the proceedings. The submission is that under Section 108 of the Evidence Act there is only a presumption of death and there is no presumption of the date of death.

9. The law is well settled that under Section 108 of the Evidence Act, there is a presumption of the fact of death after the expiry of seven years, but there is no presumption as to the exact time of death. The exact time of death is not a matter of presumption and the burden of proof is on the person who claims a right to the establishment of the fact that the death took place at a particular time. The Supreme Court in the case of *N. Jayalakshmi Ammal v. R. Gopala Pathar*, : AIR 1995 SC995 , held that the crucial fact as to the date of death has to be proved and there is no presumption as to the date of death even on the expiry of seven years.

10. The Privy Council in the case of *Lal Chand Marwari v. Mahant Ramrup Gir* AIR 1926 PC 9 held that the presumption that a person who was not heard of for seven years was dead at the end of seven years is not correct. The court held that the period is one and continuous though it may be divisible into three or even four periods of seven years. The test laid down by the Privy Council is as under (page 11) :

'Now upon this question there is, their Lordships are satisfied, no difference between the law of India as declared in the Evidence Act and the Law of England (*Rango Balaji v. Mudiyeppa* ILR [1899] Bom 296 and searching for an explanation of this very persistent heresay, their Lordships find it in the words in which the Rule both in India and in England is usually expressed. These words taken originally from *Phene's Trusts*, *In re* [1870] LR 5 Ch. 139 ; 39 LJ Ch. 316 run as follows :

'If a person has not been heard of for seven years, there is a presumption of law that he is dead ; but at what time within that period he died is not a matter of presumption but of evidence, and the onus of proving that the death took place at any particular time within the seven years lies upon the person who claims a right to the establishment of which that fact is essential.'

Following these words, it is constantly assumed--not perhaps unnaturally--that where the period of disappearance exceeds seven years, death, which may not be presumed at any time during the period of seven years, may be presumed to have taken place at its close. This, of course, is not so. The presumption is the same if the period exceeds seven years. The period is one and continuous, though it may be divisible into three or even four periods of seven years. Probably the true Rule would be less liable to be missed, and would itself be stated more accurately, if instead of speaking of a person who had not been heard of for seven years, it described the period of disappearance as one 'of not less than seven years'."

In *Bal Naicken v. Achama Naicken* : AIR1921 Mad285 , a Division Bench of this court held that in a case where a person was not heard of for more than seven years, and the question arises at what point of time the death referred to had taken place, either between the seven years or after the lapse of seven years, then, there is a presumption after the lapse of seven years, in favour of the death and it is for the other side to displace the presumption and the party relying upon the presumption is entitled to succeed as no evidence is offered by the other party. The above decision is relevant for the purpose of this case as there is presumption about the death after the lapse of seven years and it is for the petitioner to prove and rebut the presumption and if the petitioner does not rebut the presumption, it is open to the Assistant Controller of Estate Duty to rely upon the presumption on the date when he initiated the proceedings for levy of the estate duty.

11. In *Ponduri Adeyya v. Jaladi Burreyya*, : AIR1923 Mad182 , a Bench of this court held that when a person had not been heard of for ten years before the suit, he must be presumed to have died from the date of the suit.

12. In an unreported decision of this court in S. A. No. 55 of 1922, dated August 13 [1924] 47 MLJ 23 (short notes), it was held that at the end of seven years, the

presumption of death would arise and it is for the other party who challenges the contrary to prove that he died sometime later.

13. In *Seshi Ammal, In re* : (1958)2MLJ53 , another learned judge of this court held that the exact time of death is not a matter of presumption, but a matter of proof by evidence by a person who claims the right to the establishment of such a fact.

14. In *Gnanamuthu v. Anthoni* , : AIR1960 Mad430 , this court also held that the presumption as to the fact of death can be raised under Section 108 of the Evidence Act. The presumption as to the fact of death and the time of death will arise when the question is raised.

15. In *Narayana Pillai v. Velayuthan Pillai* , : AIR1963 Mad385 , this court held that the presumption under Section 108 of the Evidence Act would extend to the fact of death and not to the date of death, and this presumption can be raised when a question is raised before the court and if such a question is raised before the court and more than seven years have passed from the time when a man was last heard of, the presumption would be that he died before the date when the question was raised.

16. A learned judge of this court in *Husseiny J. Bhagat v. LIC of India* , : AIR1965 Mad440 , has held that the burden under Section 108 of the Evidence Act shifts to the party who affirms that the person is 'alive' and it cannot be disputed that it relates to the point of time at which the question itself emerges in the legal proceedings and it cannot be presumed that he was dead even on the date of the disappearance and the only conclusion possible was that a particular person was dead at the time when the question arose, i.e., the date of plaint owing to the failure of the opposite party of the proof that he was alive.

17. A learned judge of this court in *R. Gopala Pathar v. N. Jayalakshmi Ammal* , : AIR1984 Mad340 , the decision which was subsequently confirmed in *N. Jayalakshmi Ammal v. R. Gopala Pathar* , : AIR 1995 SC995 , has almost considered the entire case law on the subject and held that the presumption under Section 108 of the Evidence Act will be raised to extend generally to the fact of

death at the expiration of seven years and not to the date of death at any particular point of time, and there is no presumption that death took place at the end of seven years or at any particular time within the period of seven years. The learned judge also held that there is no presumption as to the precise date of death and it is a matter of proof and there is no presumption that a person was dead on the date of the suit. The learned judge distinguished the decision of this court in *Bal Naicken v. Achama Naicken* : AIR1921 Mad285 , an unreported decision of Madhavan Nair J., in S. A. Nos. 55 to 58 of 1922 and the decision of *Devaganugula Kanakamma v. Devaganugula Narasamma* [1924] 47 MLJ 23 (Short Notes) and held that the exact time of death is not a matter of presumption, but one of evidence.

18. In *Sabapathy v. Pattammal* : (1992)1MLJ187 , this court has reiterated the same proposition that the presumption under Section 108 of the Evidence Act is only as to the factum of death and not to the date of death and the onus of proof is upon the person who claims a right to the establishment of which that fact is essential.

19. A Bench of this court in *Abdul Jabbar Sahib v. Abdul Hafiz Sahib* : (1993)2MLJ283 , has held that the exact time of death is not a matter of presumption, but a matter of proof. This court also held that when a question is raised whether a man is alive or dead and if it is proved that he has not been heard of for seven years by those who would have naturally heard of him if he were alive, the burden of proof that he is alive is shifted to the person who affirms it and Section 108 of the Evidence Act deals with the presumption of death and not the date of death.

20. In *Balambal v. Kannammal*, [1997] 1 LW 489, a learned judge of this court held as under (page 493) :

'In *Narbada v. Ram Dayal*, , a learned single judge of that court has held while dealing with Section 108 of the Evidence Act that the provision relates to question of burden of proof cannot be missed and at the earliest be drawn when the dispute is raised and brought before the court and cannot be given a further retrospective effect. The question as to when a particular person died was held to be always a

subject-matter of proof like any other fact. In *Prem Ananthi v. Tahsildar, Coimbatore*, : AIR1989 Mad248 , a learned single judge of this court held that a presumption of death under Section 108 of the Evidence Act could be made only if it is proved at the time when the presumption is sought to be raised before a court and no person can make use of the said presumption to get an entry made in the register of deaths and births by the Registrar concerned that such person was dead and the certificate issued by the revenue officials of such civil death was interfered with by this court. In *Tadepalli Ram Rathnam v. Kantheti Varadarajulu*, : AIR 1970 AP246 , a learned single judge of the Andhra Pradesh High Court held that the presumption about continuance of life and of death envisaged under sections 107 and 108 of the Evidence Act is always a rebuttable one and Section 108 in a sense is by way of a proviso to Section 107. It was also observed therein that the exact time of death, however, is not a matter of presumption but is a matter of evidence. In *C. Abdul Jabbar Sahib v. Abdul Hafiz Sahib* : (1993)2MLJ283 , a Division Bench of this court had dealt with the respective scope of presumption under Sections 107 and 108 and as to when they come into play and held that Section 107 deals with the presumption of continuation of life whereas Section 108 deals with the presumption of death and both the presumptions come into play after a suit is instituted. While initially the presumption of life extends over the whole period of thirty years, but when it is displaced, the presumption of death extends over the whole period when the person is unheard of. The exact time of both is not a matter of presumption but is a matter of evidence. In *N. Jayalakshmi v. Gopala Pathar*, : AIR 1995 SC995 , the apex court was dealing with an appeal from this court from the decision in *Gopala Pathar v. N. Jayalakshmi Ammal*, : AIR1984 Mad340 .

Their Lordships of the apex court held that there was no presumption under Section 108 of the Evidence Act that the person who was not heard of for more than seven years, had died on any exact time of death and such position has to be established on evidence by the person who claims a right that the establishment of that fact is essential. Such observation came to be made in that case in the context of the right claims on the basis of a title said to have been acquired on coming into force of the Hindu Women's Right to Property Act on April 14, 1937. In *American Express Bank Ltd. v. Calcutta Steel Co.*, : (1993)2SCC199 , the apex

court had occasion to deal with the case of grant of relief of declaration under Section 34 of the Specific Relief Act, 1963, and held that discretionary power of court has to be exercised with circumspection, *ex debito justitiae* having regard to pros and cons in the facts and circumstances of each case and the court also cannot convert itself into an instrument of injustice or vehicle of oppression. Their Lordships also emphasised the need, while exercising the discretionary power of courts, to keep in mind the well settled principles of justice and fair play and the discretion exercised keeping in view the ends of justice since justice is the hallmark and it cannot be administered in vacuum. In *Sodhi Transport Co. v. State of U. P.*, : [1986]1SCR939 ; 99 LW 30 (SN) (SC) the apex court while dealing with the claim of presumption under Sections 111 and 114 of the Evidence Act observed that presumption is not itself an evidence. It only makes a *prima facie* case for the party in whose favour it exists and it is a Rule concerning evidence which also indicates the person on whom the burden of proof lies. It was also observed therein that when a presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts and it is only when it is a rebuttable presumption, the provision further pointed out the party on whom lies the duty of going forward with the evidence on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption are said to be deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances.

21. The Calcutta High Court in the case of the Goods of Ganesh Das : AIR1926 Cal1056 held that the presumption of continuance of life ceases at the expiration of seven years from the period when the person in question was last heard of but there is no presumption as to the time of death.

22. The Travancore-Cochin High Court in *Ramabai v. Saraswathi* AIR 1953 TC 114 held that if no one could prove any specific date, the court should draw a presumption that he was dead on the date of institution of the suit and not at some antecedent date.

23. The Mysore High Court in *Shankareppa v. Shivarudrappa* AIR 1963 Mys 115 held that Section 108 of the Evidence Act deals with the procedure to be followed, when a question is raised before the court as to whether a person is alive or dead and the presumption under Section 108 of the Evidence Act would be available when the factum of death of the person concerned becomes material. The Mysore High Court held that the question whether the party before the court was alive or dead became material in the year 1955 and the presumption that he was dead on or before the particular date would be available if the particular person had not been heard of by persons who should have heard of him if he was alive for seven years prior to the particular date.

24. The Andhra Pradesh High Court in *Venkateswarlu v. Bapayya* AIR 1957 AP 380 has taken the view holding that there is no presumption that the death took place at the end of seven years and the exact time of death is not a matter of presumption, but is a matter of evidence and the burden is upon the person who claims a right for the establishment of that fact. The court also held that there is no presumption that the person died on the date of filing of the suit.

25. The same view is taken by the Division Bench of the Andhra Pradesh High Court in the case of *Venkata Subba Rao v. G. Subba Rao*, : AIR 1964 AP326 and the court held that the burden is upon the person who claims the right to the establishment of fact of death.

26. The Andhra Pradesh High Court considered the matter in detail in *Tadepalli Ram Rathnam v. Kantheti Varadarajulu*, : AIR 1970 AP246 , and held that the exact time of death is not a matter of presumption, but is a matter of evidence and the onus of proving that fact is not cast under Section 108 of the Evidence Act, but is cast under the general principles of burden of proof. The learned judge also held that there is no presumption that the death took place at the close of the seven years or earliest at the time of the institution of the suit. The learned judge of the Andhra Pradesh High Court held that the plaintiff should adduce evidence that a particular person died after the Hindu Succession Act came into force. When such an evidence is let in, then, the burden would shift to the other party.

27. The Orissa High Court has also taken the same view in Parikhit Muduli v. Champa Dei, : AIR1967 Ori70 and held that the presumption under Section 108 of the Evidence Act will be available at a point of time when a party approaches the court for necessary relief.

28. The Himachal Pradesh High Court in Mathru v. Rami, has taken the same view holding that the burden of proving the date of death is always upon the person who asserts that the person died at a particular date because there is no presumption about the date of death and the presumption as to the fact of death arises when a question is raised and such a presumption can be drawn when a dispute is brought in a court or proceeding.

29. The Bombay High Court in the case of Subhash Ramachandra Wadehar v. Union of India, : AIR1993 Bom64 held that under Section 108 of the Evidence Act, the law presumes the death of a person unheard of for seven years, but it is silent in respect of the date of the presumed death and the date of presumed death must be proved by the party concerned as a fact by leading reliable evidence. The learned judge also laid down the following propositions on the applicability of Section 108 of the Evidence Act (page 66) :

'(1) Ordinarily a person unheard of for the statutory period shall be presumed to be dead on expiry of seven years and not earlier.

(2) Section 108 of the Indian [Evidence Act, 1872](#) is not exhaustive. It is permissible for the court to raise a suitable presumption regarding date of presumed death depending upon the attendant circumstances and other reliable material on record. In other words, no Rule of universal applicability can be spelt out regarding presumed date of death. In my opinion, proposition No. 1 must operate subject to proposition No. 2.'

The Supreme Court in Ramrati Kuer v. Dwarika Prasad, : [1967]1SCR153 , held that the admission made by a person to his knowledge, when it is against the person making such a statement, may be admissible under Section 32(3) of the Evidence Act.

30. Applying the tests laid down by the various courts of law to the facts of the case, it is clear that P.V. Gajapathi Raju was not heard of and his whereabouts were not known from August 2, 1975. The respondent initiated the proceedings for assessment by the issue of the notice under Section 55 of the Act on March 25, 1982. No doubt, that was within the period of seven years. But, he issued another notice on September 14, 1983, which was after the period of seven years and the respondent referred to the estate duty accounts filed by the petitioner and the letter dated April 2, 1982. The petitioner replied on October 19, 1983, stating that Gajapathi Raju was not heard of for more than seven years and he is deemed to be dead and she has filed estate duty accounts only on that basis. She also explained that no proceedings were pending before the court, and that is why, she has not obtained any orders of the court. The issue of letter dated September 14, 1983, and the letter of the petitioner dated October 19, 1983. clearly show that the Assistant Controller of Estate Duty has drawn the presumption as to the factum of death on the expiry of seven years when he initiated the proceedings for the purpose of estate duty assessment, and he has relied upon the presumption as to the fact of death on the expiry of seven years. The proceedings for the estate duty are quasi-judicial proceedings and if the Assistant Controller of Estate Duty has drawn the presumption of factum of death, it is open to him to determine the date of death as the seven year-period had expired and it is open to the petitioner to establish by evidence or to dispute the factum of death on the expiry of seven years. In the proceeding for estate duty, the death is a relevant and material factor on the basis of which alone the proceedings for the estate duty could be initiated and levy of estate duty can be enforced. Once the presumption has been drawn by the respondent on the expiry of seven years as to the factum of death, if the petitioner desires to rebut the same, it is open to the petitioner to disprove the same. In other words, once the presumption as to the factum of death was drawn by the Assistant Controller of Estate Duty, that would be sufficient for him to clothe him with jurisdiction to initiate the estate duty assessment proceedings and once the proceedings under the Estate Duty Act commence, it is open to the respondent to determine the date of death on the date of initiation of the estate duty assessment proceedings and it will be open to the petitioner to rebut the presumption drawn by the respondent both as to the factum of death and to

disprove the materials on the basis of which the date of death was determined by letting in relevant evidence to that effect. Therefore, it cannot be said that the Assistant Controller of Estate Duty has lacked jurisdiction to initiate the proceedings for levy of estate duty. We have seen that the case laws have held that there is no presumption as to the exact date of death and it is a matter of evidence.

31. It is relevant to notice here that there are no adversarial proceedings under the estate duty assessment proceedings before the respondent. In civil disputes, a party files pleadings stating necessary facts leading to the presumption of death and gives evidence during the trial in support of his pleadings in the court of law as to the date of death which becomes a matter of evidence. But, the evidence given in support of the death is subject to cross-examination, and it is still open to the court to accept the evidence. In estate duty proceedings, the Assessing Officer, on the materials, draws a presumption as to the fact of death and determines the date of death, and it is for the party to disprove both the presumption as well as the determination and the Assessing Officer is not expected to give evidence or examine himself in the said proceedings. The question that has to be determined is whether there are sufficient materials for the Assessing Officer to draw the presumption as to the factum of death and to determine the date of death.

32. Under the Estate Duty Act, the function of the Assistant Controller of Estate Duty is almost a two-in-one function and he is the judge of his own cause. It is open to him to rely upon the presumption under Section 108 of the Evidence Act and determine that the death had occurred on the date when he initiated the proceedings or subsequently, unless the contrary is shown by the petitioner by such evidence, to the satisfaction of the Assistant Controller of Estate Duty. If the petitioner establishes the contrary fact that P.V. Gajapathy Raju was seen alive or heard after the date or even before the date, then, it can be said that the petitioner has discharged the onus cast upon the petitioner. I, therefore, hold that the respondent has drawn the presumption as to the factum of death and initiated proceedings before the Act ceases to apply to deaths occurring after a particular date and he is entitled to rely upon the materials and determine the date of death and it will be for the accountable person to disprove the same by cogent evidence,

and if the accountable person fails to discharge the burden, then, the presumption as to the fact of death and his determination as to the date of death would operate and it will be open to the Assessing Officer to continue the assessment proceedings validly initiated by him. Therefore, it cannot be said that the respondent lacked jurisdiction when he initiated the proceedings for estate duty assessment and it is open to him to rely upon the presumption under Section 108 of the Evidence Act as to the factum of death, and it is equally open to him to determine the date of death on the date when he initiated the estate duty assessment proceedings as the question of death was raised in the said proceedings. Further, the petitioner herself has filed the estate duty accounts and it can only be on the basis that, even according to the petitioner, P.V. Gajapathy Raju was dead, and it is permissible for the respondent to determine the date of the death depending upon the facts, materials and circumstances of the case and the admission by the petitioner that P.V. Gajapathy Raju was dead. The stand of the petitioner that her husband was dead is a very relevant material for the purpose of estate duty. The decision of the Bombay High Court in Jeshankar Reva-shankar v. Bai Divali AIR 1920 Bom 85 and the decision of the Allahabad High Court in Ram Singh v. Board of Revenue, : AIR1964 All310 , are relevant and Section 108 of the Evidence Act is not exhaustive and it is permissible for the court to draw a suitable presumption even regarding the time of death. Therefore, it cannot be held that the respondent lacked jurisdiction to continue the proceedings even after the date when the Act was made in-applicable to cases of death occurring after a prescribed date, as the proceedings for estate duty in the instant case were initiated prior to that date and were pending.

33. Learned senior counsel for the petitioner relied upon an order of this court in Application No. 378 of 1987, dated January 13, 1987. I am of the view that the order of this court is only a piece of evidence and this court has not declared that P.V. Gajapathy Raju died only on the date of passing of the order. It is not an order passed in a suit for declaration, and the order was passed in an application filed under the provisions of the Indian Succession Act for the grant of letters of administration. The court has not declared in that proceeding that P.V. Gajapathy Raju died only on the date of passing of the order. This court held that he is presumed to be dead under Section 108 of the Evidence Act, and therefore, the

order of this court in Application No. 378 of 1987 would not preclude the EDO/ respondent from drawing necessary presumption under Section 108 of the Evidence Act. I am of the opinion that it cannot be said that the respondent had lacked jurisdiction and the respondent should be prohibited from proceeding further with the assessment proceedings under the provisions of the Estate Duty Act.

34. However, before passing the final order, it has to be mentioned that on the basis of the orders of this court in W. M. P. No. 6784 of 1988, this court permitted the respondent to proceed with the assessment proceedings and it is not clear whether he has passed any final order. However, even if the final order has been passed, I hold, it will have no effect. In the view I have taken, it is open to the respondent to draw a presumption as to the factum of death on the expiry of seven years and it is for him to determine the date of death. It is open to the petitioner to establish the fact that P.V. Gajapathy Raju was alive subsequently, if the petitioner desires to avail of the opportunity and it is open to the petitioner to avail of the same within thirty days from the date of this order. If the petitioner does not avail of the opportunity, it is open to the respondent to rely upon the presumption under Section 108 of the Evidence Act that would operate against the petitioner as to the fact of death and determine the exact date of death on materials or draw suitable presumption as to the date of death as he has initiated and continue the estate duty assessment proceedings before the Act was made inapplicable to deaths occurring after March 16, 1985. Needless to mention, if the respondent determines the date of death, subsequent to March 16, 1985, he will have no jurisdiction to proceed.

35. Subject to the above, the writ petition is dismissed. However, there will be no order as to costs.

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