V. Venugopala Ravi Varma Rajah

Vs

Union Of India and Another. [1969] 71 I. T. R. (Sh. N.) 35

Civil Appeals Nos. 2436 and 2437 of 1966

(J.C. Shah, V. Ramaswami - I, A.N. Grover JJ)

26.02.1969

JUDGMENT

SHAH J. -

Rajah Padmanabha Ravi Varma was the karta of a Hindu undivided family governed by the marumakkattayam law. On his death in 1961 the appellant - his brother - became the karta of the family. In 1909 the members of the family, while remaining joint, had entered into an arrangement for separate enjoyment of certain properties of the family by different members. For the assessment year 1958-59 Rajah Padmanabha filed, in the status of a Hindu undivided family, a return under the Expenditure-tax Act of the taxable expenditure incurred by him in respect of the property under his "personal control and direct enjoyment". The Expenditure-tax Act of the taxable expenditure incurred by the other members of the family in respect of properties set apart for their use and enjoyment. The Expenditure-tax Officer also served a notice of assessment under section 15(2) calling for a return of expenditure by the Hindu undivided family for the assessment year 1959-60.

The appellant then moved petitions before the High Court of Kerala under article 226 of the Constitution for writs quashing the assessment and the notice of demand for the year 1958-59 and the notice calling for a return for the assessment year 1959-60 contending, inter alia, that he was not liable to be assessed to tax on expenditure incurred in respect of property not "under his personal control and direct enjoyment". A single judge of the High Court of Kerala upheld the contention. In appeal a Division Bench of the High Court set aside the order of the single judge.

The appellant contends that the law which enables the Expenditure-tax Officer to assess tax on the expenditure of all members of the Hindu undivided family governed by the marumakkattayam law discriminates, on the ground of religion, between the Hindu undivided family and a Mappilla undivided family governed by the marumakkattayam law resident in North Malabar.

Section 3 of the Expenditure-tax Act, 1957 (29 of 1957), is the charging section. In so far as it is relevant it reads :

> "(1) Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1958, a tax (hereinafter referred to as expenditure-tax) at the rate or rates specified in the Schedule in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year..."

Under the charging section tax is imposed on individuals and Hindu undivided families. An

undivided family which consists of Hindus alone may be treated as a unit of assessment : an undivided family whose members are not Hindus will be assessed to tax as an "individual". Counsel for the appellant contends that, whereas a Hindu family governed by the marumakkattayam law is assessed to expenditure-tax on the total expenditure-tax on the total expenditure incurred by all the members of the undivided family, because the unit of taxation under section 3 is the Hindu undivided family, because the unit of taxation under section 3 is the Hindu undivided family, a Mappilla undivided family governed by the marumakkattayam law in North Malabar is liable to be assessed to tax as an "individual", and on that account at a lower rate.

Marumakkattayam law applied originally by usage to a section of the Hindus inhabiting the South-Western coastal region in India. Some centuries ago a section of the Hindu inhabitants of North Malabar were converted es masse to Islam, but they still continued to remain governed by the marumakkattayam law especially in matters of property relations among members of the family. The law administered by the courts to these communities is, subject to express statutory provisions, a body of customs and usages which have received judicial recognition.

The mistakshara law of joint family is founded upon agnatic relationship : the undivided family is characterised by community of interest and unity of possession among persons descended from a common ancestor in the male line. The principal incident of marumakkattayam law is that it is matriarchate : members of the family constituting a marumakkattayam tarwad are descended through a common ancestress in the female line with equal rights in the property of the family. Under the customary marumakkattayam law no partition of the family estate may be made, but items of the family property may by agreement be separately enjoyed by the members. On the death the interest of a member devolved by survivorship. Management of the family property remained in the hands of the eldest male member, and in the absence of a male member a female member. A tarwad may consist of two or more branches known as thavazhies, each tavazhi or branch consisting of one of the female members of the tarwad and her children and all her desc

The District of Malabar formed part of the State of Madras till October 31, 1956. The customary marumakkattayam law applicable to Malabar was modified in certain respects from time to time by the Madras Legislature, e.g., the Malabar Marriage Act, 1896 (4 of 1896), the Malabar Wills Act, 1898 (5 of 1898). But the law relating to property relations between the members of the tarwad remained in its customary form till the fourth decade of this century. Under the customary law partition of the property of the family could not be claimed by an individual member or even by a thavazhi. It was so laid down by a course of judicial decisions for over 75 years, and this rule was accepted as settled law till the Madras Legislature enacted the Madras Marumakkattayam Act, 1933 (22 of 1933) and the Mappilla Marumakkattayam Act, 1939 (17 of 1939), the former applying to Hindus and the latter to Mappillas who are Muslims. There were, however, significant differences between two Acts. Under Act 22 of 1933 only a tarwad could

These and other statutory modifications were applicable only to the Malabar area, which was originally part of the State of Madras and not to the State of Travancore-Cochin as it existed before the State Reorganization Act, 1956. There were several legislative measures in the States of Travancore and Cochin before those States merged with the Indian Union, and in the State of Travancore-Cochin after merger and in the State of Kerala, making changes in the customary Marumakkattayam law : these were Cochin Makkathayam Act, 1115 M. E. (17 of 1115 M. E.); Cochin Marumakkattayam Act, 1095 M. E. (13 of 1095 M. E.); Cochin Nair Act, 1095 M. E. (13 of 1095 M. E.) and Act No. 29 of 1113 M. E.; Cochin Paliam Tarwad Act, 1097 M. E. (8 of 1097 M. E.); Cochin Thiyya Act, 1107 M. E. (8 of 1107 M. E.); Travancore Nanjinad Vellala Regulation,

1101 M. E. (6 of 1101 M. E.); Travancore Nayar Regulation, 1088 M. E. (1 of 1088 M. E. and II of 1100 M. E.); Travancore Wills Act, 1074 M. E. (6 of 1074 M. E.). It is sufficient to ob

The Hindu Succession Act, 1956 (30 of 1956), also made inroads upon the customary law. Section 3(h) defined the expression "marumakkattayam law", and by section 7 it was provided that if a Hindu to whom the marumakkattayam or nambudri law would have applied, if the Hindu Succession Act had not been passed, dies, his or her interest in the property of a tarwad, tavazhi or illom shall devolve by testamentary or intestate succession, not according to the marumakkattayam law or the nambudri law, but under the Hindu Succession Act. By section 17 of the Act sections 8, 10, 15 and 23 apply to persons governed by the marumakkattayam law subject to certain modifications.

The Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), and the Hindu Marriage Act, 1955 (23 of 1955), also apply to Hindus governed by the marumakkattayam law and modify the law relating to family relations.

Initially common system of law relating to family property of the tarwad was applicable to Hindus and Mappillas governed by the marumakkattayam law. Since the enactment of Madras Act No. 22 of 1933 and the other Acts governing the Hindus, and Act No. 17 of 1939 governing the Mappillas, points of similarity even in property relations in the tarwads have considerably narrowed. Application of the Islamic laws of marriage and inheritance to the Mappillas led to greater cleavage. If a member of a Mappilla marumakkattayam family married a person not governed by the marumakkattayam law, the property of the person governed by the law, whereas the property of the person governed by the Islamic law whereas the interest of a Mappilla governed by the marumakkattayam law devolved by survivorship, his separate property descended by inheritance in accordance with the Islamic law. Hindus governed by the marumakkattayam law since the enactment of the Hindu Succession Act remained members of the undivided family, but on death

In a Hindu tarwad governed by the marumakkattayam law the descent is matriarchate and all members, male and female, have equal shares in the property of the tarwad. Though not a family governed by the mitakshara law it is still a Hindu undivided family within the meaning of the Expenditure-tax Act. The property relations between members of a Mappilla marumakkattayam tarwad governed by the matriarchate with equal shares for males and females were in certain respects, already stated, different from the relations between members of a Hindu joint family governed by the marumakkattayam law.

The community of Mappillas governed by the marumakkattayam law is, compared to the Hindus, a small community restricted only to the northern area of the Malabar District. It is again a dwindling community because of the impact of the law of inheritance applicable to share obtained on partition. It is in the light of these special characteristics that the plea of discrimination must be considered.

Equal protection clause of the Constitution does not enjoin equal protection of the laws as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways; the legislative may select persons, properties,

transactions and objects, and apply different methods and even rates for tax, if the legislative does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or

It is for the legislature to determine the objects on which tax shall be levied, and the rates thereof. The courts will not strike down an Act as denying the equal protection of laws merely because other objects could have been, but are not, taxed by the legislature : Raja Jagannath Baksh Singh v. State of Uttar Pradesh. The same rule has been accepted by the courts in America.

Willis in his Constitutional Law of the United States has stated at page 587 :

> "A state does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods, and even for taxation if it does so reasonably."

As stated in Weaver's Constitutional Law, article 275, at page 405 :

> "The fourteenth amendment was not designed to prevent a state from establishing a system of taxation or from effecting a change in its system in all proper and reasonable ways, nor to require the states to adopt an ironclad rule of equality to prevent the classification of property for purposes of taxation or the imposition of different rates upon different classes."

Weaver again says at page 397 :

> "Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons, all of whom stand in the same relation in the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege... A classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates. In respect to such distinction, a legislative body has a wide discretion and an Act will not be held invalid unless the classification is clearly unreasonable and arbitrary."

It is unnecessary to multiply citations.

The Parliament has declared for the purpose of the Expenditure-tax Act an undivided family of Hindus as a unit of taxation and imposed tax at the rates prescribed. To fall within the description the unit must be an undivided family of Hindus. Within the expression "Hindus undivided family" will fall an undivided family of Hindus governed by the marumakkattayam law. Even though the basic scheme of a Hindus undivided family governed by the mitakshara law and the marumakkattayam law is different in two important respects, viz., the descent is through females and children both males and females have equal rights to property - these families are still Hindu undivided families. The law applicable to Hindu undivided family governed by the marumakkattayam law and to the Mappilla tarwad in North Malabar has the same characteristics in two principal respects - (a) descent is traced through females; and (b) there is community of interest and unity of possession in respect of the family property. But the laws applicable

The Mappilla families governed by the marumakkattayam law reside in a small part of the country and from numerically a small community. Parliament has again been accustomed in enacting tax laws to make a distinction between a Hindu undivided family consisting of Hindus and undivided families of Mappillas. By the taxing Acts Parliament could have treated Mappilla tarwads as units of taxation. But the mere fact that the law could have been extended to another class of persons, who have certain characteristics similar to a section of the Hindus but have not been so included, is not a ground for stricking down the law. In treating a Hindu undivided family as a unit of taxation under the Expenditure-tax Act and not a non-Hindu undivided family, the Parliament has not attempted an "obvious inequality".

Under the taxing Acts the scheme of treating a Hindu undivided family as a district taxable entity has been adopted for a long time, e.g., the Indian Income-tax Act, 1869 (IX of 1869), the Indian Income-tax Act, 1870 (IX of 1870), the Indian Income-tax Act, 1871 (XII of 1871), Act No. VIII of 1872, Act No. II of 1886, Act No. VII of 1918, Act No. XI of 1922, Act No. 43 of 1961 have treated a Hindu undivided family as a distinct taxable entity. Similarly under the Wealth-tax Act, 1957 (27 of 1957), and the Gift-tax Act, 1958 (18 of 1958), the Hindu undivided family is made a unit of taxation. Under the Business Profits Tax Act, 1947 (21 of 1947), and the Excess Profits Tax Act, 1940, also the Hindu undivided family was made a unit of taxation. For the purposes of these Acts Mappilla tarwads governed by the marumakkattayam law have been regarded as individuals.

This long course of legislative history in matters of taxing income, wealth, gifts, capital gains and business profits clearly indicates that the legislature regarded undivided families of Hindus as a class to which the legislation may approximately be applied. An intention to effectively administer the taxing Acts and not to discriminate on the ground of religion may be attributed to the legislature.

Parliament in the present case having made the Expenditure-tax Act applicable to Hindus governed by the law of the joint family, but not including Mappilla families who are governed by the Mappilla marukkattayam Act has not made any discrimination and the charging section is not liable to be struck down on the ground that the Mappilla may have to pay tax at a lower rate, whereas a Hindu undivided family, by reason of the amalgamation of the expenditure of all the members of the family, may have to pay tax at a higher rate.

The appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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