

Inspection Assistant Commissioner of Agricultural Income-Tax and Sales Tax (Special), Kozhikode

Vs

V. K. Ramunni Panikkar, Receiver of Zamorin's Estate

Civil Appeal No. 1397 of 1969

(K.S. Hegde, A.N. Grover JJ)

05.10.1971

JUDGMENT

HEGDE, J. -

1. One K. C. Sreemanavikraman alias Eattan Raja was the Zamorin of Calicut. He was a sthanamdar. In respect of the sthanam property, he was liable to pay agricultural income-tax under the Kerala Agricultural Income-tax Act, 1950, (in brief "the Act") for the period from November 1, 1956, to March 31, 1958. Sreemanavikraman Raja died on May 2, 1958. Thereafter, on May 12, 1958, Sthanam Properties (Assumption of Temporary Management and Control) and the Hindu Succession (Amendment) Act, 1958 (28 of 1958) came into force. After the death of Sreemanavidraman Raja, the sthanam property was taken possession of by Kunhammaman Raja claiming to be the succeeding sthanamdar. In respect of the assessment due for the period November 1, 1956, to March 31, 1958, Kunhammaman Raja was assessed to tax as the successor sthanamdar. The said Kunhammaman Raja died on December 23, 1960, without making any payment. Thereafter the next senior most member of the Zamorin family, P. C. Cheria Kunjunni Raja, took possession of the sthanam property. He also died soon after. During the life time of P. C. Cheria Kunjunni Raja, the Agricultural Income- tax Officer imposed a penalty of Rs. 5,000 for non-payment of the tax referred to earlier. P. C. Cheria Kunjunni Raja, paid a sum of Rs. 20,100 out of the tax and penalty due, as coercive proceedings were threatened to be taken against him. On the death of P. C. Cheria Kunjunni Raja, the next senior most member in the Zamorin family was D. C. Cheria Kunjunni Raja. When the Agricultural Income-tax Officer attempted to collect the tax imposed under the assessment order mentioned earlier from K. C. Cheria Kunjunni Raja, he filed a petition before that office representing that he had nothing to do with the sthanam property and the sthanam property stood divided under section 7(3) of the Hindu Succession Act, 1956, on death of Sreemanavikraman of May 2, 1958. The Hindu Succession Act, 1956, had come into force on June 18, 1956. After the receipt of that representation, the Agricultural Income-tax Officer passed an order on March 25, 1963, stating that as the successors of the Zamorin who died on May 2, 1958, had designated themselves as Zamorin Rajas, they have the liability to pay the arrears due to the Government. He directed K. C. Cheria Kunjunni Raja to pay the tax and penalty imposed. Aggrieved by that order K. C. Cheria Kunjunni Raja filed a writ petition in the Kerala High Court challenging the validity of the threatened proceedings against him. The High Court quashed the demand notices issued by the Agricultural Income-tax Officer to K. C. Cheria Kunjunni Raja. It held that the assessment having been made on Kunhammaman Raja, his share alone was liable to be proceeded against. It further held that the liability to pay the tax and penalty was that of the personal heirs of Kunhammaman Raja and that only to the extent they had come into possession of the assets

of the said Raja.

Thereafter, the Inspecting Assistant Commissioner, Kozhikode, ordered that as the entire sthanam property had devolved on the 693 members, all those persons were liable to pay the arrears of the tax and penalty. This order was made without notice to the parties.

Meanwhile, in the partition suit in the Zamorin's family, the court appointed two joint receivers. The receivers objected to the order of the Assistant Commissioner demanding the arrears of tax referred to earlier from them. They represented to him that the estate in their hands is not liable to pay the arrears of tax and penalty demanded. But, those representations were not accepted by the authorities. They threatened to proceed against the assets in the hands of the receivers. At that stage, the receivers filed the writ petition from which this appeal arises. Therein, they challenged the right of the Agricultural Income-tax Officer to collect the arrears of tax and penalty from out of the properties in their hands. The question before the High Court was whether the tax due from Manavikraman Raja was realisable from the assets in the hands of the receivers. The writ petition was heard by a Full Bench of three judges. By a majority, the High Court came to the conclusion that the only persons who were liable to pay the tax in question were the personal heirs of Sreemanavikraman Raja who had received the income. The court held that, in view of section 7(3) of the Hindu Succession Act, the sthanam property stood divided at the time of the death of Sreemanavikraman Raja into 693 shares, out of which 692 shares went to members of the tarwad of the deceased and one share to his personal heirs-wife and children. It opined that the tax due from Manavikraman Raja could have been levied and collected only from his personal heirs as they alone were liable to pay that tax. As a result of that conclusion it quashed the impugned demand.

Section 7 of the Hindu Succession Act provides for the devolution of interest in the property of a tarwad, tavazhi, kutumba, or illom. Section 7(3) provides :

"Notwithstanding anything contained in sub-section (1), when a sthanamdar dies after the commencement of this Act, the sthanam property held by him shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar as if the sthanam property had been divided per capita immediately before the death of the sthanamdar among himself and all the members of his family and the heirs of the sthanamdar shall be held by them as their separate property.

Explanation. - For the purposes of this sub-section, the family of a sthanamdar shall include every branch of that family, whether divided or undivided the male members of which would have been entitled by any custom or usage to succeed to the position of sthanamdar if this Act had not been passed."

We have considered the scope of this section in Civil Appeal No. 1137 of 1969. Hence, it is sufficient for our present purpose to state that in view of section 7(3) of the Hindu Succession Act, it must be held that on the death of Sreemanavikraman Raja, each of the members of his tarwad took a per capita share in the sthanam property as co-owners and not as his heirs. His personal heirs took the share which the deceased was deemed to have got as his share when he was taking his last breath. Section 7(3) of the Hindu Succession Act embodies a fiction. The purpose of that fiction was to gradually abolish the sthanam and to provide for the devolution of the sthanam properties on the members of sthani's tarwad except as regard one per capita share which the personal heirs of the sthanamdar are to inherit as the heirs of the sthanamdar.

The nature of a sthanam was considered by this court in *K. K. Kochuni v. State of Madras*. Therein, this court observed that, according to custom, sthanam means a position of dignity and respect and for maintaining that position, properties were attached to that office and the same was held by the "sthani". Sthani is solely entitled to the income of that property during his lifetime. The senior most member of a tarwad usually became the sthanamdar of the sthanam attached to that tarwad. On his succession to the sthanam, he stood property but he gave up his right in the tarwad property. All the same he and the members of his tarwad had the same right of succession to the properties of each other as if his severance from the family had been the result not of his succession to the sthanam, but a voluntary division between him and the rest of the family.

Whatever might have been the customary law, section 7(3) of the Hindu Succession Act - the validity of which was not in issue before us - by a fiction deems that the sthanam property stood divided amongst the sthani and the members of his tarwad, a split-second before his death. From the language of the section, it is clear that the members of the tarwad took the property as co-owners and not as the heirs of the deceased sthani. This fiction was created for the purpose of providing for the devolution of the sthanam properties. The Act 28 of 1958 came into force only on May 12, 1958. Therefore, that Act cannot have any effect on the sthanam with which we are concerned in this case because that sthanam stood destroyed on May 2, 1958. Hence, we need not refer to the provisions of that Act.

The income of the sthanam property during November 1, 1956, to March 31, 1958, was the exclusive property of Sreemanavikraman Raja. He was alone entitled to that income. Therefore, he alone was liable to pay the tax. Under the Agricultural Income-tax Act, no charge is created on property in respect of the arrears of agricultural income-tax. That being so, the liability to pay the arrears of tax due from the deceased sthani fell on his personal heirs and that only to the extent they received any of his assets. This position is clear from section 24(1) of the Act which provides that "where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the agricultural income-tax assessed as payable by such person or any agricultural income-tax which would have been payable by him under this Act, if he had not died."

The assessment made on Kunjunni Raja in his capacity as the successor sthanamdar was an invalid assessment. Legally, he never became the sthanamdar. There was no sthanam after the death of Manavikraman Raja. With the death of Manavikraman Raja the sthanam came to an end. The only persons who could have represented the estate of Sreemanavikraman Raja were his personal heirs. They were not made parties to the assessment. No notice of the assessment proceedings was given to them. Kanjunni Raja was not one of his legal representatives. Even if it is considered that the sthanam properties had devolved on the members of the tarwad by succession, Kanjunni Raja alone could have represented the entire body of successors numbering 692. There was no question of any bona fide enquiry by the assessing authority. It was clearly a case of misunderstanding of the legal position. Further, it does not appear that Kunjunni Raja was assessed as the legal representative of the deceased sthani. He appears to have been assessed as the successor sthani liable to pay the debts due from the estate. Hence, the assessment was not made in accordance with the law : see *First Additional Income-tax Officer, Kozhikode v. Mrs. Suseela Sadanandan*. In this view of the matter it is not necessary for us to consider the other provisions of the Act providing for the assessment and collection of the tax due from a deceased person.

In the result this appeal fails and the same is dismissed with costs.

Appeal dismissed.

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