

Wealth Tax Officer, Calicut

Vs

C. K. Mammed Kayi (Since Deceased) Through His Lrs, Shri T. M. Pocker and Others

Civil Appeal No. 1543 of 1971

(E. S. Venkatramiah, V. D. Tulzapurkar JJ)

07.04.1981

JUDGMENT

TULZAPURKAR, J. -

1. This appeal, by certificate granted by the Kerala High Court, raises the question whether Mappilla Marumakkatayam Tarwads of North Malabar - Muslim undivided families governed by Marumakkatayam Act (Madras Act 17 of 1939) - fall within the expression 'individual' and are assessable to tax under Section 3 of the Wealth Tax Act, 1957 ?
2. The checked history through which this litigation has passed may briefly be indicated in order to appreciate how the aforesaid question arises for our determination. At the relevant time the deceased-respondent was the karnavan of a Mappilla Marumakkatayam Tarwad registered as impartible within the meaning of Section 20(1) of the Mappilla Marumakkatayam Act (Madras Act 17 of 1939). He was assessed to wealth tax for the assessment year 1957-58 on the net wealth of his Tarwad considered as an individual under Section 3 of the Wealth Tax Act, 1957 and on completion of the assessment a demand notice dated July 16, 1958 was served on him for payment. On September 10, 1958 he filed a writ petition being O.P. No. 674 of 1958 seeking to quash the said assessment and the demand notice on the ground of unconstitutionality of the Wealth Tax Act 27 of 1957 (hereinafter called 'the Act'). Four other writ petitions were also filed by the karnavans of Hindu undivided families of Malabar and Cochin governed by the Madras Marumakkatayam Act 22 of 1923 challenging the constitutionality of the Act. Since common questions of law arose for determination, the High Court disposed of the writ petitions by a common judgment. The constitutionality of the Act was challenged on two grounds - (a) that the Parliament was not competent to include a Hindu undivided family in the charging Section 3 of the Act in view of Entry 86 in List I of the Seventh Schedule of the Constitution and (b) that the charging Section 3 of the Act was violative of Article 14 of the Constitution. The High Court repelled the first ground of challenge and held that Parliament was competent to include a Hindu undivided family in Section 3 of the Act as constituting a body or group of individuals coming within the term 'individuals' in Entry 86, but accepted the latter ground of challenge by its judgment rendered on July 1, 1951. It took the view that there was discrimination as between Hindu undivided families and Muslim Mappilla Tarwads which were also undivided families and, therefore, the charging section insofar as it governed undivided families was hit by Article 14. The High Court observed that the Department had failed to substantiate its contention that Muslim Mappilla Tarwads were so insignificant in number that their existence could be ignored in the context of the attack under Article 14. The Department carried the matter in appeal to this Court. By its judgment dated February 17, 1964, this Court set aside the judgment and orders of the High Court and remanded the cases to the High Court to consider whether Article 14 applied to the cases or not after giving the parties opportunity of

putting forward their respective cases supported by facts and figures. In doing so, this Court observed that on the question raised under Article 14 the High Court seemed to take the view that it was for the State to show that Article 14 was not applicable, that this was not correct and that it was for the party who came forward with the application that equality before the law or equal protection of laws was being denied to him to adduce facts to prove such denial.

3. On remand, out of the two contentions initially formulated by the assesseees, the first relating to the constitutionality of the Act in relation to Entry 86 in List I had in the meantime been squarely dealt with and overruled by this Court in the case of *Seth Banarsi Dass v. Wealth Tax Officer* ((1965) 2 SCR 355 : AIR 1965 SC 1387 : (1965) 56 ITR 224) and, therefore, the same was not pressed and only the second contention regarding the validity of the charging Section 3 as being violative of Article 14 was argued before the High Court. Each one of the three learned Judges, who heard the matter ultimately rejected the challenge and held that Section 3 was not violative of Article 14, but each one did so for different reasons and in that process the majority reached the conclusion that non-Hindu undivided families like Mappilla Marumakkatayam Tarwads, were altogether outside the purview of the charging Section 3 and hence assessment made and the demand notice served on the deceased-respondent deserved to be quashed. Justice Velu Pillai took the view that the legislative entries in a Constitution were to be widely and liberally construed but not the provisions of a taxing statute, that though the term 'individuals' in Entry 86 of List I would be comprehensive enough to include a body or group of individuals like undivided Hindu families similar construction of the expression 'individual' in Section 3 of the Wealth Tax Act so as to include non-Hindu undivided families like Mappilla Marumakkatayam Tarwads was not warranted, that the term 'individual' in Section 3 of the Act occurred in antithesis with the term 'Hindu undivided family' and if all undivided families were included in the term 'individual' there was no necessity to mention Hindu undivided family as a distinct taxing unit. He, therefore, came to the conclusion that non-Hindu undivided families were not covered by the term 'individual' and were, therefore outside the charging section of the Act, but their exclusion from the charging section did not attract the vice of discrimination under Article 14 inasmuch as it had been established that there were only 22 Mappilla Marumakkatayam Tarwads in the whole country and as such constituted an insignificant or microscopic minority and their exclusion from the charging provision was neither deliberate nor material and, therefore, Section 3 did not violate Article 14. Justice V.P. Gopalan Nambiyar, however, took the view that the expression 'individual' in Section 3 of the Act properly read included a group of individuals who were members of a Mappilla Marumakkatayam Tarwad but since such interpretation of the term 'individual' led to differential treatment to such non-Hindu undivided families as compared to Hindu undivided families including Hindu Marumakkatayam Tarwads and would be violative of Article 14 he would read down that expression so as to exclude Mappilla Marumakkatayam Tarwads and on reading down the expression as aforesaid Section 3 avoided the vice of the discrimination under Article 14. Justice T.S. Krishnamoorthy Iyer, however, took the view that the expression 'individual' in Section 3 of the Act included group of individuals who were members of a Mappilla Marumakkatayam Tarwad as, according to him, the specific mention of 'Hindu undivided family' as a separate assessable entity in the charging section could not restrict the meaning of the term 'individual' and, therefore, Mappilla Marumakkatayam Tarwads were assessable under Section 3 of the Act and that even after inclusion of such group of individuals within the expression 'individual' the charging Section 3 of the Act was not violative of Article 14 of the Constitution. He took the view that the equality clause permitted the legislature a wider discretion to classify persons, properties or transactions into different categories and tax them differently under its power of taxation, that a Hindu Marumakkatayam Tarwad and a Mappilla Marumakkatayam Tarwad were not similarly situate, that the classification made by the legislature

was rational and, therefore, the Act which provided for a lower limit of exemption to individual and higher limit of exemption to Hindu undivided family could not amount to hostile discrimination against group of individuals constituting the Mappilla Marumakkatayam Tarwad. In his view there was no substance in the challenge to Section 3 of the Act under Article 14 and the writ petition was liable to be dismissed. However, in accordance with the view of the majority that Mappilla Marumkkatayam Tarwads were outside the purview of Section 3 of the Act the writ petition was allowed and the assessment made and demand notice served on the deceased-respondent were quashed. In other words, though all the learned Judges repelled the challenge to the charging section based on Article 14 of the Constitution, the majority reached that conclusion by holding that Mappilla Marumakkatayam Tarwads were outside the purview of Section 3 of the Act. It is this latter view which is being challenged before us by the Department in this appeal.

4. Counsel for the Revenue urged two contentions in support of the appeal. In the first place he supported the construction placed by Krishnamoorthy Iyer, J., on the expression 'individual' in Section 3 of the Act that it took in a body or group of individuals like a Mappilla Marumakkatayam Tarwad for being assessed to wealth tax. Secondly, he urged that such construction was in accord with the long legislative practice obtaining in the taxing scheme in the country under which Mappilla Marumkkatayam Tarwads have always been treated and assessed in the status of individual - a legislative practice that has been judicially noted by this Court in the case of V. Venugopala Ravi Varma Rajah v. Union of India ((1969) 1 SCC 681 : (1969) 74 ITR 49). On the other hand, counsel for the respondent-assessee canvassed for our acceptance the view taken by Velu Pillai, J., that the expression 'individual' in Section 3 did not cover non-Hindu undivided families like Mappilla Marumakkatayam Tarwads and these were, therefore, outside the purview of the charging provision. He attempted to strengthen that view by contending that the expression 'individual' in Section 3 meant a single individual as a human being and according to him this was clear from the fact that references to 'wife', 'daughter' and 'child' of an individual occur in Section 4 of the Act. He further pointed out that under Section 5(1)(ii) wealth tax was not payable by an assessee in respect of his interest in the coparcenary property of any Hindu undivided family of which he is a member but there was no corresponding exclusion of the interest of the assessee in the property of a non-Hindu undivided family like a Mappilla Marumakkatayam Tarwad from the incidence of the tax and this also suggested that the term 'individual' in Section 3 was not intended to include a Mappilla Marumakkatayam Tarwad.

5. Section 3 of the Act at the material time ran thus :

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, 1957, a tax (hereinafter referred to as 'wealth tax') in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the schedule.

6. It cannot be disputed that the canon of construction applicable to entries in the three legislative lists occurring in a Constitution would be different from the canon of construction that would apply to terms or expressions used in a taxing statute. The subject of an entry in any legislative list is to demarcate as wide a legislative field as possible by the use of compendious words or expressions while the rule of construction applicable to a taxing statute must ensure that "the subject is not to be taxed unless the language of the statute clearly imposes the obligation" (per Lord Simonds in *Russell v. Scott* (1948 AC 422 : (1948) 2 All ER 1 (HL))). It is, therefore, clear that because the expression 'individuals' occurring in Entry 86 of List I of the Seventh Schedule to the Constitution takes within its ambit a Hindu undivided family, it would not automatically follow that the term

'individual' occurring in Section 3 of the Wealth Tax Act, 1957 would include a non-Hindu undivided family like a Mappilla Marumakkatayam Tarwad, but the question will have to be considered in the light of the scheme of the Wealth Tax Act itself. The enactment is intended to provide for the levy of wealth tax; the general scheme thereof is to assess all persons who happen to possess or earn wealth beyond a particular limit fixed by the statute to wealth tax and since the Act imposes a general tax on the entire wealth of the community the presumption would be of equality of incidence rather than exemption of a few. Secondly, the term 'individual' under Section 13(2) of the General Clauses Act, 1897 can be read in plural and as such would include a body or group of individuals like a Mappilla Tarwad. Thirdly, there is no warrant for suggesting that the two terms 'individual' and 'Hindu undivided family' have been used in antithesis with each other, for Section 3 being the charging provision is merely concerned with specifying different assessable units for purposes of assessment of wealth and imposition of the levy; it cannot be disputed that the legislature can select persons, properties, transactions and objects for the imposition of levy and for that purpose classify as many different assessing units as it could reasonably think necessary and this is how three assessable units namely, 'individual', 'Hindu undivided family' and 'company' (which was later omitted) have come to be specified in Section 3. In our view the specific mention of Hindu undivided family in the section does not result in the exclusion of group of individuals who only form a unit by reason of their birth like a Mappilla Tarwad from the operation of the section. It is difficult to accept the argument that if term 'individual' was intended to include joint families or undivided families it was redundant to specify Hindu undivided families.

7. In the context of the argument that the term 'individual' can refer only to a single human being it will be apposite to refer to what this Court has observed in *C.I.T. v. Sodra Devi* ((1957) 32 ITR 615 : 1958 SCR 1 : AIR 1957 SC 832). At page 620 of the report this Court has said :

. . . word 'individual' has not been defined under the Act (Indian Income Tax Act, 1922) and there is authority for the proposition that the word 'individual' does not mean only a human being but is wide enough to include a group of persons forming a natural unit.

The contention that because there are references to 'wife', 'daughter' and 'child' of an individual in Section 4 the term 'individual' in Section 3 should be construed as referable to a single human being cannot obviously be accepted. Similarly absence of provisions similar to those applicable to Hindu undivided family for assessing group of individuals who form non-Hindu undivided families (provisions like Section 5(1)(ii)) cannot affect or control in any manner the charging section. On construction, therefore, we are clearly of the view that the term 'individual' in Section 3 includes a group of individuals like a Mappilla Tarwad.

8. Furthermore, we would like to point out that the aforesaid construction would be in accord with the legislative practice obtaining in the taxing scheme in the country whereunder Parliament has always been treating and assessing Mappilla Marumakkatayam Tarwads in the status of 'individual' under the various taxing statutes. In *V. Venugopala Ravi Varma Rajah v. Union of India* ((1969) 1 SCC 681 : (1969) 74 ITR 49), a case arising under the Expenditure Tax Act 29 of 1957, the question for determination was whether Section 3 of that Act was violative of Article 14 of the Constitution because a Hindu undivided family (specifically mentioned as a distinct assessing unit) governed by the Marumakkatayam Law had to pay tax at a higher rate by reason of the amalgamation of the expenditure of all the members of the family whereas a Mappilla undivided family was required to pay tax at a lower rate since the members of such family governed by the Marumakkatayam Law were liable to be taxed as individuals under the section and this Court answered the question in the

negative. While doing so this Court pointed out how Parliament had been accustomed in enacting tax laws to make a distinction between a Hindu undivided family consisting of Hindus and undivided families of Mappillas and how for purposes of taxing statutes Mappilla Tarwads have always been regarded as individuals. The relevant observations in this behalf run as follows :

Under the taxing Acts the scheme of treating a Hindu Undivided Family has been adopted for a long time, e.g., the Indian Income Tax Act 9 of 1869, Indian Income Tax Act 9 of 1870, Indian Income Tax Act 12 of 1871, Act 8 of 1872, Act 2 of 1886, Act 7 of 1918, Act 11 of 1922, Act 43 of 1961 have treated a Hindu Undivided Family as a distinct taxable entity. Similarly under the Wealth Tax Act 27 of 1957 and the Gift Tax Act 18 of 1958, the Hindu Undivided Family is made a unit of taxation. Under the Business Profits Tax Act 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 Marumakkatayam Law have been regarded as individuals.

9. For all these reasons we hold that the term 'individual' in Section 3 of the Act includes within its ambit Mappilla Marumakkatayam Tarwads and they are well within the purview of the taxing provisions of the enactment. Further, even after their inclusion in the term 'individual' Section 3 of the Act would not be violative of Article 14 for the same reasons for which Section 3 of the Expenditure Tax Act, 1957 has been held to be not so violative by this Court in V. Venugopala case ((1969) 1 SCC 681 : (1969) 74 ITR 49).

10. In the result the appeal is allowed but there will be no order as to costs.

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