ANDHRA PRADESH HIGH COURT

Commissioner of Wealth-Tax

Vs

Mukundgirji

(B Jeevan Reddy and K Punnayya, JJ.)

22.02.1983

JUDGMENT

B. Jeevan Reddy, J.

1. The question of law referred in this case is :

"Whether, on the facts and in the circumstances of the case, the properties devolved on the assessee on his father's death are assessable in the status of 'individual' or in the status of Hindu undivided family'?"

2. The answer to this question depends upon the meaning and effect of s. 8 of the HIndu Succession Act, 1956. The assessee, Mukundgirji, belongs to a secular sect, viz., Dinggles Gosavees, governed by customary law relating to succession. According to this custom, each guru nominates his successor. The Guru is the head of the math and is the sole and absolute owner of all the properties belonging to the math. The assessee's grandfather, Maheshgirji, who was the Guru in his lifetime, nominated by his will dated November 20, 1946, one of his grandsons, viz., Ghanshamgirji as his successor-Guru. Thereby he bypassed his son, Chaturgirji, who had three sons, viz., Chandrabhangirji, Mukundgirji and Ghanshamgirji, Maheshgirji died on January 30, 1949. His will was not probated. Chaturgirji filed a suit in the City Civil Court, Hyderabad, consisting the will and claiming the guruship in himself. A compromise was arrived at in this suit whereunder Ghanshamgirji renounced his guruship in favour of his father, Chaturgirji. Certain business assets and properties left by Maheshgirji were divided amongst Chaturgirji and his three sons on 31-10-1951. In respect of two business assets, a partnership was formed consisting of the father and three sons and the income from this firm was assessed individually in the hands of each of the partner. Chaturgirji died on December 24, 1956, intestate. The properties left by him were divided equally by his three sons. For wealth-tax purposes, the properties which devolved upon the assessee on the death of his father were assessed as his individual properties. But from the assessment year 1967-68 onward, the assessee did not include these properties in his individual wealth-tax return. Instead, he filed a separate return for these properties in the status of "Hindu undivided family" on the ground that the assets in question were ancestral properties which consisting of himself and his sons. The WTO did not accept this contention and included these properties also in the personal net wealth of the assessee. On appeal, the AAC accepted the assessee's contention and deleted these properties from the

personal wealth of the assessee. The appeal preferred by the Department to the Tribunal was dismissed where upon the Revenue applied for and obtained this reference under s. 27(1) of the W. T. Act.

3. Mr. M. Suryanarayan Murthy, the learned standing counsel for the Department, contended that inasmuch as the said properties devolved upon the assessee under s. 8 of the Hindu Succession Act, 1956, they constitute the absolute properties of the assessee in which his sons have no right by birth. Counsel contended that whatever may have been the position in Hindu law earlier to the enactment of the Hindu Succession Act, the situation has undergone a radical change with the enactment of the said legislation. Besides s. 8, the learned counsel relied upon ss. 4, 9, 19 and 29 of the W. T. Act. On the other hand, it is contended by Mr. Y. V. Anjaneyulu, learned counsel for the assessee, that s. 8 deals only with the mode of devolution or transmission, as it may be called, of the properties of the deceased but does not concern itself with the character of the property in the hands of the recipient vis-a-vis his own sons. Counsel contended that there are no words in s. 8 or in any other provision of the Act to indicate the intention of Parliament to do away with the concept of Hindu law prevailing until then in that behalf, and that in the absence of any such clear manifestation it would be reasonable to interpret s. 8 consistent with the notions of Hindu law prevailing until then. Both the counsel relied upon decisions to which we shall refer at the appropriate stage.

4. For a proper application of the question at issue, it is necessary, in the first instance, to ascertain the position in Hindu law obtaining prior to the enactment of the Hindu Succession Act. According to the Mitakshara school, which is the law governing this State and the assessee herein, the property (i.e., separate or self-acquired property) of a Hindu dying intestate, devolved upon his son-of course, the son of the son, whether born before the death of the grandfather or later, had a right in this property, by birth. It did not matter whether these properties were obtained (by the grandfather) on a partition with his father/brother/son, or whether they were obtained under a will or a gift, or whether acquired by his own skill and exertions. In all these cases, the properties constituted his separate or self-acquired properties, as they may be called. On his death, they devolved upon his son. But, because these properties constituted ancestral properties in the hands of the son, the grandson had a share in those properties by birth-whether he was born before the death of the grandfather, or thereafter. In other words, in the hands of the son, these properties constituted HUF properties vis-a-vis the grandson(s).

5. In paragraph 43 of Mulla's Hindu Law (14th Edn.), dealing with the order of succession among Sapindas, S. Nos. 1 to 3, in so far as they are relevant, read as follows (p. 118 of 15th Edn.) :

> "1-3. Son, grandson (son's son) and great-grandson (son's son's son), and (after 14th April, 1937) widow, predeceased son's widow, and predeceased son's predeceased son's widow. A son, a grandson whose father is dead, and a great-grandson whose father and grandfather are both dead, succeed simultaneously as a single heir to the separate or self-acquired property of the deceased with rights of survivorship : *(Marudayi v. Doraisami*[1] and *Gangadhar v. Ibrahim*[2]."

6. In para. 223, the following statement of law occurs :
"223. Ancestral property. - (1) Property inherited from paternal ancestor. - All property inherited

by a male Hindu from his father, father's father, or father's father's father, is ancestral property. The essential feature of ancestral property according to the Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest in it by birth. Their rights attach to it, at the moment of their birth. Thus, if A inherits property, whether movable or immovable from his father or father's father, or fathers father's father, it is ancestral property as regards his male issue. If A has no son, son's son, or son, s son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases. But if he has sons, sons' sons, or sons' sons' son in existence at the time, or if a son, son's son or son's son's son is born to him subsequently, they become entitled to an interest in it by the mere fact of their birth in the family, and A cannot claim to hold the property as absolute owner nor can he deal with the property as he likes."

5. And, in para. 230 it is stated that : "Property acquired in any of the following ways is the separate property of the acquirer; it is called 'self-acquired' property.....

(1) Obstructed heritage.....
(2) Gift.....
(3) Government grant.....
(4) Property lost to family.....
(5) Income of separate property.....
(6) Share on partition.....
(7) Property held by sole surviving coparcener.....
(8) Separate earnings.....
(9) Gains of learning.....

6. Reference may also be made in this context to the following passage in the decision of the Supreme Court in Arunachala Mudaliar v. Muruganatha Mudaliar, :

> "It is undoubtedly true that according to Mitakshaa, the son has a right by birth both in his father's and grandfather's estate, but as has been pointed out before, a distinction is is made in respect by Mtakshara itself. In the ancestral or grandfather's property in the hands of the father, the son has equal rights with his father, while in the self-acquired property of the father, his rights are unequal by reason of the father having an independent power over or predominant interest in the same; vide Mayne's Hindu Law, 11Th Edn., p. 336. I Its obvious, however, that the son can assert this equal right with the father only when the grand-father's property has devolved upon his father and has become ancestral property in his hands. The property of the grandfather can normally vest in the father as ancestral property if and when the father inherits such property on the death of the grandfather or receives it, by partition, made by the grandfather himself during his lifetime. On both these occasions the grandfather's property come to the father by virtue of the latter's legal right as a son or descendant of the former and consequently it becomes ancestral property in his hands."

7. That this is the position in Hindu law is agreed to by both the counsel. The same statement of law occurs in Addl. CIT v. P. L. Karuppan Cheittiar [FB].
8. The question now is whether the HIndu Succession Act has made any departure from the above position. The Act has been enacted to amend and codify the law relating to intestate

succession among the Hindus. It applies to all Hindus including a Virashaiva, a Lingayat, or a follower of the Brahmo, Prathana or Arya Samaj, as well as to persons professing Buddhism, Jainisim or Sikh religiion. Section 4 gives an overriding effect to the provisions of the Act. Sub-section (1) of s. 4 reads thus :

"Save as otherwise expressly provided in this Act,-

> (a) any text, rule or interpretation of HIndu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
> (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

9. Section 6 of the Act deals with devolution of interest in coparcenary property. It has no application to the present case because Maheshgirji was not a member of a coparcenary on the date of his death. It is, therefore, really unnecessary to notice the features of s. 6 for the purpose of this case. It is s. 8 alone which applies and it reads as follows :

"The property of a male Hindu dying intestate shall devolve according to the provisions of this of this Chapter : -

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
(b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in class II of the Schedule ;
(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
(d) lastly, if there is no agnate, then upon the cognates of the deceased."

10. Since clause (a) of s. 8 refers to class I of the Schedule, we may conveniently set out class I of the Schedule at this stage.

> "Class I Son; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; of a pre-deceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son; widow of a predeceased son of a predeceased son."

11. According to s. 9, the heirs specified in the schedule in class I take simultaneously and to the exclusion of all other heirs. Similarly, the heirs mentioned in the first entry in class II are to be preferred to those in the second entry; and those in the second entry shall be preferred to those in the third entry and so on. Section 10 sets out Rules according to which the properties shall be divided among the heirs in class I of the Schedule. Section 19 says that if two or more heirs succeed together to the property of an intestate, they shall take the property per capita and per stripes unless otherwise expressly provided in the Act. It is also provided that they shall take the property as tenants-in-common and as not as joint-tenants.

12. It is relevant to notice that class I of the Schedule mentions the son but not son's son. The son of a predeceased son is mentioned but not the son of a son who is alive. It is true that this was

also the position even prior to the Hindu Succession Act; but what makes the difference is the following features : (a) section 4(1) (a) declares that with respect to any matter for which provision is made by this Act, any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Succession Act shall cease to have effect; (b) class I contains not only male members but also female members; and (c) according to s. 19, if two sons succeed to the estate of their father under s. 8, they take the property as tenants-in-common and not as join tenants. We shall elaborate. A look at the Hindu Succession Act would disclose that Parliament wanted to make a clean break from the old Hindu law in certain respects consistent with modern and egalitarian concepts. For the sake of removal of any doubts, therefore, s. 4(1) (a) declared that, in so far as a matter is provided for by the Act, one should lot only to the Act but not to the pre-existing Hindu law. It would, therefore, be not consistent with the spirit and object of the enactment to seek to strain the provisions of the Act to accord with the prior notions and concepts of Hindu law. That such a course is not possible is made clear by the inclusion of the females in class I of the Schedule. To hold to-day that the property which devolves upon a Hindu under s. 8 of the Act would be HUF property in his hands vis-a-vis his own sons would amount to creating two classes among the heirs mentioned in class I, viz., the male heirs in whose hands it would be joint family property vis-a-vis their sons; and female heirs with respect to whom no such concept can be applied or contemplated. The intention to depart from the pre-existing Hindu law is again made clear by s. 19 which says that two or more heirs succeeding together to the property of an intestate shall take the property as tenants-in-common and not as joint tenants. According to Hindu law as it obtained prior to the Hindu Succession Act, two or more sons succeeding to their father's property took it as join tenants but not as tenants-in-common. The Act has, however, chosen to provide expressly that they shall take as tenants-in-common. Accordingly, were are of the opinion that the properties which devolve upon a heir mentioned in class I of the Schedule under s. 8 constitute his absolute properties, and that his sons have no right by birth in such properties and cannot, therefore, claim any share or sue for partition of such properties.

13. In Karuppan Chettiar's case [FB], a Full Bench of the Madras High Court had to deal with this very question. Govindan Nair C.J. referred to the pre-existing position in Hindu law and to the relevant provisions of the Hindu Succession Act, in particular to s. 8, and observed thus (p. 530);

> "From this section, it is clear that when a male Hindu dies intestae, his property shall first devolve upon his heirs, being the relative specified in class I of the Schedule and what is said in this section and in section 9 will show that among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession. The relatives specified in class II will get a chance only if there is no heir of class I and if there is no heir of any of the two classes, the agnates of the deceased will get the chance, and lastly, if there is no agnate, the cognates of deceased will take the property. We are not concerned in this case with the effect of succession opening to relative specified in class II, or to agnates or cognates. There are heirs under class I and this is clear from the facts as already stated. The question is only, therefore, as to how those heirs take the property under section 8. If the mode of division provided by the section is different from that which obtained before the Hindu Succession Act came into operation, in accordance with

> the principles of Hindu law in view of what is categorically stated in section 4 of the Act, it is section 8 of the Act that should prevail and not the principles of Hindu law. If there is a difference in scope and effect regarding the mode or method of devolution that is provided in section 8, it is section 8 which should be applied and not the principles of Hindu law."

14. The learned CHief Justice further observed (p. 531) that the role contained in section 8 :

> "is directly derogatory of the law established according to the principles of the Hindu law and this provision in the statute must prevail in view of the unequivocal expression of the intention in the stature itself which says that, to the extent to which provisions had been made in the statue, those provisions shall override the established provisions in the texts of Hindu law."

15. The same view has taken by the Allahabad High Court in *CIT v. Ram Rakshpal*[3] and CWT v. Chander Sen . In Ram Rakshpal's case, M. H. Beg J., speaking for the Bench rejected the contention that s. 8 deals only with devolution of property leaving the remaining part of the Hindu law of succession and inheritance untouched. The learned judge observed that the object of the Act was to provide a "self-contained code on all matters relating to succession to property of citizens governed by the Act" and held that s. 8 lays down a line of devolution of property upon the heirs, who are divided into two classes mentioned in the Schedule, and that these rules must be given effect to unburdened by the notions prevailing under the principles of Hindu law. This principle was reiterated in Chander Sen's case . The same view has been taken in Shrivallabhdas Modani v. CIT , a decision of the Madhya Pradesh High Court. The decision is based upon the principle that the right of a son's son in his grandfather's property during the lifetime of his father, which existed under the Hindu law as in force before the Act, is not saved expressly by the Act; and, therefore, the earlier interpretation of the Hindu law giving right by birth in such properties ceases to have effect, and on the further principle that, in construing a condification Act, the law which was in force earlier should be ignored and the construction should be confined to the language used in the new Act. It was held that s. 8 should be taken as a self-contained provision laying down the line of devolution of property of a Hindu dying intestate. This view has been reiterated in CIT v. Ratanlal . The conclusion arrived at by theses courts is consistent with the one arrived at by us though it may be that, in the matter of reasoning, there may be some difference in approach and emphasis.

16. The only other court which has taken a contrary view is the Gujarat High Court in CWT v Harshadlal Manilal , and more elaborately in CIT v. Dr. Babubhai Mansukhbhai . The ratio of the Gujarat High COurt's view is to be found in the following passage occurring at pp. 421 and 422. DIvan C.J., speaking for the court, said :

> "It will be noticed that both section 6 and section 30 deal with the undivided share of a Hindu in Mitakshara coparcenary property. They do not deal with his individual self-acquired property. Therefore, it is obvious that what has been provided for in section 6 and section 30 of the Hidu Succession Act, can in no way affect the character of the property in the hands of the son when the son gets the property by inheritance from his own father. Neither section 6 nor section 30 deals with such a situation. Under section 8 of the Act it has been provided that the property of a male Hindu dying intestate shall

> devolve according to Chapter II upon the heirs, being the relatives specified in class I of the Schedule. If there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; and if there is no heir of any of the two classes, then upon the agnates of the deceased and if there is no agnate, then upon the cognates of the deceased. The result, therefore, is that so far as the property is concerned, it devolves according to the provisions of the chapter in which section 8 is located but that does not again deal with the character of the property in the hands of the person to whom the property devolves by succession. With respect to the learned judges of the Allahabad High Court, it is impossible to read into the words of section 8 any provision which interferes with the scheme of Hindu law as it prevailed prior to the enactment of the Hindu Succession Act. Neither section 6 nor section 8 nor section 30 affect this principle of Hindu law as to in what capacity or in what character the son would enjoy the property once he received it from his father in succession."

17. For the reasons set out herein before, we are unable to agree with the opinion of the Gujarat High Court, not withstanding our great respect for the learned Chief Justice and the other judge, who constituted the Bench.

18. Reliance is lastly placed by Mr. Anjaneyulu upon a Bench decision of this court in CED v. Estate of late M. V. K. Papa Rao . In view of the fact that the provisions of the Hindu Succession Act have not been noticed and also because the question referred also did not expressly refer to the position obtaining under the Hindu Succession Act, the observations relied upon cannot be treated as a pre-succession upon the meaning, scope or effect of s. 8 of the Hindu Succession Act. Of the there questions referred to therein, question No. 2 was to the following effect :

> "2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the properties devolved on the deceased through a will were ancestral properties in which the deceased's minor son acquired an interest and accordingly only 1/8th value of the properties is includible in the 'estate passing' and not 1/4th share as adopted by the Assistant Controller of Estate Duty?"

19. This question was dealt with and answered in the following paragraph, p. 816 :
"The answer to the second question turn on the interpretation of the will dated March 18, 1936. The English translation of the will - the relevant recital - speaks in the following words :'The other half shall be enjoyed by my wife, Seshamma, for her life-time, the share that fell to her, in the upstairs house, pati peradu, my adopted son, Suryarao's family shall have the rent of the immovable properties that fell to my wife's share to my father-in law, Manyam Surayya, or in his palace his sons or grandsons with full rights of sale, gift etc.' When succession opened or when the will became operative on the death of the testator, Ganeswara Rao, his widow, Seshamma, was alive, and on her death Manyam Surayya, the father of the deceased, received the land as legatee. On the death of Surayya, the land was succeeded to by Papa Rao. On these statement of facts, the question again resolves itself on facts, for, Surayya's death, his son, Papa Rao, succeeded to the property. The character of the property in the hands of Papa Rao can be none other than ancestral. Therefore, we agree with the reasoning of the Appellate Tribunal in answering the question in favour of the assessee."

20. It is evident, that this decision does not deal with s. 8 nor with its meaning and effect vis-a-vis

the principle of Hindu law obtaining hitherto.

21. For the above reasons, we answer the question referred to us in the following words : The properties which devolved upon the assessee on his father's death are assessable in the status of "individual" and not in the status of "Hindu undivided family" comprising of the assessee and his son or sons, as the case may be. The answer shall be in favour of the Department and against the assessee. There shall be no order as to costs.

22. The learned counsel for the assessee, Mr. Y. V. Anjaneyulu, makes an oral request for grant of leave to appeal to the Supreme Court. Since the question at issue is an important question relating to interpretation of s. 8 of the Hindu Succession Act and upon which question there has been a divergence of opinion among the High Courts in the country, we cerify this case to be a fit one for appeal to the Supreme Court under s. 29(1) of the W. T. Act, 1957 (in R. C. Nos. 19/78 and 32/79), as well as under s. 261 of the I. T. Act (in

Cases Referred.

1[1907] ILR 30 Mad 348
2[1923] ILR 47 Bom 556; 72 IC 307; AIR 1923 Bom 265
3[1968] 67 ITR 164 (All)
4R. C. No. 197 of 1979). A Certificate shall accordingly issue.