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M. K. BALAKRISHNAN MENON

v.

ASST. CONTROLLER OF ESTATE DUTY-cum-I.T.O.
ERNAKULAM

October 5, 1971

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[K. S. HEGDE AND A. N. GROVER, JJ.]

Marumakkattayam Law—Whether the entire estate passed in the death of the sthanamdar to his successors and if the entire property is liable to Estate duty under Estate Duty Act, 1953—Interpretation of s. 7(3) of the Succession Act, 1956.

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One T who was the third Stanamdar of a family, died in 1960. The sthanam owned several properties in his personal capacity. After his death a suit for the partition of the Sthanam was filed by various members of the Tarwad. The appellant was appointed a receiver of the properties covered by the third Sthanam of which the sthanamdar was the deceased T. The receiver was in these circumstances, treated as an accountable person in respect of the sthanam properties. Pursuant to a notice issued under s. 55 of the Estate Duty Act, 1953, by the Assistant Controller of

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Estate Duty, the appellant filed the necessary accounts. But he raised the contention in the assessment proceedings that according to s. 7(3) of the Hindu Succession Act, 1956, the deceased T was entitled only to 1/114th share in the sthanam properties and therefore only that share could be taken into account in determining the principal value of the Estate liable to duty.

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The respondent, however, held that the entire estate passed on the death of the deceased and was liable to duty. The appellant filed a petition under Art. 226 challenging the assessment order. A learned Single Judge allowed the petition and quashed the assessment order. The respondent filed an appeal before a divisional bench which was heard by a full bench and negatived the contention of the appellant and held that on the death of the Sthanamdar the whole of the Sthanam property passed and was deemed to pass and the Estate duty was payable on the whole of the property. Dismissing the appeal,

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HELD : (i) In Marumakkattayam branch of the Hindu law, the word 'Marumakkattayam' is inheritance through nephews and nieces. The essential difference between Marumakkattayam and the other schools of Hindu law is that the former is founded on the Matrilineal family while the latter is founded upon the agnatic family. In the Mitakshara joint family, the members claim their descent from a common ancestor but in Marumakkattayam family which is known as the tarwad, the descent is from a common ancestress. Tarwad is the name given to a joint family consisting of males and females who have all descended in the family line from a common ancestress. [964 E]

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(ii) The legal fiction created by the words, "as if the Sthanam property had been divided per capita immediately before the death of the sthanamdar", in s. 7(3) of the Succession Act, is meant for the purpose of gradually liquidating the sthanams and distributing the sthanam properties amongst the members of the sthanee's tarwad and his personal heirs without infringing the provisions of the Constitution. Neither the members of the Tarwad nor the personal heirs of the sthanee had any

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interest in the sathanam properties. The first part of s. 7(3) clearly provides that the property which passes on the death of the sathanamdar is the whole of the sathanam property held by him. The second part only deals with distribution of that property. The Sathanam property held by the sathanamdar has to pass from the sathanamdar to the members of the family to which he belonged and his heirs. Legal fiction in the words which have been set out, do not cut down the sathanam property that passes on the death of sathanamdar to a per capita share, the fiction having been introduced only for determining the respective shares for the purpose of distribution to the members of the family and the heirs of the sathanamdar. [1968 G]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1137 of 1969 and 1421 of 1971.

Appeals by certificate/special leave from the judgment and order dated November 29, 1966 of the Kerala High Court in Writ Appeal No. 119 of 1965.

M. C. Chagla and *M. R. K. Pillai*, for the appellant (in both the appeals).

S. T. Desai, *M. C. Bhandare* and *B. D. Sharma*, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave from a judgment of the Kerala High Court in which a question of substantial importance arises relating to the extent of the property that attracts Estates Duty on the death of a Sthanee or Sthanamdar in a Hindu family governed by the Marumakkattayam law.

It may be mentioned that Civil Appeal No. 1137/69 was brought to this Court by certificate against the same judgment but the certificate is defective for want of reasons and has therefore to be revoked.

One K. K. Thampan who was the third Sthanomdar of Kuthiravattathu Family died on May 17, 1960. The Sthanam owned several properties such as forest lands, agricultural lands, buildings etc. The deceased also owned several properties in his personal capacity. After his death a suit for the partition of the Sthanam was filed in a civil court by the various members of the Tarwad. The appellant before us was appointed a Receiver of the properties covered by the third Sthanam on which the Sthanamdar was the deceased K. K. Thampan. The Receiver was, in these circumstances, treated as an accountable person in respect of the Sthanam properties. Pursuant to a notice issued under s. 55 of the Estate Duty Act 1953, hereinafter called the 'Act', by the Assistant Controller of Estate Duty (respondent herein) the appellant file the necessary accounts. But he raised a contention in

A the assessment proceedings that according to s. 7(3) of the Hindu Succession Act 1956, hereinafter called the "Succession Act", the deceased Thampan was entitled only to 1/114th share in the properties in the Sthanam and therefore that share could be taken into account in determining the principal value of the estate liable to duty. The respondent, however, held that the entire estate passed on the death of the deceased and was liable to duty. The appellant filed a petition under Art. 226 of the Constitution challenging the assessment order. A learned single judge of the High Court allowed the petition and quashed the assessment order. The respondent filed an appeal before a division bench of the High Court which was heard by a full bench together with other appeals involving a similar point. Before the High Court it was not disputed by the appellant that if the Act stood alone the entire properties of the Sthanam were liable to estate duty under the Act. The sole contention was that s. 7(3) of the Succession Act made a difference inasmuch as by virtue of the partition postulated under that provision immediately before the death of the Sthanamdar the property that passed or should be deemed to pass on the death of the Sthanamdar was only his *per capita* share of the Sthanam property and not the whole property of the Sthanam. The full bench negatived the contention of the appellant and held that on the death of the Sthanamdar the whole of the Sthanam property passed and was deemed to pass and the Estate duty was payable on the whole of the property.

E The Act was enacted to provide for the levy and collection of estate duty. Section 5(1) provides for levy of estate duty and says, *inter alia*, that in the case of every person dying after the commencement of the Act there shall, save as expressly provided, be levied and paid upon the principal value ascertained as provided of all property settled or not settled which passes on the death of such person a duty called "estate duty" at the rate fixed in accordance with s. 35. Section 7, to the extent it is material, is reproduced below :—

G "S. 7. Interests ceasing on death.—(1) Subjects to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the death of the deceased is death the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasenthana law.

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- (2).....
 - (3).....

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole.

Explanation.—For the removal of doubts, it is hereby declared that the holder of a Sthanam is neither the holder of an office nor a corporation sole within the meaning of this sub-section”.

In order to determine as to what property shall be deemed to pass on the death of Sthanamdar it is necessary to decide the nature of the Sthanam property and the interest of the Sthanamdar in that property. For this purpose we have to turn to the Marumakkattayam branch of Hindu law and then consider what is the exact ambit and scope of the changes which have been made under that law so far as succession is concerned in the case of Sthanamdar by the Succession Act to the extent it is material in the present case. As pointed out in Mayne's Hindu Law and Usage, 1950 Edn. Marumakkattayam law is a body of customs and usages which have received judicial recognition. It prevails among a considerable section of the people inhabiting the west coast of south India. The literal meaning of the word “Marumakkattayam” is inheritance through nephews and nieces. The essential difference between Marumakkattayam and the other schools of Hindu Law is that the former is founded on the matriarchate while the latter is founded upon the agnatic family. In the Mitakshara joint family the members claim their descent from a common ancestor but in a Marumakkattayam family which is known as the tarwad the descent is from a common ancestress. Tarwad is the name given to a joint family consisting of males and females who have all descended in the family line from a common ancestress. Many compares a tarwad to a family corporation. Every member of a tarwad has equal rights in the property by reason of his or her birth in the tarwad. It was laid down in a course of judicial decisions in the nineteenth century that one or more members of a tarwad cannot claim partition and separate possession of his or their share of the tarwad property without the consent or concurrence of all the members of the tarwad. The Madras legislature enacted certain statutes giving a right of partition to the members of a tarwad to enforce partition of a tarwad property. The shares on partition were to be on per capita basis.

Now Sthanam and Sthanamdar emerged in this manner. Some of the aristocratic Hindu families in the west coast had attached to

- A** their families an office called Sthanam meaning literally "status, rank or dignity". The holder of Sthanam was called a Sthaneer or Sthanamdar. The rulers granted Sthanams to their chieftains and important public officers which were usually accompanied by a grant of land for the maintenance of the dignity of the officer.
- B** In addition to the families of princes and chieftains there were other families which possessed Sthanams without any particular dignity attached to them. The incidents of the institution were that the senior most member of family became the Sthanamdar who was usually the male member; but there were instances where the senior most female member became the Sthanamdar. Separate properties belonged to each Sthanam and they vested in the holder
- C** of the office for the time being and descended to the successors in office. One important feature was that Sthanamdar ceased to have any interest in the property of his tarwad and the members of his tarwad had in their turn only reversionary rights to the Sthanam properties. The Sthanamdar had a limited estate in the sense that he could encumber or alienate the Sthanam properties only
- D** for a legal necessity like any limited owner but otherwise he was absolutely entitled to the income accruing during his tenure of office. His position was analogous to that of a holder of an impartible estate. His successor had no interest in it and the right of the successor was nothing more than a *spes successions*. There is a good deal of discussion on these matters in a judgment of this Court in *Kavalappara Kottarahil Kochuni & Others v. The State of Madras & Ors.*⁽¹⁾ which is on the same lines as above. In that case the constitutionality of the provisions of the Madras Marumakkattayam (Removal of Doubts) Act, 1955 passed by the Madras Legislature soon after a decision of the Privy Council declaring that the properties in possession of the Sthanamdar were
- E** sthanam properties in which the members of the tarwad had no interest had been challenged. By s. 2 of that Act it had been provided that any sthanam in respect of which there was or had been, at any time, an intermingling of the properties of the sthanam and the properties of the tarwad or the members of the tarwad had been receiving maintenance from the properties of the sthanam or there had been a vacancy caused by there being no
- F** male member of the tarwad eligible to succeed to the sthanamdar, shall be deemed to be a Marumakkattayam tarwad and the properties appertaining to such sthanam shall be deemed to be properties belonging to the tarwad. It was held in the majority judgment that the aforesaid provisions of the Madras Act were a device to deprive the sthanam of its properties and vest them in the tarwad and as such they were directly hit by Art. 19(1)(f) and
- G** could not be saved by Art. 19(5) of the Constitution.
- H**

(1) [1960] 3 S.C.R. 887.

Now all the sthanams would gradually get completely liquidated by the provisions of the Succession Act. Section 7 of the Succession Act deals with devolution of interest in the property of a tarwad etc. Sub-sections (1) and (3) of that section which are material for our purposes may be reproduced :

“7(1) When a Hindu to whom the marumakkattayam or nambudri law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a tarwad, tavazhi or illom, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the marumakkattayam or nambudri law.

Explanation

(3) 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 then living, and the shares falling to 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”.

The result of the enactment of s. 7(3) of the Succession Act is that the sthanams continued till the death of the sthanamdar and thereafter the sthanam property devolved upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar (his personal heirs). The division was to be per capita on the basis of a notional partition having taken place immediately before the death of the sthanamdar.

The points for consideration are :

1. Whether the provisions of the Succession Act can affect and are relevant for the levy of estate duty under the Act ?

A (2) What is the true effect of the provisions of s. 7 (3) of the Succession Act ?

(3) Whether the estate duty would be leviable on the entire property which belonged to the sathanamdar or it can be levied only on 1/114th share in the sathanam properties to which alone the deceased Thampan would have been entitled if a partition had taken place under s. 7(3) of the Succession Act immediately before his death ?

C As regards the first point it has already been mentioned that before the High Court there was no dispute that if the court had to look to the provisions of the Act alone the entire property of the sathanam was liable to estate duty. On behalf of the appellant it has been contended before us that in order to determine the interest in property which ceases on the death of the deceased and which is deemed to pass on his death and the benefit which accrues or arises by the cesser of such interest within the meaning of s. 7(1) of the Act it is essential to turn to the law by which the deceased is governed for the purpose of ascertaining the the extent of his interest in the property. The provisions of s. 7 of the succession Act have to be read together with s. 7 of the Act for determining the interest which the deceased had in the sathanam property on which the estate duty would be leviable. This position is not controverted by the counsel for the respondent. The controversy thus narrows down to the true scope and ambit of the provisions of s. 7(3) of the Succession Act. On behalf of the appellant it has been maintained that on a proper construction of the language employed in s. 7(3) it should be held that before the death of the sathanamdar which took place in accordance with what is provided in sub-s.(3) of the sathanam property and that on his death all that devolved on his heirs was the share which the sathanamdar would have got in that partition. It is pointed out that the legal fiction of partition or division is created by sub-s.(3) for the definite purpose of allotting a share in the sathanam properties to the personal heirs of the sathanamdar which could not be done under the general Marumakkattayam law. The partition thus had to be real and effective and the sathanamdar should be considered to have died as a divided member. In other words the true position, according to the learned counsel for the appellant, is that the division per capita under s.7(3) took place immediately before the death of the sathanamdar with the result that the interest which he had in the sathanam property was only to the extent of his share which alone devolved upon his heirs. On the other hand the position taken up on behalf of the respondent before the High Court, which was accepted and which has been reiterated before us, is that s. 7(3) merely creates a legal fiction

for the purpose of distribution of the properties which is to take place after the death of sthanamdar and that being the sole purpose for which the legal fiction was introduced it could not be extended further so as to include an actual division or partition having been effected in the lifetime of the sthanamdar with the result that he became a divided member for all purposes.

We have had occasion to notice in some detail the incidents of the institution of sthanam and sthanamdar as also the nature of the sthanam property held by the sthanamdar. It has not been disputed before us on behalf of the appellant that during his lifetime the sthanam property belonged to the sthanamdar. Certain restrictions were placed on his powers of alienation but that did not detract from the nature of the estate held by him. The cesser of his interest in the sthanam property would be of the whole of that property and the benefit that would accrue or arise by the cesser of such interest would also be of the entire sthanam property. Position would be different only if s.7(3) of the Succession Act is so construed as to lead to the result that a partition or division of the sthanam property shall be deemed to have taken place during his lifetime. In our judgment such an interpretation of s. 7(3) of the Succession Act is likely to involve the constitutionality of that provision in view of the decision of this Court in *K. K. Kochuni's*(¹) case. In other words by bringing about a statutory division or partition of the sthanam property by which the sthanamdar will be deprived of that property except to the extent of a per capita share therein will be infringement of Art. 19(1)(f) of the Constitution. The court ought not to interpret statutory provisions unless compelled by their language in such a manner as would involve its constitutionality because the legislature is presumed to enact a law which does not contravene or violate the constitutional provisions. The other construction which has been accepted by the High Court appears to be more in consonance with the background in which s. 7(3) of the Succession Act has been enacted. The legal fiction also which has been introduced should only be limited to that purpose and there can be no justification for extending it. The legal fiction created by the words "as if the sthanam property had been divided per capita immediately before the death of the sthanamdar" appears to be meant solely for the purpose of gradually liquidating the sthanams and distributing the sthanam properties amongst the members of the sthanee's tarwad and his personal heirs without infringing the provisions of the Constitution. It may be pointed out that neither the members of the tarwad nor the personal heirs of the sthanee had any interest in the sthanam properties. The first part of s. 7(3) clearly provides that the property which passes on the

(1) [1960] 3 S.C.R. 887.

- A death of the sathanamdar is the whole of the sathanam property held by him. The second part only deals with distribution of that property. We have no doubt that the High Court was right in saying that the word "devolve" as used in the first part has the meaning given to it by Leach M. R. in *Perr v. Parr*⁽¹⁾ of passing
- B from a person dying to a person living. Thus the sathanam property held by the sathanamdar has to pass from the sathanamdar to the members of the family to which he belonged and his heirs. Legal fiction in the words which have been set out do not cut down the sathanam property that passes on the death of sathanamdar to a per capita share, the fiction having been introduced only for
- C determining the respective shares for the purpose of distribution to the members of the family and the heirs of sathanamdar.

D For all the reasons given above we affirm the decision of the High Court and dismiss this appeal (C.A. 1421/71) but in view of the entire circumstances make no order as to costs. The other appeal (C.A. 1137 of 1969) is dismissed owing to the certificate being defective for want of reasons.

S.N.

Appeals dismissed

(1) 2 L.J. Ch. 167.