

PETITIONER:
INSPECTOR ASSISTANT COMMISSIONER OF AGRICULTURAL INCOME TAX

Vs.

RESPONDENT:
V.K. RAMUNNI PANIKKAR, RECEIVER OF ZOMORINESTATE

DATE OF JUDGMENT 05/10/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 2513 1972 SCR (1) 934

ACT:
Hindu Succession Act, 1956, s. 7(3) and Kerala Agricultural Income-tax Act, 1950, s. 24(1)-Sthani liable to pay tax-Death of Sthani--Liability of other members of Tarwad.

HEADNOTE:
Section 7(3) of the Hindu Succession Act, 1956, by a fiction deems that the Sthanam property stands divided amongst the sthani and the members of his tarwad, a split second before the death of the sthani. The members of the tarwad took the property as co-owners and not as heirs of the deceased sthani. The purpose of the fiction was to gradually abolish the sthanams and to provide for the devolution of the sthanam properties on the members of sthani's tarwad except as regards one per capita share which the personal heirs of the sthani are to inherit as the heirs of the sthani. On May 2, 1958, the Zamorin of Calicut died. In respect of the agricultural income-tax under the Kerala Agricultural Income-tax Act, 1950, which he was liable to pay for the period November 1, 1956 to March 31, 1958, the person who took possession of the sthanam property claiming to be the succeeding sthani was assessed to tax as the sursthani. After his death, the Agricultural Income-tax Officer attempted to collect the tax from the successive senior most members of the Zamorin's family. The validity of the assessment was challenged and the High Court held that the liability to pay the tax and penalty imposed was only that of the personal heirs of the person who took possession of the properties immediately after the death of the Zamorin, and that, only to the extent of the assets of that person which had come into their possession. Thereafter, it was ordered by the Department that, as the entire Sthanam property had devolved on the 693 members of the tarwad all those persons were liable to pay the tax and penalty, but the order was made without notice to the parties. When the authorities threatened to proceed against the properties in the hands of the Receivers, who were appointed in the partition suit in the Zamorin's family, the Receivers filed a writ petition challenging 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 High Court quashed the demand holding that the only persons who were liable to pay the tax were the personal heirs of the Zamorin

as it was they who had received the income. Dismissing the appeal to this Court, HELD: Under the law relating to sthanams the sthani was alone entitled to the income of the sthanam properties. Therefore the income of the sthanam property in the present case, during November 1, 1956 to March 31, 1958 was the exclusive property of the Zamorin who has the sthani. Hence, 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. Under s. 24(1) of the Act the liability to pay

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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. The assessment made of the person who took possession of the properties after the Zamorin's death as the successor sthani was an invalid assessment, because, legally he never became the sthani. On the death of the Zamorin the sthanam came to an end and the only persons who could have represented the estate of the Zamorin were his personal heirs who, however, were not made parties to the assessment. [938 F-H; 939 A-B]

Income-tax Officer, Kozhikode v. Mrs. Susheela Sadananda, 57 I.T.R. 168, K. K. Kochuni v. State of Madras, [1960] 3 S.C.R. 887 and M. K. B. Menon v. Asstt. Controller of Estate Duty, C.A. No. 1137/1969 dt. 5-10-1971, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1397 of 1969. Appeal from the judgment and order dated January 1, 1968 of the Kerala High Court in O. P. No. 2413 of 1965.

V.A.Seyid Muhammad and A. G. Pudissery, for the appellant. alias

A. R. Somanatha Iyer and P. Kesava Pillai for the respondent.

The Judgment of the Court was delivered by Hegde J. 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 Hindu Succession (Amendment Act 1958), Act 28 of 1958 came into force. After the death of Sreemanavikraman Raja, the sthanam property was taken possession of by Kunhamman Raja claiming to be the succeeding sthanamdar. In respect of the assessment due for the period November 1, 1956 to March 31, 1958, Kunhamman Raja was assessed to tax as the successor sthanamdar. The said Kunhamman Raja died on December 23, 1960 without making any payment. Thereafter the next senior most member in 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 K. C. Cheria Kunjunni Raja. When the

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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 officer representing that he had nothing to do with the sthanam property and the sthanam property stood divided under s. 7(3) of the Hindu Succession Act, 1956 on the death of Sreemanavikraman on 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 2-5-1958 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 Kunhamman Raja, his share alone was liable to be proceeded against. It further held that the liability to pay that tax and penalty was that of the personal heirs of Kunhamman 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

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of Sreemanavikraman Raja who had received the income. The Court held that in view of s. 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, kavaru, or illom. Section 7(3) provides :

"Notwithstanding anything contained in sub-s.

(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 subsection 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 s. 7(3) of the Hindu Succession Act, it must be held that on the death of Sreemanavikaraman 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 sthanams and to provide for the devolution of the sthanam properties on the members of sthani's tarwad except as regards one per capita share which the personal heirs of the sthanamdar are to inherit as the heirs of the sthanamdar.

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The nature of a sthanam was considered by this Court in K. K. Kochuni and ors. v. The State of Madras and ors. (1) Therein this Court observed that according to the 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 "stani". Stani is solely entitled to the income of that property during his life time. The senior most member of a tarwad usually became the sthanamdar of the sthanam attached to that tarwad. On his succession to stanom. he stood separated from the rest of the family. He solely became entitled to the stanom 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 stanom, but a voluntary division between him and the rest of the family.

Whatever might have been the customary law, s. 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 stani 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 stani. 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 stanom 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 Sreemana-vikaraman 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 stani fell on his personal heirs and that only to the extent they received any of his assets. This position is clear from S. 24(1) of the Act which provides that "when 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 agriculture income-tax which would have been payable by him under this Act, if he had not died".

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

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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 not 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 the legal position. Further, it does not appear that Kunjunni Raja was assessed as the legal representative of the deceased stani. He appears to have been assessed as the successor stani liable to pay the debts due from the estate. Hence the assessment was not made in accordance with law, see Income-tax Officer, Kozhikode v. Mrs. Susheela Sadananda and anr.(1). 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.

V.P.S.

Appeal

dismissed.

(1) 57 I.T.R. 168

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