A. Narayanan And Anr. vs Commissioner Of Income Tax, Madras on 27 October, 1966

Equivalent citations: AIR1967SC433, [1967]63ITR466(SC), AIR 1967 SUPREME COURT 433

Bench: J.C. Shah, V. Bhargava

JUDGMENT

Shah, J.

1. Chockalingam Chettiar and his son, Annamalai, were members of a Hindu joint family. On March 28, 1939, the joint family status was severed. On February 2, 1943, Chockalingam executed a will devising the property which fell to his share, in favour of his two grandsons - Narayanan and Viswanathan - and of the other grandsons that maybe born of his son, Annamalai. The relevant provisions of the will were these :

> "After my lifetime, the minor sons of my divided son the aforesaid Annamalai Chettiar, viz., Narayanan and Viswanathan and the male children that may be born hereafter to the aforesaid Annamalai Chettiar shall take and enjoy in equal shares and with absolute rights all assets and liabilities in respect of immovable and movable properties... I hereby appoint my divided son S.N.A.S. Annamalai Chettiar... and his wife Meenakshi Achi... as executors. Therefore, they shall after my lifetime manage and augment all my immovable and movable properties and firms, which are mentioned above, in their capacity as guardians and executors of the aforesaid minors, and when the aforesaid minors attain majority deliver the same to them."

After the death of Chockalingam on February 7, 1943, Meenakshi gave birth to two sons - Chockalingam on August 11, 1946, and Ramaswami on March 23, 1948.

2. In the assessment year 1951-52 the Income-tax Officer assessed the income of the property devised under the will of Chockalingam Chettiar on the footing that Narayanan and Viswanathan who were in existence at the time of his death were each entitled to a moiety of the estate. Similar orders of assessment were made for the year 1952-53, 1953-54 and 1956-57. The Appellate Assistant Commissioner confirmed the orders of the Income-tax Officer, and appeals to the Income-tax Tribunal failed.

3. The Tribunal referred to the High Court of Judicature at Madras the following question under section 66(1) of the Indian Income-tax Act :

> "Whether the assessment on Viswanathan and Narayanan on a half share of the income of the estate of S.N.A.S. Chockalingam Chettiar is valid on a proper construction of the will dated 2nd February, 194 ?"

The High Court recorded an affirmative answer. They observed :

> "We are clearly of opinion that though the testator made a bequest to his grand-children by Annamalai and that such a bequest was to a class of heirs, there being no provision in the will, express or implied, indicating a period of distribution later than the death of the testator and there being no deferring of possession beyond the death, the date of ascertainment of the class must in view of section 111 of the Indian Succession Act be taken to be the date when the testator died."

With special leave, Narayanan and Viswanathan have appealed to this court.

4. Ordinarily the will of a testator speaks on the date of his death. If a bequest is made to class of persons, then the thing bequeathed by the operation of section 111 of the Indian Succession Act, 1925, goes only to persons belonging to that class as are alive at the testator's death. But to this rule there is an exception that if property is bequeathed to a class of persons and such class is described as standing in a particular degree of relationship to a specified individual and the possession of the legatees is deferred until some time after the death of the testator because of a prior bequest or otherwise, the legacy shall be taken by such persons belonging to the class as are alive at the date to which the possession is deferred and to the representatives of any of them who have died since the death of the testator.

5. There is no doubt that under the will there is a bequest in favour of a class of persons who are described as standing a particular degree of relationship to the testator, and the sole question which falls to be determined is whether possession of the legatees to whom the legacy is bequeathed is deferred until a time later than the death of the testator. If possession of the legatees is deferred until a time after the death of the testator, the legacy being in favour of the testator's grandsons, such grandsons of the testator who will be in existence on the date till which possession is deferred will take the property. At the date of the testator's death there were only two grandsons alive. Two more were born to Meenakshi - testator's daughter-in-law after the death of the testator. The appellants contend that the property devolves upon the four grandsons of the testator, and the order of assessment levying tax from two of them only who were alive at the testator's death is not valid. But on the plain terms of the will possession of the class to whom the legacy was given was not deferred until a time later than the death of the testator. The will provides that "after my lifetime, ° ° ° Narayannan and Viswanathan and the male children that may be born hereafter to the aforesaid Annamalai Chettiar shall take and enjoy in equal shares and with absolute rights all assets and liabilities". Counsel for the appellants strenuously contended that the members of the class designated were under the will to take possession as and when each member attained the age of majority. But that is contrary to the terms of the will. The testator had in express terms devised the property to his grandsons, who were to take and enjoy the property with absolute rights "after the death of the testator". Appointment of the parents of the grandsons as their guardians to manage the

property for and on behalf of the minors had not the effect of deferring possession. The property was expressly given to the grandsons and such other grandsons that may be born. There was no prior bequest in favour of any other person, and legal possession ot the property on the death of the testator was not vested in or reserved for any other person. There was, therefore, no postponement of vesting of legal possession in the grandsons in existence at the date of the testator's death.

6. Counsel invited our attention to the recital that the testator was ailing at the date of the making of the will and to the fact that the testator died within five days after the date of execution of the will. It will urged that the testator could not have believed at the time when he executed the will that Meenakshi, his daughter-in-law, would give birth to a son during his lifetime, and it must be inferred that it was the intention of the testator that the estate should be taken over by Narayanan and Viswanathan and other male children that may be born after the testator's death to Meenakshi. But there is no ambiguity in the terms of the will. The will gives the estate to the grandsons who were in existence and the other male children who may be born after the date of the execution of the will. Legal possession of the legatees was not deferred, and it is not open to the court to speculate whether the testator could have contemplated the birth of any male children who may be born after the date of the execution of the will. Legal possession of the legatees was not deferred, and it is not open to the Court to speculate whether the testator could have contemplated the birth of any male children to Meenakshi during his lifetime. The High Court was, therefore, right in holding that the estate belonged only to the two grandsons of the testators Narayanan and Viswanathan-and that they were properly assessed to tax in respect of the income therefrom.

7. The appeals fail and are dismissed with costs. One hearing fee.

8. Appeals dismissed.