V.T.S. Thyagasundaradoss Thevar And ... vs V.T.S. Sevuga Pandia Thevar And Anr. on 25 February, 1965

Equivalent citations: AIR1965SC1730

Author: K. Subba Rao

Bench: K. Subba Rao, J.C. Shah, R.S. Bachawat

JUDGMENT

K. Subba Rao, J.

1. V. T. S. Sevuga Pandia Thevar, hereinafter called the Zamindar, was the Zamindar of the erstwhile Estate of Seithur, an impartible Estate, in Ramanathapuram District in the State of Madras. Originally this Zamindari was an ancestral impartible Estate and it continued to be so in the hands of the Zamindar's father, Sundaradoss Thevar. In the year 1895, the said Sundaradoss Thevar executed, a will whereunder he gave this property to his son, the Zamindar. The Government of Madras, in exercise of the powers conferred on it under the Madras Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1948, hereinafter called the Act, issued a notification dated March 8, 1954, abolishing the said Zamindari. Thereafter, under Section 54-A of the Act the State Government deposited a sum of Rs. 68,589 with the Madras Estates Abolition Tribunal, Madurai, hereinafter called the Tribunal. On January 17, 1955, the Zamindar filed before the Tribunal a claim for the recovery of the said amount under Section 42 of the Act on the ground that the said Estate was his separate property and, therefore, he was entitled to get the entire amount of compensation. His exclusive, claim for the entire amount was resisted by his sons and others entitled to maintenance, inter alia, on the ground that the Estate was an ancestral impartible Estate and, therefore, they were also entitled to share in the compensation or to get maintenance, as the ease may be, under Section 45 of the Act. The Tribunal held that the said Estate was a joint family property and, therefore, the persons mentioned in Section 45 of the Act were also entitled to a share in the compensation in the manner prescribed thereunder. Against the order of the Tribunal the Zamindar preferred an appeal to the High Court of Judicature at Madras making all the objectors respondents to that appeal. That appeal was heard by a Division Bench of the High Court consisting of Rajagopalan and Balakrishna Ayyar, JJ. It held that the said Estate was not an ancestral impartible Estate and that the Zamindar was exclusively entitled to the compensation deposited with the Tribunal. The objectors, by special leave, have preferred the present appeal to this Court.

2. Mr. A. V. Viswanatha Sastry, learned counsel for the appellants contended that the Seithur Estate was an ancestral impartible Estate and, therefore, the Tribunal rightly distributed the compensation between the appellants and the Zamindar in terms of Section 45 of the Act. He elaborated this argument under different heads, which we shall consider seriatim.

3. The first contention of the learned counsel is that under the will Sundaradoss Thevar did not bequeath the said Estate to his son the Zamindar, but the will only contained a recital as to the existence of the said Estate and the fact that it would devolve alter his death on his next heir, namely, the Zamindar. It is not disputed that on the date the will was executed the holder of an ancestral impartible Estate could validly bequeath it to whomsoever he liked. The answer to the question raised, therefore, depends purely on the construction of the will

4. The scheme of the will may briefly be slated thus: The testator at the time of his death owned an ancestral impartible Estate called Seithur Zamin, a self-acquired zamin called the Elumalai Zamin and other movable and immovable properties. He had certain debts and other obligations to discharge; he had to provide, after his death, for the maintenance of his mother, son, daughter, nephew and others. He gave A Schedule property, i.e., the Seithur Zamin, to his son, the Zamindar; B Schedule property, i.e., Elumalai Zamin, to his nephew, C Schedule property, to his daughter; D Schedule property, to Challam, who served his wives faithfully, and E Schedule property to Muthiah Bhagavathar. In addition he made other bequests, directed his debts to be paid and other obligations discharged out of his entire Estate. He appointed an Executor to carry out the terms of his will.

5. Strong reliance is placed by learned counsel for the appellants on the preamble to the will, and, emphasizing on the words "After us there is our only son Sevuga Pandia Dorai, aged 11 years, who is entitled to get all our properties as the heir and at present there is none excepting the said person", an argument is advanced that the said words indicate the intention of the testator that the Estate should go to his son as his heir. But the preamble was not the dispositive clause: it only gave the financial position of the testator, the persons to be provided for and declared his right to dispose of the property in favour of the persons mentioned in the will. Consistent with the preamble, the heading of the clauses making the bequests stated "The arrangements made hereby are as follows". What follows were the arrangements made by him and not what the law of inheritance brought about. Under the will the testator bequeathed A, B, C, D and E Schedule properties to different persons and the clauses making the disposition were couched in the same terminology. Though different words were used in the document as translated, both the learned counsel, who know Tamil, agreed that the same Tamil word was used for bequeathing the different properties to different persons. What is more, whenever the testator wanted to give an absolute Estate to a legatee he used the same words of inheritance such as "shall enjoy hereditarily from son to grandson and so on in succession." It is a well settled rule of construction that the same words used in a document shall be given the same meaning unless there is a clear intention to the contrary. It is not disputed that in the case of C, D and E Schedules the said words of disposition conveyed an absolute interest to the legatees mentioned therein. If that be so, we cannot without violating the said rule of construction and without doing violence to the language used give a different meaning to the clause containing the disposition of the A Schedule property in favour of the Zamindar. Under the relevant clause the testator said "Our son Sevuga Pandia Dorai Avergal shall take the properties set out in A Schedule herein after our lifetime and hold and enjoy the same with absolute rights and from son to grandson and so on in succession." If the testator intended to bequeath an absolute interest to the legatee, he could not have done so in words clearer than the said words. We find it impossible to construe the said words to mean that the testator was only recognizing the rights of the son to the Estate if he

died intestate: that will be rewriting the will. The appointment of an Executor to administer all the properties, including the A Schedule property, is another indication that the said property was also subject to a bequest. The appointment of an Executor would not have arisen in respect of the A Schedule property if the said property had not been bequeathed under the will. Further, the testator directed all the debts due by him to be paid out of his entire property including the A Schedule property. If the Zamindar was taking the impartible Estate as an heir, he would take it free from the liabilities not binding on the Estate. He was taking it subject to the liabilities not binding on the Estate, because he was taking it as a legatee and not as an heir. For instance, in the matter of purchase of Elumalai Zamin, which is admitted to be not a part of the impartible Estate, the testator borrowed money from others; he directed the Executor to discharge the said debt from and out of the A Schedule property and the assets relating to the same irrespective of the property that might have been secured in respect of that debt. In respect of other obligations he directed them to be discharged from and out of the entire property bequeathed, including the A Schedule property. For instance, he directed the Executor to spend from the said two zamins amounts necessary to meet the expenses for performing the marriage of his younger brother's son, Muthuswami Pandian, for palace construction and repair and also for making jewels for the wife of Muthuswami Pandian. He also directed him to spend from both the zamins the amounts necessary for performing and conducting festivals. What is more, some items of properties forming part of the impartible Estate, i.e., A Schedule property, were bequeathed to others. The following 3 items prima facie formed part of the Seithur Zamin; (1) a palace in the Seithur Zamin Estate; (2) pannai lands in the Estate purchased from Dalava Madaliar; and (3) Pannai lands in Seithur Zamin in Devadanamkulam village; and pannai lands in Kooraipadugai punja in Pallathavu. Though the palace and pannai lands formed part of the impartible Estate, under the will they were bequeathed to Muthuswami Pandian, Muthathal and others. Under the will the Zamindar got not only the impartible Estate, i.e., the A Schedule property, but also properties other than B, C, D and E Schedules The Estate as well as other properties were bequeathed to him under the same clause couched in the same language. Therefore, it cannot be said that in respect of the A Schedule property there was no bequest and in respect of other properties there was a bequest. Such a construction will introduce inconsistency and incongruity in the dispositive clause. Briefly stated, the testator did not make any distinction in the matter of bequests between the impartible Estate and his other properties. He divided all his properties into A, B, C, D and E Schedules. He asserted his absolute right to dispose of them. Having regard to the circumstances obtaining at the time of executing the will, by using appropriate words he bequeathed them in the manner described by him in the various clauses of the will. He gave to his only son most of the A Schedule property and also some other properties. A small part of the A Schedule property was bequeathed by him to others also. The A Schedule property and other properties were made equally liable to discharge some of the specified debts. There was a clear bequest of the A Schedule property to the Zamindar, subject to the obligations mentioned above and it is impossible to read into the will the contention of the learned counsel that, though in terms it was a bequest, in fact, having regard to the preamble, it was only a recognition of the Zamindar's right to succeed to the Estate. To accept the argument of the appellants is to read into the will something which is not there. Obviously that cannot be done.

6. In the context of this contention strong reliance is placed upon a judgment of the Judicial Committee in Shyam Pratap Singh v. Collector of Etawah, There, a holder of an impartible Estate

executed a will, the relevant part whereof read thus:

> Today K has given his son M to me in adoption and I have taken him in adoption. After my death, my adopted son shall be the "gaddi-nashin" and the owner of my entire movable and immovable property. After my death he shall, like myself, have all the powers. M is yet a minor: therefore, during his minority, my mother, B who was my guardian during my minority and who managed the entire estate very well, shall remain the guardian of my adopted son and shall manage the entire estate. I have, therefore executed this will in a sound state of body and mind and after full deliberation On a construction of the said will the judicial Committee held that taking the document as a whole the only operative part of it was the appointment of the guardian and the rest of it was narrative; and even on the assumption that the document could be construed as a gift of the property to M, their Lordships held that it was not effective to change its character from that of an impartible Raj governed by the rule of lineal primogeniture inasmuch as the testator had not broken the line of succession but on the contrary had given the property to the person who would succeed under the rule of lineal primogeniture. It is a well settled principle that a particular will shall be construed on its own terms. Except perhaps when the terms of two wills are exactly or practically the same, it is not possible even to derive any help from the construction of one will in construing the other will. The will we have extracted above differs in many material particulars from the will which is now under our scrutiny. That apart, the judgment of the Privy Council discloses that the parties who appeared before it were not interested to argue that the will contained a bequest. The following observation of the Privy Council makes that clear:
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> "The first question which arises for decision on these consolidated appeals is whether the view taken by the High Court as to the construction and effect of the alleged will of Raja Hukam is correct. Upon this question the plaintiff and defendant have joined forces in attacking the decision of the High Court, and no argument has been advanced before the Board in support of the decision, since Rani Baisni is not represented. Their Lordships can only decide the question as between the parties to this appeal. Rani Baisni, the only party who was interested to contend that the finding of the High Court that there was a bequest in favour of the adopted son was not represented before the Privy Council. Further, the terms of the will as extracted above did not contain any clause of clear disposition as in the will in the present appeal. The words used therein were susceptible of the construction accepted by the Judicial Committee, namely, that it was only an indication of the testator of the destination of the property in the event of his death. The decision, therefore, does not help the appellants. We, therefore, hold on a fair reading of the express words used in the will that the testator in clear and unambiguous terms made a bequest of the A Schedule property to the Zamindar, his only son.

7. The next argument of the learned counsel for the appellants may be stated thus: Even if there was a bequest, on a true construction of the recitals in the will it should be held that the bequest was

impressed with the incidents of an ancestral Estate; that is to say, the legatee had to take it as a joint family property in which his sons had an interest. To put it in other words, it is said that in the hands of the legatee the Estate was a joint family impartible Estate. We find it difficult to appreciate this argument. We have already held in dealing with the first point that under the will there was a clear bequest of the Estate in favour of the Zamindar. We have also expressed the view that the preamble to the will had only described the factual position at the time the will was executed and that it had no impact on the dispositive clause. The relevant clauses of the will making the bequest do not even remotely suggest the idea now canvassed before us. In view of the similarity of the clauses of disposition used in regard to different bequests, all of them should be construed in the same way. If so construed, it cannot be suggested that only in the case of the Zamindar a joint family Estate was given, whereas in the case of others an absolute Estate was given. In terms of the bequest, all of them got a similar Estate, namely, an absolute Estate in respect of the properties bequeathed to them.

8. Can it be said that the nature of the Estate leads to the legal position that the legatee of the said Estate only got a joint family Estate, though under the express words of the bequest he got an absolute Estate ? As the law then stood, a holder of an ancestral impartible Estate could alienate the same in favour of a third party by a deed inter vivos or under a will: in either case the alienee or legatee, as the case may be, got an absolute interest therein. The holder's son could not interdict the said alienation or bequest as he had no right by birth therein. The son had only a right to take the ancestral Estate by survivorship in case the father died intestate. The exercise of the right by a father to alienate destroyed his son's right to take it by survivorship. If one right was exercised, the) other was lost. As the Zamindar got the Estate as a legatee and not as a member of a joint Hindu family by right of survivorship, he got it absolutely in his own right under the terms of the will.

9. The question may be looked at from a different angle. The testator, as we have interpreted his will, conferred an absolute interest in the impartible Estate on the Zamindar. How did that absolute Estate become a joint family Estate in the hands of the legatee ? An absolute Estate so conferred could have been limited by law operating on the bequest or by some inherent disqualification of the legatee to receive an absolute bequest. None of the said two circumstances existed in the present case.

10. The argument of the learned counsel is presumably inspired by the judgment of this Court in C. N. Arunachala Mudaliar v. C. A. Muruganatha Mudaliar. . In that case a father made a gift of his self-acquired property to his son. It was contended that the property was an ancestral one in the hands of the son and, therefore, the latter's sons had a right by birth in the said property. Rejecting that contention, Mukherjea, J., as he then was, speaking for the Court, observed:

> "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 life-time. On both these occasions the grandfather's property comes 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. But when the father obtains the grandfather's

> property by way of gift, he receives it not because he is a son or has any legal right to such property but because his father chose to bestow a favour on him which he could have bestowed on any other person as well."

Later on the learned Judge expressed the same idea in a happier language thus:

> "When, however, he makes a gift which is only an act of bounty, he is unfettered in the exercise of his discretion by any rule or dictate of law."

On the said legal basis the learned Judge concluded thus:

> "As the law is accepted and well settled that a Mitakshara father has complete powers of disposition over his self-acquired property, it must follow as a necessary consequence that the father is quite competent to provide expressly, when he makes a gift, either that the donee would take it exclusively for himself or that the gift would be for the benefit of his branch of the family."

On a construction of the document in that case, the learned Judge held that the gift was given exclusively to the donee and not for the benefit of his branch of the family. The said judgment decided two points, namely, (i) if a son gets the property of his father by inheritance or in partition, it being ancestral property under Hindu law, he becomes a co-owner with his son or sons; and (ii) the father can bequeath his self-acquired property to his son or sons absolutely or to the branch of his or their family. The first depends upon Hindu law and the second on the nature of the bequest made. We have already held on a construction of the will in question that the father bequeathed the property, which he was entitled to do under law, absolutely to the Zamindar and not to the branch of his family. As the Zamindar obtained his father's property by way of bequest and not by virtue of his right as a son or descendant there is no scope for invoking Hindu law to hold that in his hands the said property became the joint family property. We, therefore, hold that in the hands of the Zamindar the impartible Estate was his self-acquired property.

11. The next contention is that though under the will the Zamindar did not take the impartible Estate as a joint family property it had become one by reason of Section 4 of the Madras Impartible Estates' Act II of 1904. The said Act came into force on February 8, 1904. To appreciate this contention it will be necessary to know briefly the incidents of an impartible Estate before the said Act was enacted. The law is so well settled that it does not call for copious citation or discussion. It would be enough if an important decision of the Privy Council, where all the incidents are collected, is noticed; that is the decision in Shiba Prasad Singh v. Rani Prayag Kumari Debi There, Sir Dinshah Mulla, speaking for the Board, after considering the case-law on the subject, summarized the legal position thus:

> "Impartibility is essentially a creature of customs. In the case of ordinary joint family property. the members of the family have (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. The first of these rights cannot exist

> in the case of an impartible Estate, though ancestral, from the very nature of the Estate. The second is incompatible with the custom of impartibility, as laid down in Sartaj Kuari v. Deoraj Kuari, 15 Ind App 5 (PC) and the First Pittapur Case, Raja Rao Venkata Surya Mahipati Rama Krishna Rao Bahadur v. Court of Wards, 26 Ind App 83 (PC); and so also the third as held in the Second Pittapur Case, Sri Raja Rao Venkata Mahipati Gangadara Rama Rao Bahadur v. Raja of Pittapur, 45 Ind App 148: (AIR 1918 PC 81). To this extent the general law of the Mitakshara has been superseded by custom, and the impartible Estate, though ancestral, is clothed with the incidents of self-acquired and separate property. But the right of survivorship is not inconsistent with the custom of impartibility. This right, therefore, still remains, and this is what was held in Baijnath Prasad Singh v. Tej Bali Singh, 48 Ind App 195: (AIR 1921 PC 62). To this extent the Estate still retains its character of joint family property, and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquired by birth in joint family property no longer exist, the birth-right of the senior member to take by survivorship still remains. Nor is this right a mere spes successionis similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's Estate. It is a right which is capable of being renounced and surrendered. Such being their Lordships' view, it follows that in order to establish that a family governed by the Mitakshara in which there is an ancestral impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to renounce their right of succession to the estate."

This is a full statement of the law on the subject. Though some observations made by the Privy Council in a later decision in Collector of Gorakhpur v. Ram Sundar Mal threw some doubt on some aspects of the legal position stated supra, the subsequent decisions of the Privy Council clarified the position and reaffirmed the law as enunciated in Shiba Prasad Singh's Case see Commr. of Income-tax, Punjab v. Krishna Kishore It is, therefore, dear that an impartible Estate could be an ancestral property or a self-acquired property of the holder of the said Estate. Even if it was an ancestral Estate, the sons of the holder had no right to restrain alienations by the head of the family even without necessity, for the said right was incompatible with the custom of impartibility as laid down in Sartaj Kuari's Case 15 Ind App 5 (PC) and the first Pittapur Case, 26 Ind App 83 (PC). The result was that as the law then stood the head of an impartible Estate could alienate the properly, whether it was ancestral or self-acquired. Presumably to preserve impartible Estates, the Madras Impartible Estates Act II of 1904 was passed and it became law on February 8, 1904. The long title of the Act reads: "An Act to declare that certain Estates are impartible and that the proprietors of such Estates cannot exercise unrestricted powers of alienation in respect thereof" "Impartible Estate" is defined to mean an Estate descendible to a single heir and subject to the other incidents of impartible Estates in Southern India. Section 3 says that the Estates included in the Schedule shall be deemed to be impartible Estates. In the Schedule Seithur Estate is included as one of the Estates to which the Madras Act II of 1904 applied. Section 4, on which reliance is placed by the learned counsel for the appellants reads thus:

> "(1) The proprietor of an impartible Estate shall be incapable of alienating or binding by his debts, such Estate or any part thereof beyond his own lifetime unless the alienation shall be made, or the debt incurred, under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other co-parceners, to make an alienation of the joint property, or to incur a debt binding on the shares of the other coparceners independently of their consent."

This sub-section in terms limits the unrestricted power to incur debts or alienate properties possessed by an impartible estate-holder in respect of his Estate. The limits of his power are defined by reference to the power of a managing member of a joint Hindu family, not being the father or grandfather of the other coparceners, to make an alienation of the joint family property or to incur a debt. His power in regard to alienations and debts is equated to that of a manager of a joint Hindu family. While an impartible estate-holder before the Act could alienate the Estate or a part thereof or incur debts binding on the Estate without any restrictions on his power, after the Act he can only do so under the circumstances where a manager of a Hindu joint family can do so. But it is not possible to hold that the sub-section by its own force converted a self-acquired impartible Estate before the Act into a joint family-Estate thereafter. The words of the sub-section do not bear any such contention. If so, it follows that though the Seithur Zamin was an impartible Estate under Madras Act II of 1904, it continued to, be a self-acquired property of the Zamindar.

12. It is then contended that the Zamindar had voluntarily thrown the impartible Estate into the common stock with the intention of abandoning all his separate claims upon it. Mr. Vedantachari, learned counsel for the Zamindar, argued that there was no scope for the application of the said doctrine of blending in the case of an impartible Estate, as the other members of the family had no present interest in the said property. It is not necessary to express our opinion on this question, as the Tribunal as well as the High Court, on a consideration of the evidence placed before them, came to the conclusion that the evidence adduced for that purpose was wholly insufficient to sustain a finding of blending. The finding is one of fact and no exceptional circumstances have been placed before us to make us interfere with that finding.

13. If the impartible Estate was the self-acquired property of the Zamindar, the next question is whether the appellants would be entitled to share in the compensation under the provisions of the Act. The Act and the Rules made thereunder provide for the deposit of the compensation by the State with the Tribunal, for a procedure to enable the claimants to apply to the said Tribunal for the compensation and for the manner of ascertaining and distributing the compensation among them in accordance with the value of their respective interests in the Estate. The material sections then proceed to state thus:

> Section 44. (2) The value of those interests shall be ascertained-
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> (a) in the case of the impartible Estates referred to in Section 45, in accordance with the provisions contained in that section and in such rules, not inconsistent with that section, as may be made by the Government in this behalf; and

(b) in the case of other Estates, in accordance with such rules as may be made by the Government in this behalf.

Section 45. (1) In the case of an impartible Estate which had to be regarded as the property of a joint Hindu family for the purpose of ascertaining the succession thereto immediately before the notified date, the following provisions shall apply.

(2) The Tribunal shall determine the aggregate compensation payable to all the following persons, considered as a single group:--

(a) the principal landholder and his legitimate son grandsons and great-grandsons in the male line living or in the womb on the notified date, including sons, grandsons and great-grandsons adopted before such date (Who are hereinafter called "sharers"); Rules made in exercise of the powers conferred by Section 67 read with Section 44 (2) (b) of the Act: Rule 1. In the case of an Estate not being an impartible Estate governed by Section 45, the value of the respective interests in the Estate of the principal landholder and the other persons mentioned in Section 44 (1) shall be ascertained.

Rule 4. (1) In the case of (1) a partible Estate other than that specified in rule (3) or (ii) an impartible Estate not governed by Section 45 the Tribunal shall determine the aggregate compensation payable to all the following persons considered as a single group:--

(i) the persons, who immediately before the notified date, owned the Estate....."

The question is whether Section 45 (1) of the Act applied to the Estate, in which case the persons mentioned in Section 45 (2), i.e., the appellants and the Zamindar, would get the compensation, or whether rule 4 (1) would apply, in which case the persons mentioned therein, i.e., the persons who immediately before the notified date had owned the Estate, would get the compensation. Learned counsel for the appellants contends that the impartible Estate mentioned in Section 45 (1) is the same as that described in Section-4 (1) of the Impartible Estates Act II of 1904. We do not see any justification for this contention. Section 45 (1) only gives the description of an ancestral impartible Estate as evolved by judicial decisions. As noticed earlier it has been held by the Judicial Committee that an impartible Estate, though ancestral, is clothed with the incidents of a self-acquired and separate property, but the right of survivorship alone still remains and to that extent the Estate still retains the character of a joint family property. Section 45 (1) of the Act in terms succinctly describes an ancestral impartible Estate in the light of the said decisions. As we have held that Seithur Zamin is not an ancestral impartible Estate in the hands of the Zamindar, it is outside the scope of Section 45 of the Act. It follows that it will be governed by Rules 1 and 4 (1) of the Rules made under the Act. It is not disputed that if Rule 4 (1) applies, the appellants are out of Court, for the Zamindar alone owned the Estate before the notified date.

14. In our view, the judgment of the High Court is correct. The appeal fails and is dismissed with costs.