

Income-Tax Officer, Gudur And Anr. vs Maramreddy Sulochanamma on 7 August, 1970

Equivalent citations: AIR1971SC37, [1971]79ITR1(SC), (1971)3SCC113, AIR 1971 SUPREME COURT 37

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Bench: J.C. Shah, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. These appeals by special leave arise from the decision of the High Court of Andhra Pradesh in Writ Appeals Nos. 13 to 22 of 1965 on its file. Only one question of law arose for decision in those appeals, the very question arising for decision In these appeals and that question is whether the notices issued by the Income-tax Officer under Section 34 of the Indian Income-tax Act, 1922 (which will be hereinafter called the Act) in March, 1962 on the respondent and her sisters are valid in law.

2. One Narayana Reddy was an Income-tax assessee. He died on March 26, 1948, leaving behind him his widow Ramanamma and five daughters. On his death his widow took possession of the estate and was managing it. Subsequently misunderstanding appears to have arisen between her and some of her daughters. One of the daughters by name Sreedevamma filed a suit for removing her mother from management of the estate and for the appointment of a receiver. In that suit a Commissioner was appointed to take an inventory. The Commissioner, while taking the inventory, found an unregistered will dated March 4, 1948, in the safe. That will was purported to have been executed by Narayana Reddy. It is said that in that will various dispositions were made including some provision for certain charities. It is further said that two of the sons-in-law of Narayana Reddy were designated therein as the executOrs. After the discovery of that will the widow Ramanamma instituted a suit challenging the genuineness of that will. One of the sons-in-law of Narayana Reddy instituted another suit for administration of the estate of his father-in-law claiming to be an executor appointed under the will. During the pendency of these suits the parties compromised their disputes and filed a compromise petition on April 15, 1954. A decree in terms of the compromise was made. Under the terms of the compromise the estate of Narayana Reddy was divided between the widow of Narayana Reddy, his mother and his five daughters. Some provision for certain charities was also made thereunder and for managing those charities some trustees were appointed. It is said that the parties were in possession and enjoyment of their respective shares ever since the compromise decree. Narayana Reddy's widow died on September 5, 1956. Before her death she

bequeathed her share in the property to her last three daughters.

3. After the death of Narayana Reddy the income-tax authorities dealt with his widow as his sole legal representative. On that basis the authorities collected from her the tax due from the estate of the deceased Narayana Reddy. They also took reassessment proceedings under Section 34 of the Act and collected some additional tax from her. On March 17, 1962, the respondent, who is one of the daughters of Narayana Reddy and who had obtained a share in the estate of Narayana Reddy under the compromise decree referred to earlier, was served with notices under Section 34 of the Act seeking to reopen the assessment of Narayana Reddy for the years 1941-42 to 1949-50. She filed as many as nine writ petitions challenging the validity of the notices served on her. The main question for decision is, as mentioned earlier, whether the said notices are valid.

4. Section 24B(1) of the Act provides:

Where 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 tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

5. Interpreting that provision this Court ruled in *First Addl. Income-tax Officer, Kozhikode v. Mrs. Suseela Sadanandan*, that if a person dies executing a will appointing more than one executor or dies intestate leaving behind him more than one heir, under Section 24B of the Act, the Income-tax Officer has to proceed to assess the total income of the deceased against all the executors or all the legal representatives as the case may be. It was further ruled therein that if there are more than one executor of the deceased person all of them will be his representatives and for the purpose of Section 24B(2) all of them jointly can represent the estate of the deceased. In that decision the principle laid down by this Court in *Dayaram v. Shyam Sundari*, that where a plaintiff or an appellant, after diligent and bona fide enquiry ascertains who the legal representatives of a deceased defendant or respondent are, and brings them on record within the time limited by law, there is no abatement of the suit or appeal and those legal representatives sufficiently represent the estate of the deceased and a decision obtained with them on record will bind not merely those impleaded but the entire estate including those not brought on record was held to be not confined to any suit and appeals but is of general application. It was observed therein that there is no reason why that principle cannot be invoked in the case of assessment of the income of a deceased person in the hands of his legal representatives.

6. It is clear that notices issued in respect of the assessment for the assessment year 1949-50 are clearly invalid as they relate to a period subsequent to the death of Narayana Reddy. Hence we are concerned with the validity of the notices relating to the other assessment years.

7. It is now established that the copies of the notices impugned in the writ petitions had been sent to all the daughters of Narayana Reddy but no notice was sent to his mother or to the Trustees. The respondent in her writ petitions pleaded that she is not a legal representative of Narayana Reddy. That averment cannot be correct. The question whether the will purported to have been executed by

Narayana Reddy is a genuine one or not has not been gone into. If intermeddling with the properties of the deceased is adopted as the test for determining his legal representatives then his mother and the trustees appointed for the management of the charities would become his legal representatives. The Income-tax Officer has not taken any positive stand as to how he came to the conclusion that the daughters of Narayana Reddy alone are his legal representatives. It is not made clear whether he relied on the will. If he relies on the will then he should have issued notices to the executors appointed thereunder, if executors had been appointed as alleged. The will is not before the Court. Therefore we cannot be definite as to its terms. If on the other hand the Income-tax Officer relies on the general Hindu Law then again it is not clear whether he made enquiry as to who were all the legal representatives of Narayana Reddy on the day he issued the notices.

8. The allegations in the writ petitions are vague and confused. The respondent's assertion therein that she is not one of the legal representatives of her father appears to have no basis. She does not say who were all the legal representatives of her father. It is not clear what her stand is as regards the will said to have been executed by her father. She does not deny that under the compromise decree, she obtained a portion of her father's properties. The averments in her petitions are bald and lacking in particulars.

9. Equally confused is the case pleaded by the Income-tax Officer. Apart from asserting that he had issued notices to all the legal representatives of Narayana Reddy, he did not disclose his basis for coming to the conclusion that the daughters of Narayana Reddy alone are his legal representatives. It is not clear whether he takes his stand on the general Hindu Law or the will alleged to have been executed by Narayana Reddy or the compromise decree. He did not even aver that he made any bona fide enquiry before issuing the impugned notices.

10. The facts and circumstances disclosed in this case are somewhat similar to those in Mrs. Suseela Sadanandan's case, . Hence in the interest of justice we think it proper to allow these appeals and remand the case to the High Court for reconsideration of the case after ascertaining.

(1) Who were all in possession and management of the estate of Narayana Reddy (a) immediately after his death (b) at the time when the notices under Section 34 were issued by the Income-tax Officer;

(2) Is the will purported to have been executed by Narayana Reddy a true and genuine document, if so, were any executors appointed under the will, if so, who were those executors; if not, who were the legatees under that will;

(3) If the will is held to be not genuine, who were the heirs of Narayana Reddy in accordance with law by which he was governed and (4) Who all were in possession of the properties of Narayana Reddy under the terms of the compromise decree.

11. After ascertaining these facts the High Court must determine whether the Income-tax Officer had made any bona fide enquiry before issuing notices under Section 34 or whether he had issued notices to all the legal representatives of Narayana Reddy.

12. In our opinion for the resulting confusion the Income-tax Officer is primarily responsible. Hence the Revenue should pay the costs incurred by the respondent both in the High Court and this Court upto this stage irrespective of the result of the case. So far as the future costs are concerned it shall be in the discretion of the High Court