

First Additional Income-Tax Officer, ... vs Susheela Sadanandan And Anr. on 29 October, 1964

Equivalent citations: [1965]57ITR168(SC)

Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Subba Rao, J.

1. This appeal by special leave is directed against the judgment and order of the Kerala High Court issuing appropriate writs under article 226 of the Constitution against the appellant and the second respondent.

2. One S. P. Sadanandan, resident of Kozhikode, died on July 10, 1948, leaving a registered will dated June 23, 1948. Respondent No. 1 is his widow. Under the said will the testator appointed his widow, the 1st respondent herein, his eldest son, Earnest Devadas Sadanandan, and one Paramasivan, a chartered account of Kozhikode, as his executors. The family of the testator consisted of his widow, 2 sons, 3 daughters and a grandson through a deceased daughter. Under the will various bequests were made.

3. S. P. Sadanandan was assessed to income-tax for the years 1945-46 to 1949-50. The Income-tax Officer, after the assessee's death, discovered that there was a large scale evasion of tax by the assessee and on that ground on March 20, 1954, issued notices under section 34 of the Income-tax Act, 1922, hereinafter called the Act, and they were addressed to "late S. P. Sadanandan by his legal heirs E. D. Sadanandan and others, Kozhikode." Pursuant to the notices a return was submitted in due course and the name of the assessee in the return was as "late S. P. Sadanandan by the legal heirs E. D. Sadanandan and others". The return was signed by E. D. Sadanandan as the legal heir and his status was given as "individual". On August 17, 1954, the Income-tax Officer, Coimbatore, made an order of reassessment for the said years and in the said order the assessee was described as "Late S. P. Sadanandan represented by legal heirs and legal representatives Sri E. D. Sadanandan and J. G. Sadanandan and others, Kozhikode". In the first paragraph of the assessment order the Income-tax Officer noted :

"The assessee in this case is Shri S. P. Sadanandan, who died on July 10, 1948. After his death he is represented by his sons, namely, E. D. Sadanandan and J. G. Sadanandan, and the assessee's wife, Mrs. S. P. Sadanandan."

4. We have taken the aforesaid facts from the judgment of the High Court, as no documents from which the said facts were gathered by the High Court are placed before us. E. D. Sadanandan filed appeals against the said order of assessment to the Appellate Assistant Commissioner, Coimbatore, and the said appeals were ultimately dismissed on June 20, 1957. On September 15, 1956, the 2nd respondent issued two notices to the 1st respondent; one was a notice of attachment under section 27 of the Madras Revenue Recovery Act II of 1864, attaching the properties mentioned therein for recovery of a tax of Rs. 13,09,352-3-0 and stating that if the said amount was not paid on or before December 7, 1956, the attached properties would be sold, and the other was a notice of sale of land issued under section 36 of the said Act proclaiming that most of the attached properties would be sold on December 8, 1956. For one reason or other - the details need not be given here - the properties were not sold pursuant to the said notices. On November 15, 1957, the 2nd respondent issued fresh notices under section 27 and 36 of the said Act demanding that the said amount should be paid on or before February 9, 1958, and stating that if the said amount was not paid on or before the said date the said attached properties would be sold on February 10, 1958. Thereafter, the 1st respondent filed O.P. 70 of 1958, under article 226 of the Constitution in the High Court of Kerala at Ernakulam for quashing the notices of attachment and for restraining the 2nd respondent from taking any steps to recover the said amount alleged to be due from her. A Division Bench of the High Court allowed the petition on the ground that as the notices under section 34 of the Act were not served on all the executors named in the will there was no proper representation of the deceased in the assessment proceedings and, therefore, the said assessment order was void. Hence, the present appeal.

5. Mr. Rajagopala Sastri, learned counsel for the revenue, raised before us the following points : (1) The High Court should have dismissed the writ petition in exercise of its discretion as the question raised by the 1st respondent involved complicated questions of fact and law which could not be satisfactorily disposed of in a summary proceeding under article 226 of the Constitution; (2) on the facts stated and omitted to be stated in the affidavit, no right to relief was disclosed and, therefore, the High Court should have dismissed the petition in limine; (3) either on the basis of the existence of a will or on the basis of intestacy, the notices served on E. D. Sadanandan on behalf of all the legal representatives of late S. P. Sadanandan were sufficient to sustain the assessment against the estate of S. P. Sadanandan; and (4) in any view, the order of assessment would be effective against E. D. Sadanandan, and the order of the High Court couched in very wide language should be clarified so as to confine it only to the claim of the 1st respondents.

6. The first point was not raised before the High Court. Nor are there any merits in the said contention. The complaint of the 1st respondent was that under the colour of an order of assessment to which she was not a party, her property was being attached and sought to be sold under a coercive process. To state it differently, she alleged that the State threatened to infringe her fundamental right under article 19(1)(f) of the Constitution and, therefore, sought the help of the High Court to issue an appropriate writ to protect her right. This court has held in more than one decision that the existence of an alternative remedy is no ground for refusing to issue an appropriate writ under article 226 of the Constitution if fundamental rights are affected. The High Court, therefore, rightly disposed of the petition on merits.

7. The next question is whether the reassessment orders made pursuant to the notices issued under section 34 of the Act were void on the ground that they did not comply with the provisions of sub-section (1) and (2) of section 24B of the Act. Under sub-section (1) of section 24B of the Act the executor or administrator or other legal representative is liable to pay out of the estate of the deceased the tax payable by him or any tax which would have been payable by him under the Act if he had not died. Under the said sub-section the liability of the legal representative is limited to the extent to which the estate is capable of meeting the charge. Under sub-section (2) thereof, if a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, the Income-tax Officer may serve the said notices on the administrator, executor or other legal representative of the deceased and proceed to assess the total income of the deceased as if the said legal representative were the assessee; that is to say, for the purpose of assessment the legal representative were the assessee; that is to say, for the purpose of assessment the legal representative would represent the deceased person. Under section 13(2) of the General Clauses Act (Central Act X of 1897), words in singular will include their plural also. The expression "legal representative" in section 24B of the Act takes in plurality of legal representatives. As pointed out by Mahajan J., as he then was, in *Tirtha Lal v. Bhushan Moyee Dasi*, if there are two or more legal representatives of the deceased person, all must be impleaded to make the representation of the estate complete. The said principle was applied to co-executors : see *Muniyammal v. Third Additional Income-tax Officer, Salem and Vedakannu Nadar v. Nanguneri Taluk Singikulam Annadana Chatram*. The result, is that if a person dies executing a will appointing more than one executor or dies intestate leaving behind him more than one heir, the Income-tax Officer shall proceed to assess the total income of the deceased against all the executors or the legal representatives, as the case may be.

8. The question, therefore, is whether the Income-tax Officer proceeded to reassess the total income of the deceased against all his legal representatives. Unfortunately in the context of this question neither the affidavits filed by the parties before the High Court nor the material placed before it disclose the crucial facts necessary for giving a definite answer to the said question. It is not disputed that S. P. Sadanandan died executing a will. Under that will three persons were appointed as executors, namely, his widow, Mrs. Suseela Sadanandan, who is the 1st respondent, his eldest son, E. D. Sadanandan, and one Paramasivan, a registered accountant and the auditor of Kozhikode. The will also shows that S. P. Sadanandan had another minor son, two minor daughters and a minor grandson through another predeceased daughter. Under the will the properties of the deceased vested in the said executors who were directed to administer the estate as per the terms of the will. It is admitted that the said will was not probated. Under section 211 of the Indian Succession Act the executor of a deceased person is his legal representative for all purposes and all the properties of the deceased person vest in him as such. By the application of section 13 of the General Clauses Act, if there are more than one executor of a deceased person, all of them will be his representatives. If so, for the purpose of section 24B(2) of the Act, all of them only can represent the estate of the deceased. But as no probate was taken, under section 213(1) of the Indian Succession Act no rights as executor can be established in any court of justice : see *Ganshamdass Narayandass v. Gulab Bi Bai* . and *Hem Nolini v. Isolyne Sarojbashini*. The effect of the non-probate of a will on the status of the executor has been the subject of innumerable decisions in this country. A detailed consideration of the said decisions is out of place in the present context. In *Williams on Executors* and

Administrators, Vol. I, 14th Edition, it is stated at page 58 thus :

"Where an executor is appointed by a will, he derives title from the will, and the property of the deceased vests in him from the moment of the testator's death, so that probate is said to have relation to the time of the testator's death. Thus, though he cannot rely on his title in any court without production of probate, probate is merely operative as the authenticated evidence of the executor's title."

9. The learned author further elaborates the legal position thus at page 64 :

"But a creditor of a deceased debtor cannot sue a person named as executor in the will unless he has either administered, that is, intermeddled with the estate, or proved the will, and consequently, the seizure and sale of part of the testator's assets, under an execution founded upon a judgment in an action so constituted, was ineffectual to bind the testator's estate."

10. The definition of a legal representative under section 2(11) of the Code of Civil Procedure also runs on the same lines : it means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. It has been held that one who intermeddles with the estate of a deceased person, even though it may be only with a part thereof, is a legal representative within the meaning of section 2(11) of the Code of Civil Procedure and is liable to the extent of the property taken possession of by him. On the same analogy, it may be held that if all the executors or some of them administered the estate of a deceased without obtaining the probate, all of them or some of them who have administered the estate may be held to be the legal representatives of the deceased and liable to the extent of the property taken possession of by them. If it had been established that E. D. Sadanandan had alone been managing the entire estate, the court could have come to the conclusion that he was the legal representative of the deceased and, therefore, represented the estate in the assessment proceedings. But, unfortunately, as we have already indicated, no serious attempt was made by the parties to establish before the High Court by placing before it the necessary material that all or some of the executors, though they did not obtain probate of the will, had intermeddled with the estate wholly or in part.

11. There is also a large body of authority holding that if a party bonafide impleaded one of the legal representatives as representing the estate of a deceased party and the said representative represented the estate, the decree obtained therein is binding on the other legal representatives of the deceased. It is unnecessary to survey the wide field of decisions on this aspect of the case, as this court in a recent decision, in *Daya Ram v. Shyam Sundari*, has summarized the law. Rajagopala Ayyangar J., speaking for the court, said thus :

"When this provision speaks of 'legal representatives' is it the intention of the legislature that unless each and every one of the legal representatives of the deceased defendants, where these are several, is brought on record there is no proper constitution of the suit or appeal, with the result that the suit or appeal would abate ? The almost universal concerns of opinion of all the High Courts is 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, that the impleaded legal representatives sufficiently represent the estate of the deceased and that a decision obtained with them on record will bind not merely those impleaded but the entire estate including those not brought on record."

12. Though this principle was laid down in the context of suits or appeals, it is one of general application. We do not see why the said principle cannot be invoked in the case of assessment of income from the estate of a deceased person in the hands of his legal representatives. Here again no material was placed before the High Court. The Income-tax Officer, who filed the affidavits, had no personal knowledge of what had happened at the time of the making of the assessment. Better material could have been placed to enable the court to come to a conclusion whether the Income-tax Officer acted bona fide in serving the notices only on E. D. Sadanandan, because he was the executor who intermeddled with the estate and was in actual management thereof.

13. Further, the notices under section 34 of the Act were addressed to "Late S. P. Sadanandan by his heirs E. D. Sadanandan and others, Kozhikode." The record placed before us does not disclose how the proceedings were conducted who represented the estate and whether the other executors and the legatees expressly accepted the representation or acquiesced therein. Though notices were served only on one of the executors, the proceedings might show that the estate was properly represented by E. D. Sadanandan with the consent, express or implied, of the other executors and heirs. This again is a question of fact to be decided on relevant evidence.

14. Even if the will was ignored, the question whether the Income-tax Officer acted bona fide and whether the estate was properly and effectively represented by one or other of the legal representatives of the deceased still remains to be considered.

15. Lastly, even if some of the legal representatives were not served, the question arises whether the assessment order made against the estate represented by E. D. Sadanandan would continue to be effective against that part of the estate in his possession or management; or to part it in other words, what would be the effect of the non-service of notice on some of the legal representatives on the enforceability of the assessment order against that part of the estate in the possession and management of E. D. Sadanandan.

16. Before us learned counsel on both sides advanced arguments on hypothetical and alternative basis. Except the affidavit filed by the Income-tax Officer, which is vague to the extreme, and that filed by the respondent, which is equally unhelpful, no material has been placed before us. The records of the income-tax proceedings on which the learned judges of the High Court have fully drawn upon are also non available to us. On the scanty material it is impossible to come to any definite conclusion on any of the points posed by us. We, therefore, with some reluctance, set aside the order of the High Court and remand the matter to it for fresh disposal. The parties will have opportunity to file fresh affidavits and to place all the relevant material before the High Court to enable it to come to a definite conclusion on the following points, among others :

(1) Whether E. D. Sadanandan was in possession and management of the entire estate of his father and, if so, whether he would be the legal representatives of his father within the meaning of section 24B of the Income-tax Act.

(2) Even if he intermeddled only with a part of the estate, whether the Income-tax Officer bona fide treated him as representative of the estate and proceeded to assess the income of the estate in his hands.

(3) Whether E. D. Sadanandan, in fact, represented the estate and whether the other executors and representatives expressly or impliedly accepted his representation.

(4) Whether the 1st respondent who was not a part to the assessment proceedings could question the enforceability of the final assessment order made against E. D. Sadanandan.

17. We may make it clear that we have not finally expressed any opinion on question of law or fact that arise in the case. Any observations that we have made on any point are not intended to be our final decision thereon, but only to afford a guide to the High Court to come to its own conclusion thereon. The High Court has liberty to consider all the contentions of the parties without being in any way hampered by our observations.

18. As the appellant was, to a large extent, guilty of laches in the matter, we direct the appellant to pay the costs of the 1st respondent in this court. Costs of the High Court will abide the result.