Supreme Court of India
Asstt. Collector Of Estate Duty ... vs V. Devaki Ammal, Madras on 17 November, 1994
Bench: S.P. Bharucha, S.C. Sen, K.S. Paripoornan

CASE NO.:
Appeal (civil) 71 of 1975

PETITIONER:
ASSTT. COLLECTOR OF ESTATE DUTY MADRAS

RESPONDENT:
V. DEVAKI AMMAL, MADRAS

DATE OF JUDGMENT: 17/11/1994

BENCH:
S.P. BHARUCHA & S.C. SEN & K.S. PARIPOORNAN

JUDGMENT:

JUDGMENT 1994 SUPPL. (5) SCR 573 The Judgment of the Court was delivered by BHARUCHA, J. In PL S. RM. Ramanathan Chettiar v. Asstt. Controller of Estate Duty, Coimbatore, 76 ITR 402, a Division Bench of the Madras High Court, upon a writ petition, held that Section 34(I)(c) of the Estate Duty Act, 1953, was not violative of Article 14 of the Constitution, It was held that there was no discrimination brought about by Section 34(l)(c) between the members of a Mitakshara Joint Hindu family and the members of a Dayabhaga family.

Even so, upon a writ petition, another Division Bench of the Madras High Court in, V. Devaki Ammal v. Asstt. Controller of Estate Duty, Madras, 9:1 ITR 24, held Section 34 (1) (c) to be discriminatory and violative of Article 14 of the Constitution. The latter Division Bench noted the judgment of the earlier Division Bench. Indeed, it quoted therefrom. It went on, however, to consider the validity of Section 34 (1) (c) for the following reasons :

"If section 34 (1) (c) is construed as a provision for aggregation of the benefits accrued to each of the lineal descendants on the death of the deceased, then on the principle laid down in that case the validity of the section has to be upheld, In fact, the learned counsel for the petitioner, wanted us to construe section 34 (1) (c) in the same manner and quash the order of the respondent on the ground that the clubbing of the son's share with that of the deceased in this case is not warranted under section 34 (1) (c). But the revenue very strenuously contends that the object of section 34 (1) (c) is to club the coparcenary interest of lineal descendant also with the coparcenary interest of the deceased so as to form one whole estate and that the validity of the section has to be considered in that light. As a matter of fact, the respondent in this case has construed section 34 (1) (c) in the manner suggested by the revenue and has clubbed the half share of the son with the half share of the deceased father so as to form one estate and had applied the rate applicable to such combined estate in his assessment orders and it is that order which is being challenged before us. We, therefore, proceed to consider the question of the validity of section 34(1 )(c) on the basis of the wider interpretation which the revenue has adopted."

We are at a loss to understand how, once one Division Bench of a High Court has held a particular provision of law to be Constitutional and not violative of Article 14, it is open to another Division Bench to hold that the same provision of law is unconstitutional and violative of Article 14, Judicial discipline demands that one Division Bench of a High Court should, ordinarily, follow the judgment of another Division Bench of that High Court. In extraordinary cases, where the latter Division Bench finds it difficult, for stated reasons, to follow the earlier Division Bench judgment, the proper course is to order that the papers be placed before the learned Chief Justice of the High Court for constituting a larger Bench. Certainly, where one Division Bench has held a statutory provision to be constitutional it is not open to another Division Bench to hold otherwise.

It is more strange that the latter Division Bench here should have reconsidered the constitutionality of Section 34(I)(c) because, as what is quoted above shows, the successful party before the earlier Division Bench, the Revenue, canvassed a wider interpretation of that provision.

The later judgment of the Madras High Court is under challenge in the first appeal.

It must be immediately stated that, upon writ petitions, the provisions of Section 34 (1) (c) have been held to be constitutional and not violative of Article 14 by me Kerala High Court in T.R. Jayasankar v. Assistant Controller of Estate Duty, 83 ITR 445; The Andhra Pradesh High Court in N. Krishna Prasadv. Asstt. Controller of Estate Duty, Guntur,56 ITR 332, Smt. Komanduri Seshamma v. Appellate Controller of Estate Duty, 88 ITR 82, and N.V. Somaraju v. Government of India and Ors. 97 ITR 97; The Punjab High Court in Hari Ram v. Asstt. Controller of Estate Duty-cum-Income-Tax Circle, Gurgaonand Ors., 101 ITR 539; The Allahabad High Court in Badri Vishal Tandon v. Asstt. Controller of Estate Duty. Allahabad and Ors. 103 ITR 468; and the Paroa High Court in Rameshwar Loll Agarwal v. Union of India and Ors., 133 ITR 545. The validity of Section 34 (1) (c) has also been considered in reference applications and upheld by the Allahabad High Court in Maharani Raj Laxmi Kumari Devi V. Controller of Estate Duty, Lucknow, 121 ITR 1002; The Madras High Court in Smt Gunvantibai v. Controller of Estate Dvty, M.P., 130 ITR 122; The Gujarat High Court in Ramniklal J. Daftary v. Controller of Estate Duly, Gujarat, 136 ITR 422 and the Andhra Pradesh High Court in C. Vanajakshi Venkata Rao and anr, v. Controller of Estate Duty, 143 ITR 1014; In many-of these judgments the High Courts concerned have noted the judgment under appeal and declined to follow it.

For the purposes of understanding the arguments, it may be noted that Section 3 of the Estate Duty Act is the charging section; it states that in the case of every person dying after the commencement of the Act there would be levied and paid upon the principal value of all property specified in the First Schedule to the Act which passed on his death a duty called estate duty; it was payable at the rates fixed in accordance with Section

35. Section 6 states that the property which the deceased was at the time of his death competent to dispose of would be deemed to pass on his death. Section 7(1) states that property in which the deceased or any other person had an interest ceasing on the death of the deceased would be deemed to pass on the deceased's death to the extent to which a benefit accrued or arose by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu

family governed by the Mitakshara, Marumakkattayam or Aliyasantana law. Section 39(1) states that the value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death. There are analogous provisions in relation to the Marumakkattayam and Aliyasantana families in Section 39(2). For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of the Act are, by reason of Section 39(3), nude applicable as they would have applied if the whole of the joint family property had belonged to the deceased. Section 34(1) reads thus:

"34 (1) For the purpose of determining the rate of the estate duty to be paid on any property passing on the death of the deceased,-

(a) all property so passing other than property exempted from estate duty under clauses (c), (d), (e), (i), (j), (1), (m), (mn), (n), (o) and (p) of sub-section (I) of section 33;

(b) agricultural land so passing, if any, situate in any State not specified in the First Schedule; and

(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, also the interests in the joint family property of all the lineal descendants of the deceased member, shall be aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof."

Sub-section (2) of Section 34, so far as is relevant for bur purpose, reads thus;

"(2) Where any such estate as is referred to in sub-section (I) includes any property exempt from estate duty, the estate duty leviable on the property not so exempt shall be on amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been so exempt, the same proportion as the value of the property not so exempt bears to the value of the whole estate.

Explanation - For the purposes of this sub-section, "property exempt from estate duty" means -

xxx xxx xxx

(iii) the interests of all coparceners other man the deceased in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

On behalf of the Revenue it was submitted that Section 34 (1) (c) was not violative of Article 14 and reliance was placed upon the judgment of the Madras High Court in the aforementioned earlier

judgment in PL S. RM. Sivaswamy Chettiar and me judgments of the various High Courts adverted to above. It was also submitted, having regard to the fact that we were concerned with a provision in a taxing statute which had been upheld by so many High Courts over a long period of time, that uniform understanding of the law should be maintained. Learned counsel for the accountable person pointed out mat clauses (a) and (b) of Section 34(1) related to property that had actually passed whereas clause (c) related to property which did not pass but, by reason of the deeming provisions of Section 7, was deemed to pass. By reason of Section 34, therefore, it was submitted, unequals were treated equally. Estates falling under clauses (a) and (b) were not equal to the estates falling under clause (c) but the latter estates were similarly treated in that aggregation in the manner specified under Section 34 was required to be made in regard to all of them. We find no substance in this contention. Section 34 sets out at one place in the statute cases in which aggregation is to be made. That aggregation is to be made in respect of the properties which fall under clauses (a) and (b), which pass on death, and also in respect of property under clause (c), which is deemed to pass on death, does not lead to the conclusion that unequals are treated equally.

It was next submitted that when a Dayabhaga father died his son got a share in his estate only on death whereas in a Mitaksbara Joint Hindu family a son got a right to the property thereof at birth. Neither the father nor the son had any defined share in a joint Hindu family property governed by Mitakshara law. Yet, those governed by Mitakshara Jaw were sought to be equated with those covered by Dayabhaga law on death.

We think that we should immediately quote from the judgment of the Madras High Court in the earlier case, of PL. S.RM. Ramanathan Chettiar.

"In the case of a member of a Dayabhaga family dying, no question of aggregation can arise at all for the member of such a family dying possessed by reason of his personal law a defined share in the assets of the family, unlike a deceased member belonging to a joint Hindu family governed by the Mitakshara law. It is precisely for that reason that in the case of a member belonging to a joint Hindu family governed by the Mitakshara law dying, the principle of aggregation has been embodied in section 34 (I) (c). But for the principle of aggregation, the rate applicable to such a case will be the rate corresponding to the value of the benefit that can be regarded as having accrued to each of the lineal descendants of the deceased. Whereas, in the case of a Dayabhaga family, in view of the fact that the share of the deceased member is a crystallised one, the rate applicable in that case would be a rate corresponding to the value of the share of the deceased member. It may be seen, therefore, that, but for the principle of aggregation envisaged by section 34 (I) (c), there would be discrimination. In fact, section 34 (1) (c) avoids such a discrimination. To illustrate, suppose there is a Hindu joint family governed by the Mitakshara law consisting of two brothers and one of them dies leaving two sons. Had it not been for section 34 (1) (c), each of the sons would be entitled to insist that the rate applicable to the value of the benefit accrued to him would be mat corresponding to such value. But, in view of section 34 (1) (c), the value of the benefit accruing to each of the two sons would be aggregated and the rate applicable to the aggregated value as ascertained under section 39 would be applied to the value of the benefit accruing to one of the sons of the deceased. By this process precisely the same result is achieved as in the case of a member of a Dayabhaga Hindu family dying, assuming that the family consisted of members as we have assumed

in the case of the Mitakshara Hindu joint family.

It would follow, therefore, that there is no discrimination whatever brought about by Section 34(l)(c) between members of a Mitakshara joint Hindu family and of a Dayabhaga family in the matter of application of rates of taxation.

The matter can also be looked at rather differently. In the judgment of this Court in V. Venugopala Ravi Verma Rajah v. Union of India, 74 ITR 49, it was said, "Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways; the legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification; it is not a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classification is rational, the legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment; A taxing statute may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions or occupations similarly situate, incidence of taxation which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects.

It is for the legislature to determine the objects on which tax shall be levied, and the rates thereof."

In the case of a joint Hindu family governed by Mitakshara law the sons have, from birth, an interest along with their father in his property. This is true also of Marumakkattayam and Aliyasantana families. The Mitakshara, Marumakkattayam and Aliyasantana cases form a class apart and the Legislature is entitled to provide, as it has done in Section 7, that in such cases the property in which the deceased or any other person had any interest leasing on his death shall be deemed to pass on the death to the extent to which a benefit accrued or arose by the cessar of such interest Section 39 provides that that benefit shall be valued, in the event that the deceased was governed by Mitakshara law, on the basis of the principal value of the deceased's share in the joint family property had there been a partition immediately before his death. These provisions are not challenged. Section 34(1 )(c) only provides for the rate of estate duty to be levied upon such benefit. For determining that rate the interest of all the lineal descendants of the deceased in the joint Hindu family property is to be aggregated so as to form one estate and estate duty is to be levied at the rate applicable to the principal value thereof. Sub-section (2) of Section 34 is put somewhat clumsily. It uses the expression "property exempt from duty" and its Explanation defines the expression to include the interests of all co-parceners, other than the deceased, in the joint family property. Where, therefore, the estate referred to in clause

(c) of sub-section (1) of Section 34 includes the interests of co-parceners other than the deceased, which is the property exempt from estate duty, the estate duty leviable on the property not exempt, i.e., on the interest of the deceased, shall be calculated by application of this formula; what is the proportion of the value of me property not exempt to the value of estate; that proportion of the amount payable tin the estate is payable on the interest of the deceased.

We see, therefore, no merit in the contention that Section 34(1)(C) is violative of Article 14 or that it is unconstitutional on that account.

The appeal (Civil Appeal No. 71 of 1975) is allowed. The judgment and order under appeal is set aside. The respondent shall pay to the appellant the costs of the appeal fixed at Rs. 10,000.

Civil Appeal Nos. 72 and 73 of 1975 and S.L.P. (Civil) No. 15176/85 are directed against orders that follow the judgment that we have just set aside; they are allowed and the orders ander appeal set aside. Civil Appeal No. 3641 of 1983 is by an accountable person. No point other than that covered by this judgment has been urged. It is dismissed. Writ Petition (Civil) No. 1007/89 raises the same point and is dismissed. In Tax Reference Case No. 9 of 1978 the question posed is answered in the affirmative and in favour of the Revenue. In all these matters each party shall bear and pay its own costs.