Privy Council Appeal No. 16 *of* 1955

The Attorney General of Ceylon - - - - - - - *Appellant*

v.

Ar. Arunachalam Chettiar and others (Substituted for V. Ramaswami Iyengar and another, Administrators of the Estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased) - - - - - - - - *Respondents*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10th JULY, 1957

Present at the Hearing:

VISCOUNT SIMONDS
LORD REID
LORD COHEN
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

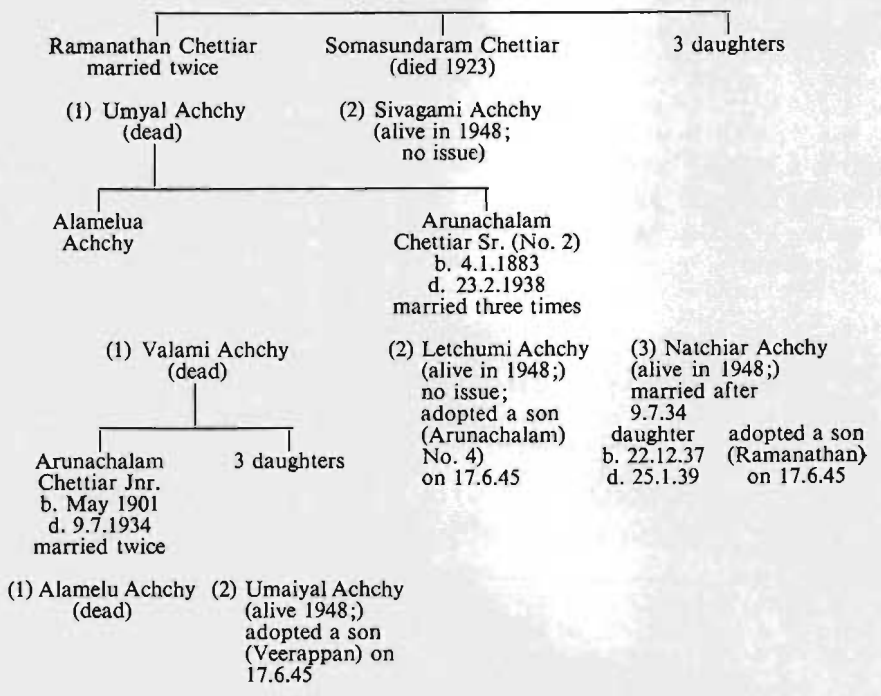
[*Delivered by* VISCOUNT SIMONDS]

This appeal from a judgment and decree of the Supreme Court of Ceylon and the succeeding appeal, No. 17 of 1955, from the same Court, have certain facts in common which will be stated in the opinion now given by their Lordships and will not be repeated in their opinion on the second appeal.

Both appeals raise questions as to the exigibility of estate duty under the relevant Ordinances of Ceylon upon the death, first, of one Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar and, second, of his father one Rm. Ar. Ar. Arunachalam Chettiar. These gentlemen will be called "the son" and "the father" in this opinion.

The father and the son were members of a Hindu community known as Nattukottai Chettiars who inhabit certain districts of Southern India and were governed by the Mitakshara system of Hindu law in matters relating to inheritance succession, adoption, marriage and other matters. They were also coparcenary members of a joint Hindu family which had extensive trading and other interests in India, Ceylon, and other far Eastern countries. Immediately before the 9th July, 1934, when the son died, he and the father were the only living coparceners. The father then became the sole surviving coparcener of the family. But there were females also who, though they had not the rights of coparceners, yet had rights of residence in, and maintenance out of, the joint family property and were in all respects members of the Hindu undivided family of which the father and son were coparceners. Moreover it was competent for the surviving widow of the son to adopt a son who would thus become a coparcener with the father and the father himself during his life and after his death his surviving widows had a similar power of adoption. It is convenient to set out here a genealogical tree which shows not only the members of the family but the manner in which these powers of adoption were exercised.

ARUNACHALAM CHETTIAR (No. 1).



The son, as has been said, died on the 9th July, 1934. The father died on the 23rd February, 1938. Both of them died in India where they were domiciled.

On the 31st October, 1938, the Assessor of Estate Duty, Colombo, served on the administrators of the estate of the father a notice of assessment that in respect of the estate of the son estate duty payable by them had been assessed at a figure of Rs.223,493.70. This sum was by amended notices reduced to Rs.221,743. From the notices it is clear that the assessment was in respect of what was described as the "Deceased's half share" of the assets of the business carried on by the family in Ceylon and of certain other assets. Objection was duly taken to the assessment but was overruled by the Commissioner of Estate Duty The matter was then appealed to the District Court of Colombo. The learned District Judge allowed the appeal and an appeal from his decision by the present appellant, the Attorney General of Ceylon, to the Supreme Court of Ceylon was dismissed.

At the date of the son's death estate duty was imposed by the Estate Duty Ordinance No. 8 of 1919 which in all material respects was a faithful copy of the Finance Act, 1894, of the United Kingdom. It will be useful to set out the provisions of the Ordinance which are relevant to this appeal.

THE ESTATE DUTY ORDINANCE No. 8 OF 1919.

2.—(1) In this Ordinance, unless the context otherwise requires, the term—

"Estate duty" means the duty imposed under the provisions of this Ordinance in case of the death of any person dying on or after the commencement* of this Ordinance.

"Deceased" means any person dying on or after the commencement of this Ordinance.

* * * * *

"Property" includes movable and immovable property of any kind situate or being in the Colony and the proceeds or sale thereof respectively, and any money or investment for the time being representing the proceeds of sale. . . .

"Property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation; and the expression "on the death" includes "at a time ascertainable only by reference to the death".

(2) For the purposes of this Ordinance—

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself.

* * * * *

7. In the case of every person dying after the commencement of this Ordinance, there shall, save as hereinafter expressly provided, be levied and paid, upon the value of all property settled or not settled, which passes on the death of such person, a duty called "estate duty", at the graduated rates set forth in the Schedule to this Ordinance.

8.—(1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

(*a*) Property of which the deceased was at the time of his death competent to dispose.

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by the cesser of such interest. . . .

* * * * *

17.—(6) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) If the interest extended to the whole income of the property, be the value of that property; and

(*b*) If the interest extended to less than the whole income of the property, be such proportion of the value of the property as corresponds to the proportion of the income which passes on the cesser of the interest.

* * * * *

It was and is claimed by the appellant that estate duty in respect of the son's estate was exigible either under S. 7 of the Ordinance (which corresponds with S. 1 of the Finance Act, 1894) or under S. 8 (1) (*a*) or (*b*) (which reproduce part of S. 2 of the same Act).

It became necessary therefore to determine with as much precision as the subject matter permitted what was the nature of the son's interest in the property in Ceylon of the Hindu undivided family of which he and the father were coparceners. This was a question of fact for the Courts of Ceylon and is today a question of fact for their Lordships also, notwithstanding that frequent reference was made to decisions of this Board given at a time when Hindu law was within their cognizance.

Expert evidence was accordingly called and given at great length by distinguished Hindu lawyers, who, though they necessarily agreed generally upon the material principles of the Mitakshara law, took different views upon certain aspects of that law. And it was upon those differences that counsel for the appellant based his argument, relying upon the evidence given by the learned Advocate General for Madras before the District Judge. It was not seriously urged that this was a case in which their Lordships should regard the matter as concluded by the fact that there were concurrent findings by the District Judge and the Supreme Court as to the nature in Hindu law of the son's interest. They have therefore felt at liberty, and indeed bound, to scrutinize the evidence given by the witnesses together with the authoritative text books and the case law upon which they relied. Nor did they reject references in the present appeal to authorities which had not been referred to in evidence. But, having done so, they must express the opinion which as the case proceeded more and more forced itself upon them, that the issue turned not upon the minor differences between the expert lawyers but upon the possibility, whichever of them was right, of bringing within the scope of a taxing Act couched in the language of the 1919 Ordinance an interest which originated in a wholly different system of law. The language of the Finance Act may be appropriate to the law of Ceylon, but it is singularly inappropriate

to the legal concepts upon which the Hindu undivided family is based and their Lordships would at the outset insist as a first principle of taxing law that its language is not to be strained to an unnatural use in order to enlarge its scope. This is particularly to be observed where the matter which is the subject of claim is well known and susceptible of clear definition and taxation by appropriate words.

It is in this context that the questions must be asked whether any property passed upon the death of the son within the meaning of S. 7 of the Ordinance or whether, alternatively, he was " competent to dispose " of any property at the time of his death within S. 8 (1) (*a*) or whether there was any property in which he had an interest ceasing on his death within S. 8 (1) (*b*), an interest which falls to be measured by the extent to which a benefit accrues or arises by its cesser, which benefit is in its turn valued in accordance with the provisions of S. 17 (6) of the Ordinance.

First, then, did any and what property " pass " on the death of the son? An attempt was made at the hearing before their Lordships to argue that the whole of the property in Ceylon of the Hindu undivided family so " passed ", though a claim for estate duty in respect of one half only was made. Their Lordships considered this argument to be inadmissible in view of the assessment that had been made and the course that the proceedings had so far taken. Counsel was therefore limited to the argument that the son's share in that property " passed " and that that share was one-half.

It appears to their Lordships that this contention is refuted by the most elementary consideration of the Mitakshara law. The learned District Judge observed that " to describe the deceased as a coparcener in " relation to the joint property is but to adopt a convenient term in the " process of attempting to analyse a legal concept which has no precise " equivalent in this country ". And he added, " the problem before us " cannot satisfactorily be solved by the mere selection of appropriate " words ". But, whatever else may be said of a coparcener, it is clear that it would be a misuse of language to say that he had a " half share " or any " share " of the family property. The numerous passages to which their Lordships were referred in Mulla's Principles of Hindu Law and Mayne's Hindu Law and Usage illustrate and expand the statement made by Lord Westbury in delivering the opinion of this Board in 11 Moore's I.A. 75 at p. 89, " According to the true notion of an " undivided family in Hindu Law, no individual member of that family " whilst it remains undivided can predicate of the joint and undivided " property, that he, that particular member has a certain definite share ". A little earlier in 9 Moore's I.A. 539, at p. 611, Lord Justice Turner had referred to the property as " the common property of a united " family." " There is," he said, " community of interest and unity of " possession between all the (' coparceners ') members of the family : and " upon the death of any one of them, the others may well take by " survivorship that in which they had during the deceased's lifetime a " common interest and a common possession."

These two passages, capable as they may be of qualification and refinement, state the essential nature of a coparcener's interest. It is true that he has other rights which appear to enlarge that interest. He can separate from the family and ask for partition of the family property : he can in certain circumstances alienate his interest (a later and not universal development of the Mitakshara law) and, if he does so, the Court will, if necessary, protect the alienee's rights by decreeing the partition for which he might himself have asked. So also the Court may intervene for the benefit of an execution creditor. These incidents give colour to the view that a coparcener has what may be called a " share ". But against them may be set the fact that the disposition of the income of the family property is in the discretion of the Karta, usually the senior male member of the family, whose right and duty it is to maintain out of it not only the coparceners but also the female members of the family, the wives, widows and unmarried daughters of living or dead coparceners, and further to devote such money as may be necessary for such family

purposes as the education, marriage, and religious ceremonies of the coparceners and of the members of their respective families (see Mulla Sec. 237). To say that in such circumstances a coparcener has a "share" of the property which "passes" on his death is in their Lordships' opinion a clear misuse of language. Nor does it help to say that the property is "vested" in or "owned" by (if "vest" and "own" are legitimate words to use) the coparceners for the time being rather than by all the members of the undivided family. It appears to their Lordships unnecessary to examine further this aspect of the claim, and the less so because they do not dissent from the views expressed by the District Judge and Mr. Justice Gratiaen in their careful and exhaustive judgments.

Section 7 failing him, the appellant turns to section 8 (1) (*a*) and contends that the son was at or immediately before his death "competent to dispose" of a share—again a half-share—of the Ceylon property of the undivided family: therefore the property passing on his death must be deemed to include that half share.

This contention was based primarily on the consideration that the son could at any time during his lifetime have obtained his share of the family property by partition. Having first communicated his intention to separate from the family, he could then have obtained his share either by agreement or in the absence of agreement by going to the Court and getting a decree. It was a complementary contention that he could by alienating or purporting to alienate his 'share' for value place his alienee in a position in which the Court would decree in favour of the latter the same partition that it would have granted to him. Thus indirectly at one or two removes, it was said, one half of the Ceylon property could have been disposed of by the son in his lifetime. In support of this argument reference was made to English cases, such as re *Penrose* [1933] Ch. 793 and re *Parsons* [1943] Ch. 12. The correctness of these decisions is not in issue but it seems to their Lordships that they throw no light upon the question, though the argument illustrates the danger of trying to apply the principles of English law to the esoteric doctrines of the Hindu undivided family. There are other answers to the contention, but, leaving them aside for the moment, why should it be assumed that the son would take the necessary preliminary step of separating from his family, a step which for economic, sentimental and traditional reasons might be utterly repugnant to him? It would be little less than absurd to stretch "competency to dispose" to such an extremity. Moreover, if, and so far as "competency to dispose" rests upon a right to obtain partition, it must be remembered that both son and father were domiciled in India and that the family property included interests not only in Ceylon but in India and other parts of Asia. Their Lordships have no right to assume in favour of the appellant that, if there had been a partition by agreement or decree, any part of the property in Ceylon would have fallen to the share of the son. Learned Counsel for the appellant tried to meet this difficulty by saying that, if there was a partition, at least the Ceylon property would have fallen to someone's share, but this did not appear to their Lordships to be equivalent to saying that the son had been competent to dispose of it. The same considerations apply to the contention that the son was competent to dispose of one half of the Ceylon property because he might have alienated for value and his alienee might have applied to the Court (to use a phrase sometimes used in this connection) "to work out the equities" in his favour. Such a process leaves the son at a long distance from competency to dispose of any particular part of the family property.

Finally section 8 (1) (*b*) of the Ordinance was invoked. Duty is exigible under this subsection in respect of property (*a*) in which the son had an interest ceasing on his death, (*b*) to the extent to which a benefit accrues or arises by the cesser of such interest, the value of that benefit being measured in accordance with the provisions of S. 17 (6) of the Ordinance, that is to say, if the interest extended to the whole income of that property, being the value of that property or, if it extended to less than the whole

income of the property, being the corresponding proportion of the value of the property.

It is clear then that two elements must coincide. There must be not only a cesser of interest in property: there must be also a benefit arising by such cesser. And further the benefit must be capable of valuation by reference to the income of the property which the deceased had enjoyed. The brief exposition already given of the law of the Hindu undivided family is sufficient to show how inept is the language of the Ordinance to embrace the case of the death of a coparcener. Their Lordships are so fully in agreement with what was said by Mr. Justice Gratiaen in the Supreme Court that they quote and adopt his words " He [the deceased] merely had a right to be maintained by the Karta out of the common fund to an extent which was at the Karta's absolute discretion: in addition, he could, if excluded entirely from the benefits of joint enjoyment have taken appropriate proceedings against the Karta to ensure a recognition of his future maintenance rights and also to obtain compensation for his earlier exclusion. I find it impossible to conceive of a basis of valuation which in relation to such an 'interest' would conform to the scheme prescribed by S. 17 (6). Nor do I think that upon a cesser of that so-called 'interest' a 'benefit' of any value can be said to have accrued to the surviving 'coparcener' when the deceased's 'interest' lapsed ". This reasoning appears to their Lordships to be cogent and conclusive. Counsel for the appellant sought a way of escape by urging that at least the surviving coparcener must benefit by the fact that the deceased could no longer claim partition of the family estate. That might or might not be an advantage to him, but the short answer is that it is not a benefit susceptible of valuation in the only way which the Ordinance prescribes.

In the result the claim to duty cannot be upheld either under S. 7 or S. 8 (1) (*a*) or (*b*). Subsidiary questions were raised with which it is not necessary to deal. If their Lordships had taken a different view on the main question, it would have been necessary to consider the local situation of certain so-called Mysore Bonds. It need not now be discussed. Nor is it necessary to consider whether, as was urged by the respondents, they were not liable to pay the duty upon the son's death, even if it was otherwise exigible. Upon this question their Lordships express no opinion. Finally a submission was made in regard to immovable property in Ceylon, in which reliance was placed on section 18 of the Partition Ordinance No. 10 of 1863 and section 7 of the Wills Ordinance No. 21 of 1844. This matter does not appear to have been raised in the Court of the District Judge. In the Supreme Court it was dealt with summarily by Mr. Justice Gratiaen and their Lordships concur in the view that he expressed.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.

(39095) Wt. 8075—17 100 8/57 D.L.

In the Privy Council

THE ATTORNEY GENERAL OF CEYLON

v.

AR. ARUNACHALAM CHETTIAR AND OTHERS (SUBSTITUTED FOR V. RAMASWAMI IYENGAR AND ANOTHER, ADMINISTRATORS OF THE ESTATE OF RM. AR. AR. RM. ARUNACHALAM CHETTIAR, DECEASED)

DELIVERED BY VISCOUNT SIMONDS

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