17, 1957

No. 17 of 1955.

In the Privy Council.

UNIVERSITY OF LONDON
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25 FEB 1958
INSTITUTE OF ADVANCED
LEGAL STUDIES
49817

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

BETWEEN

THE ATTORNEY-GENERAL OF CEYLON . *Appellant*

AND

1. AR. ARUNACHALAM CHETTIAR
2. AR. RAMANATHAN CHETTIAR
3. AR. VEERAPPA CHETTIAR

(Substituted for (1) V. RAMASWAMI IYENGAR and (2) K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased) *Respondents.*

Case for the Respondents.

RECORD.

**Signifies page references to the Record in Appeal No. 16 of 1955.*

1. This Appeal is from a Judgment of the Supreme Court of Ceylon dated the 12th October, 1953, allowing an Appeal from a Judgment of the District Court, Colombo, dated the 8th November, 1949, on a Petition of Appeal against an assessment of estate duty, and (A) declaring that no estate duty was payable under the Estate Duty Ordinance (Cap. 187) in respect of the estate in question and (B) ordering the Crown to refund to the previous Respondents the sum of Rs. 700,402/65, with legal interest. pp. 37–41. *pp. 286–313. pp. 12–15.

2. The principal issue to be determined on this Appeal is whether the property assessed for duty, which was joint property of a Hindu undivided family, ceased to be such joint property because there was at the material time only one co-parcener, and therefore became liable to estate duty on his death, notwithstanding the exemption from estate duty in the case of joint property of a Hindu undivided family provided by Section 73 of the Estate Duty Ordinance (Cap. 187). A further issue, which will arise for determination only if the said principal issue is decided in the Appellant's favour, is as to whether certain Mysore Government Securities form part of the estate of the deceased in Ceylon.

3. The original Respondents (who are hereinafter called "the Administrators") were the Administrators of the estate of one Rm. Ar. p. 12, ll. 37–40.

Ar. Rm. Arunachalam Chettiar, deceased, who died on the 23rd February, 1938, leaving a last Will dated the 9th January, 1938, providing for *inter alia* the management and disposal of the family estate.

*pp. 349–355.

pp. 53–58.

4. A Declaration of Property under the Estate Duty Ordinance (Cap. 187) claiming exemption from duty was made on the 1st May, 1939. The grounds on which exemption was claimed were stated as follows :—

p. 56, ll. 27–42.

" (A) Under Section 73 of Ordinance No. 1 of 1938 :

" Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar (son) and Rm. Ar. Ar. Rm. Arunachalam Chettiar (father) and their wives were members of an undivided Hindu Family. The son died on 9th July, 1934. The father in respect of whose estate this declaration and statement is submitted died on 23rd February, 1938. The said undivided Hindu Family owned joint properties in Ceylon to wit : The business carried on under the Vilasams of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. in Ceylon. All the property in Ceylon both movable and immovable are Trade Assets of the said business.

" (B) Under Section 7 of Ordinance No. 1 of 1938 :

A half share of the following properties are Trust Property :

(1) Thanmakerny, (2) Thachchankadu, and (3) Vannankerny Estates. "

The estate in respect of which the Crown claims estate duty is that of Arunachalam Chettiar the father. He and the son are hereinafter referred to respectively as Arunachalam Chettiar (Sr.) and Arunachalam Chettiar (Jr.) . The son predeceased the father, dying on the 9th July, 1934.

5. The sections of the Estate Duty Ordinance (Cap. 187) under which exemption from duty was claimed are as follows :—

Section 73 (as amended)

" Where a member of a Hindu undivided family dies, no estate duty shall be payable—

(*a*) on any movable property which is proved . . . to have been the joint property of that family ;

(*b*) on any immovable property when it is proved . . . that such property, if it had been movable property would have been the movable property of that family."

Section 7

" Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition enforceable at law not made by the deceased, or under a disposition enforceable at law made by the deceased more than three years before his death, where possession and enjoyment of the property was *bona fide* assumed by

the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise."

6. By a provisional Notice of Assessment dated the 5th October, 1939, the Commissioner of Estate Duty assessed the estate duty alleged to be payable in respect of the assets of the estate of Arunachalam Chettiar (Sr.) at Rs. 449,611/52. The Administrators by a Notice of Appeal dated the 3rd November, 1939, objected to the said provisional assessment. An additional Notice of Assessment dated the 9th May, 1941, assessed the duty payable at Rs. 189,750/24. The Administrators sent a Statement of Objections dated the 2nd June, 1941, against the said additional assessment. By letter dated the 16th April, 1942, the Commissioner of Estate Duty informed the Administrators that he had determined to maintain the assessment subject to the exclusion of certain property referred to in the last mentioned Statement of Objections; and an Amended Notice of Assessment dated the 29th April, 1942, was sent to the Administrators. pp. 15, 60. pp. 61–62. pp. 16–18. pp. 63–64. pp. 65–67. pp. 18. 82. p. 19. pp. 82–83.

Payment of the estate duty demanded, including interest, was made by the Administrators by the payment of various sums from time to time. The total amount paid was Rs. 700,402/65. p. 25, ll. 22–32.

7. By a Petition of Appeal dated the 14th May, 1942, in the District Court of Colombo the Administrators instituted pp. 12–15.

THE PRESENT SUIT.

In the said Petition the Administrators stated their reasons for appealing against the assessment of estate duty as follows :— p. 13, l. 31–p. 14, . 44.

"(1) The said deceased left no Estate in Ceylon liable to Estate Duty.

(2) The value of the alleged Estate of the said deceased is nil.

(3) The said deceased was a hindu domiciled in India and was governed by the Mitakshara School of Hindu Law.

(4) Under Section 73 of the Estate Duty Ordinance no Estate Duty can be charged upon the Estate of the deceased as he was a member of a Hindu Undivided Family and because—

(A) the movable properties sought to be charged with duty were the joint properties of that family, and

(B) the immovable properties to be charged, if they had been movable properties, would have been the joint properties of that family.

(5) The deceased and his son who predeceased him and their wives together constituted a Hindu undivided Family and all the property in Ceylon to wit: The business carried on under the Vilasam of Rm. Ar. Ar. Rm. in Ceylon (all the property movable

and immovable being trade assets) were the joint property of the Undivided Hindu Family. The son having died on 9th July, 1934, the said family continued to be an undivided Hindu Family with the deceased (father) his wife and the widow of the deceased son as members thereof, and the said property continued to be the joint property of the said undivided Hindu Family. At the time of the death of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar (father) on 23rd February, 1938, the said undivided family consisted of himself, his two wives (one of whom he married subsequent to the death of his son) and widowed daughter-in-law referred to above and a minor unmarried daughter of the said property [*sic*] was the joint property of the said undivided Hindu Family. No Estate Duty is payable on the joint property of an undivided Hindu Family when a member of such family dies.

(6) The Appellants plead as a matter of law that the Commissioner of Estate Duty Income Tax and Stamps is precluded in law from claiming any Estate Duty as he has always accepted the position of the deceased as a member of an undivided Hindu Family that owned the joint property in Ceylon to wit: the business carried on under Vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. and assessed for Income Tax on that basis and Income Tax was accepted on the said basis.

(7) The Appellants on whom notice of assessment of duty in respect of the alleged estate of the son (No. ED/A300 A.J. 2943 Charge No. 8208) was served have filed objections thereto. Without prejudice to the objection filed by the Appellants in respect of the son's alleged estate, in the event of the son's alleged Estate being held to be liable to pay estate duty, as a matter of law, this estate will be entitled to a reduction of 20 per cent. in the duty as per section 18 of the said Estate Duty Ordinance.

(8) Without prejudice to the foregoing objections the Appellants state :—

(A) That the Assessor is not justified in including the Mysore Government Securities as part of the Ceylon Estate.

(B) The said securities were at no time and are not in Ceylon and cannot be deemed to be assets in Ceylon in any sense of the term.

(9) The Appellants state that if any duty is liable to be paid on the alleged estate of the son (ED/A300) to that extent the value of this estate becomes reduced, as the said duty will be a liability of the said Estate as on 9th July, 1934.

(10) The Appellants state that they are not liable to pay any interest on the amount of duty for a period anterior to the date of assessment."

p. 14, l. 45.
p. 15, l. 13.

The relief prayed for was :—

(A) To have the assessment set aside.

(B) To have a declaration that the estate of Arunachalam Chettiar (Sr.) is not liable to pay any estate duty and an order for the refund of the amount already paid and thereafter to be paid as duty in pursuance of the assessment.

(C) A reduction of the value of the estate.

(D) A reduction of the assessment by the deletion of the value of the Mysore Government Securities.

(E) Further relief.

8. On the 8th March, 1948, it was agreed between the parties that this suit should be consolidated with another suit relating to a claim against the estate of Arunachalam Chettiar (Sr.) for estate duty in respect of the estate of Arunachalam Chettiar (Jr.)—which suit is now the subject of Appeal No. 16 of 1955, pending before their Lordships—as the evidence in both cases would be more or less the same and the pedigree would also be the same. It was also then agreed that the other suit should be taken first and that the evidence led in that suit should be regarded as having been led in the present suit and that a copy of the proceedings in that suit should be filed in the present suit. *p. 23, ll. 23–34.

9. On the 8th March, 1948, Counsel for the Administrators opened his case and put before the Court a copy of the pedigree. The relevant facts relating to the pedigree as set out in the Judgment of the District Court are as follows :— *p. 24, ll. 1–2. *p. 340.

" The pedigree of the family, so far as is relevant to this case is as set out in document marked A, and filed of record. The deceased Arunachalam Chettiar's grandfather ' i.e. the grandfather of Arunachalam Chettiar Sr.' was also one Arunachalam Chettiar. He was for convenience referred to in evidence as No. 1. He died leaving two sons, Ramanathan Chettiar and Somasunderam Chettiar, who separated according to the evidence. Somasunderam Chettiar carried on business under the now famous Vilasam of Ar. Ar. Rm. His son Sunderasan Chettiar is one of the executors to the Will of Arunachalam Chettiar (Sr.). Ramanathan Chettiar carried on business under the name of Rm. Ar. Ar. Rm. He married twice. By his first wife he had a daughter Alamelu Achchy, who is dead, and Arunachalam Chettiar (Sr.) who was born in 1883. Arunachalam Chettiar (Sr.) continued to carry on the business of his father as the head of a joint family, of which the male members were himself and his son Arunachalam Chettiar (Jr.) who was born in 1901 and died in 1934. Ramanathan Chettiar married a second time one Sivagamy Achchy, who is alive. Arunachalam Chettiar (Sr.) married first Valliammai Achchy, who is dead and to whom was " [*sic* : *quaere* were] " born Arunachalam Chettiar (Jr.), and three daughters, Umaiyal Achchy, Sivagamy Achchy and Unnamalia Achchy. After the death of his first wife he married Letchumi Achchy, but had no children by her. When Arunachalam Chettiar (Jr.) died in 1934, he married a third wife Natchiar Achchy while *p. 286, ll. 20–44.

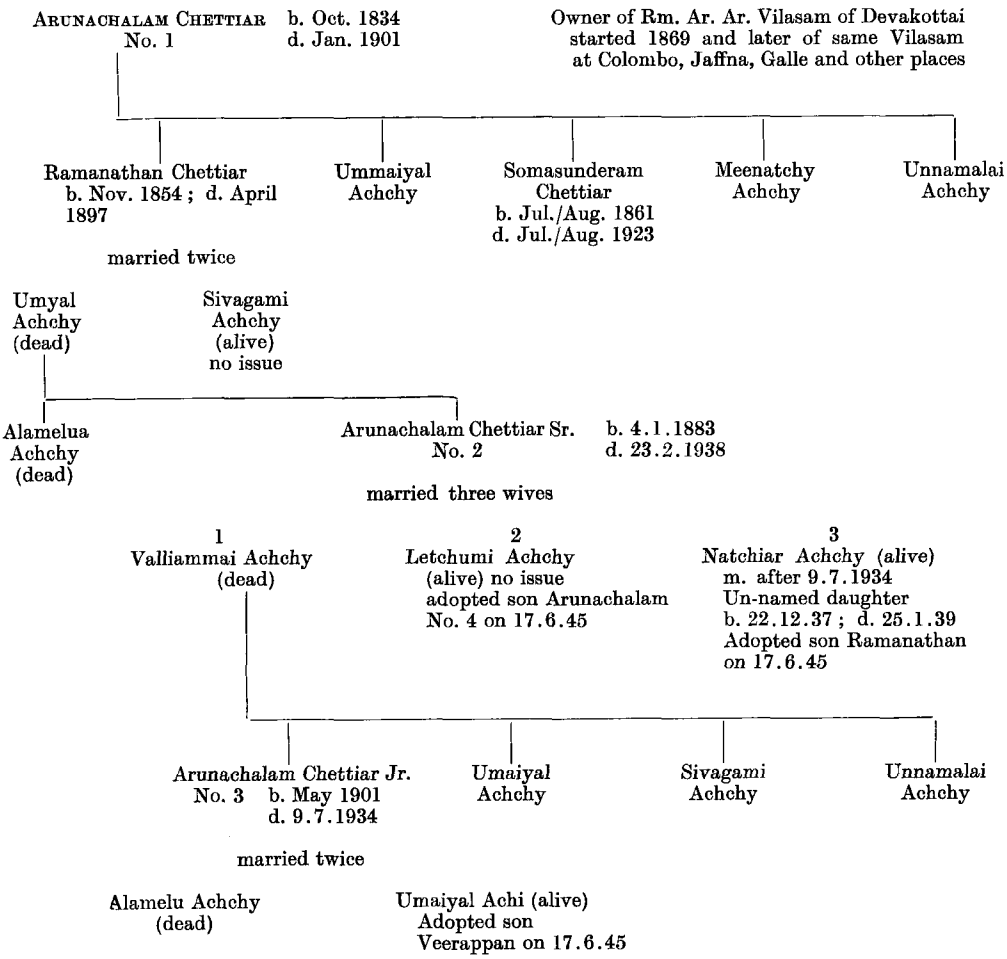
his second wife was alive, with the object of getting a son. Natchiar Achchy, however, gave birth only to two daughters, one of whom died during the lifetime of Arunachalam Chettiar (Sr.) and the other, after his death."

The Pedigree referred to above is the following :—

*p. 340.

PEDIGREE

GENEALOGICAL TABLE



pp. 20, 24, 25.

10. Issues were framed on the 8th March and 19th July, 1948.

These included the following :—

p. 20.

(1) (A) Was the deceased a member of an undivided Hindu family which carried on business in Ceylon of moneylender, rice merchant, etc. under the vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm ? 10

(B) Was the deceased not entitled to any definite share in the assets of the said family ?

(C) Did the deceased have no interest in the assets of the said family which passed on his death ?

(2) Was all the property that has been assessed as liable to pay estate duty the joint property of a Hindu undivided family of which the deceased was a member ?

* * * * *

(7) On the death of the deceased did any property pass within the meaning of the Estate Duty Ordinance No. 1 of 1938 ?

* * * * *

(9) Are the items referred to as " Mysore Government Securities " liable to be included as part of the Ceylon Estate of the deceased ?

11. The following facts were admitted by both sides :— *pp. 27, 51, 57.

" (i) That for the purposes of the payment of income tax in Ceylon during the lifetime of Arunachalam Chettiar Jnr. the returns of income derived by him and his father were made on the basis that they were members of a Hindu Undivided Family ;

(ii) That during the aforesaid period the income of Arunachalam Chettiar Jnr. and his father was assessed for purposes of payment of income tax in Ceylon on the basis that they were members of a Hindu undivided family ;

(iii) That only one return was made for each year in respect of the joint income of father and son and one assessment was made on that return ;

(iv) That after the death of Arunachalam Chettiar Jnr. the returns of income derived by his father were made on the basis that he was a member of a Hindu undivided family ;

(v) That after the death of Arunachalam Chettiar Jnr. the income of his father was assessed on the footing that the latter was a member of a Hindu undivided family ;

(vi) That the property assessed for payment of estate duty on the estate of Arunachalam Chettiar Jnr. was immediately prior to his death the joint property of a Hindu undivided family of which he and his father were members. (It was not conceded, however (by the Administrators), that Arunachalam Chettiar Jnr. and his father were the sole and only members of the undivided family.)

(vii) That the property assessed for payment of estate duty on the estate of Arunachalam Chettiar Snr. was property which, had his son been alive on the 22nd February, 1938, would have been on that date the joint property of a Hindu undivided family of which the father and son were members. (It was not conceded, however (by the Administrators), that the father and son were the only members of a joint Hindu undivided family.) "

*pp. 28–57.
pp. 23–27.
*pp. 33–36.
*p. 33, l. 41–p. 34, l. 4.
*p. 34, l. 34–p. 35, l. 32.
*pp. 342–347.
p. 23.
p. 23, ll. 35–36.

12. Oral evidence (other than expert evidence) was heard on the 8th and 9th March, 1948, the 2nd June, 1948, the 19th July, 1948, and 6th September, 1948. Amongst the witnesses called for the Administrators was the first-named Administrator himself who stated, *inter alia*, that the Administrators as Receivers in India of the estate of Arunachalam Chettiar (Sr.) applied to the District Court, Colombo, for letters of administration to administer the estate in Ceylon. This witness also stated in evidence that among the assets which he found in Ceylon were some Mysore Government Securities, being promissory notes, four of which he produced. One David Norrie, a partner in a firm of Exchange Brokers, also gave evidence concerning the Mysore Government Securities. He stated that his firm had never done any transaction in them and that they are not on his firm's Share List.

*pp. 59–190.
*p. 287, ll. 18–20.

Expert evidence as to the Hindu Law of the Mitakshara School relating to the joint property of a Hindu undivided family was given on ten days between the 4th October, 1948, and the 7th December, 1948. It was common ground that Arunachalam Chettiar (Sr.) and Arunachalam Chettiar (Jr.) being Natukottai Chettiars of South India, were governed by the Hindu Law of the Mitakshara School.

13. The respective contentions of the Crown and the Administrators were stated in the Judgment of the District Court as follows :—

*p. 298, l. 39–p. 299, l. 8.

> " . . . The Crown contends that, the property being separate property, he was full owner of it and that on his death it passed under the will in terms thereof to his executors ; he was, therefore, liable to pay estate duty under the Ordinance of 1938, Cap. 187, in respect of the entire property. For the assessee, on the other hand, it was contended that despite the fact that he was the sole surviving coparcener the property was still the property of a Hindu undivided family and that there was a Hindu family in existence consisting of himself, the widow of his son, his step-mother and his two wives and daughter. It has been conceded by the Crown that a Hindu family may consist of one male member and several females, or of females only. In fact this was decided in A.I.R. 1945 Allahabad 286. The question that arises for decision is whether the property which Arunachalam Chettiar (Sr.) had in his hands on the death of his son is property which, on his death, passed either to his heirs or to his executors. If property passed, then it would definitely be liable for duty unless it comes within the exception created by Section 73. It was contended by the assessee that property in the hands of Arunachalam Chettiar (Sr.) came within the exception created by Section 73 of the Ordinance and that, therefore, it is not liable to taxation."

*pp. 286–313.

14. By his Judgment dated the 8th November, 1949, the learned trial Judge (N. Sinnetamby, A.D.J.) found and held as follows :—

*p. 300, ll. 38–40.

> (1) That according to the relevant Hindu Law the term " joint family property " when used in any enactment must be read to mean coparcenary property.

(2) That the only basis upon which it would be possible to explain the recognized power of a sole surviving coparcener to deal with property as he deems fit, whether by act *inter vivos* or by will, is on the basis that he enjoys the right of a full owner until the contingency of an addition of a male member, whether in law or by nature, arises. *p. 305, ll. 42–46.

(3) " In any event on the date of death of Arunachalam Chettiar (Sr.) there was no male member brought into the family in law or nature who could take an interest in the coparcenary property. It was, therefore, at that point of time at least, the absolute property of Arunachalam Chettiar (Sr.) subject to the potentiality of it becoming joint family property in the event of Arunachalam Chettiar (Sr.) having a son. The eventuality did not occur, so that at the time of his death the property, it seems to me, must be regarded as his own and not the property of the joint Hindu family." *p. 307, ll. 43–51.

(4) He rejected the argument that the income of the property may be regarded as belonging to Arunachalam Chettiar (Sr.) but that the ownership of the property itself was in the joint family, by analogy with income tax cases dealing with impartible estates in the following terms :— *p. 308, ll. 1–10. *p. 309, ll. 43–49.

> " The analogy of a holder of an impartible estate would not, therefore, apply to a sole surviving coparcener. The impartible estate is still joint family property subject to certain rights which are vested in the holder and which have been established by custom, but in the case of a sole surviving coparcener it has been held by judicial authority that he is in the position of an absolute owner subject to the rights of maintenance of the widows of deceased coparceners."

The learned Judge therefore concluded that " the estate in the hands of a sole surviving coparcener at the time of his death is his separate property." He then stated a further reason in support of his said conclusion, as follows :— *p. 309, l. 49–p. 310, l. 1.

> " Even if it is considered that an estate left by a sole surviving coparcener will not come under the definition given to ' Ceylon estate ' in the Ordinance and does not pass on his death, it seems to me that the property must necessarily be held to be property which under Section 6 (*a*) must be ' deemed to pass ' for the reason that it undoubtedly is property which the deceased at the time of his death was competent to dispose. The relevant time in this case is the date of death of Arunachalam Chettiar (Sr.). The liability to estate duty arises on his death. At that time there was no son in existence. Arunachalam Chettiar (Sr.'s) powers of disposition, at least with regard to the Ceylon estate which did not include the ancestral house, were unlimited. He could have gifted the property ; he could have alienated it for value ; he could have bequeathed or devised it by will. There was absolutely no restriction on his *p. 310, ll. 16–32.

powers of alienation, and he certainly would come within the definition of the term 'competent to dispose' as set out in Section 77 (2). It seems to me, therefore, that the Ceylon estate of Arunachalam Chettiar (Sr.) is liable to the payment of estate duty, and I so hold."

The provisions of the Ordinance referred to by the learned Judge are as follows :—

Section 6. "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 ; "

Section 77 (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 ; "

*p. 311, ll. 36–42.

With regard to the Mysore Government promissory notes, the Administrators' contention was that these had not been shown to be negotiable in Ceylon. On this issue the learned Judge held that the Bills of Exchange Ordinance itself makes such documents negotiable and that these assets therefore formed part of the Ceylon estate of Arunachalam Chettiar (Sr.). The relevant provisions of the Bills of Exchange Ordinance are as follows :—

Section 84. "(1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section, unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within Ceylon is an inland note. Any other note is a foreign note."

The learned Judge accordingly answered the issues in favour of the Crown case and dismissed the Administrators' appeal with costs.

The Respondents submit that the said Judgment is wrong.

15. In their Petition of Appeal to the Supreme Court, dated the 17th November, 1949, the Administrators set out the following grounds of appeal :— pp. 30–36.

"(A) The said judgment is contrary to law and the weight of evidence. p. 33, l. 41–p. 35, l. 49.

(B) Section 73 of the Estate Duty Ordinance exempts from duty the joint property of a Hindu undivided family when a member of that family dies. It was admitted that the property assessed for payment of estate duty in this case was property which, had the son been alive on the death of the father, would have been on that date the joint property of a Hindu undivided family of which the father and son were members.

From the death of the son up to the death of the father it was established that the same Hindu family existed with a change in the personnel. It was conceded by the Crown and it was otherwise established that a Hindu family can consist of only one male member and female member or members or with female members only. Hence that which was property of a Hindu Family on the death of the son did not cease to be the property of that family, because the family continued to exist and did not become extinct.

(C) During the time that the father was sole surviving coparcener of that family he had very much larger powers over that family property than he had when there was another coparcener. These larger powers would once again have disappeared on the admission by birth or adoption of another male member of the family. No doubt the larger powers enjoyed by the sole surviving coparcener amounted even to almost unrestricted powers of alienation; none the less the property remained the property of the family. The finding that the deceased had power to dispose of this property might have been sufficient to justify the learned District Judge in holding that under Section 6 (*a*) of the Estate Duty Ordinance the property passed on the death of the deceased inasmuch as it was property which the deceased was at the time of his death competent to dispose. But that finding on competency to dispose was not necessarily decisive of the question under Section 73 of that Ordinance as to whether that property which the deceased was competent to dispose was still his property or whether it was the joint property of a Hindu undivided family. There are various examples in Hindu Law where property belonged to a family but which [*sic*] could be disposed of by an individual member of that family. It was clearly pointed out in those examples that despite the power of disposition possessed by that

individual the property none the less did not belong to him but to the family. In his judgment the learned District Judge has failed to appreciate these examples and the principles underlying them.

(D) It was submitted that the learned District Judge had failed to draw the proper distinction between separate property and joint property in Hindu Law. The learned District Judge interpreted joint property as property 'jointly' owned by more than one man; that is not the meaning of the term joint property in Hindu Law. The term 'joint property' is one borrowed from the English Law but applied to a Hindu Law conception as the nearest equivalent in the English language. In Hindu Law it is a term used in contradistinction to separate property. The fundamental distinction between joint property and separate property is that in the case of joint property a new member of the family admitted by birth or adoption takes an interest in that property on the mere admission to the family, whereas in the case of separate property it is owned by a Hindu owner absolutely and in the same sense as an owner of property in Ceylon law owns his property. No other member admitted to that family by birth or adoption acquires any right to that property. Joint property can however change into separate property, but this can only happen when it is no longer possible in the way of nature or in the way of law to bring in a new male member to that family. That, it is respectfully submitted, is the fundamental distinction between joint property and separate property. Judged by that test the property that was assessed for estate duty in this case was joint property of a Hindu undivided family of which Arunachalam Chettiar (Sr.) was the sole surviving coparcener. It was not his separate property; it had not lost the dormant quality of a new addition to the family acquiring an interest in it.

(E) Even if the learned Judge is right in treating 'joint property' as synonymous with 'coparcenery property' he has gone wrong in giving to the term 'coparcenery property' the meaning that it is owned by more than one man. Like the term 'joint' so the term 'coparcenery' does not necessarily imply a plurality of owners at every moment of time.

(F) The learned District Judge ought to have found that the properties sought to be assessed were the joint properties of a Hindu undivided family of which the deceased was a member and that Section 73 of the Estate Duty Ordinance applied to exempt the estate in question from duty.

(G) The learned District Judge should have found that no property passed within the meaning of the Estate Duty Ordinance.

(H) The Mysore Government Securities are not part of the Ceylon Estate. The documents are foreign promissory notes, but they are not necessarily negotiable instruments in Ceylon. The learned Judge has failed to appreciate the distinction between these two classes of assets. These Mysore Securities have not been proved to be negotiable instruments in Ceylon.

(I) In any event the amount paid as succession duty in Mysore should have been deducted in assessing the value of the Mysore Bonds under Section 23 of the Ordinance. The learned Judge's holding that the question of this deduction could not be raised at this stage is wrong, because the succession duty was paid after these proceedings were started in the District Court.

(J) Having taxed for purposes of Income Tax the deceased and his estate on the basis that that income of the assessee in Ceylon was the income from the joint property of an undivided Hindu family the Crown is estopped from denying that the estate assessed for estate duty in this case is the joint property of an undivided Hindu family.

(K) In the event of the Appellants being found liable at any stage to pay duty on the estate of the son of the deceased, the amount of that duty should be deducted from the assets of the estate and the Appellants should be given relief in virtue of quick succession. The judgment should have contained a direction to that effect."

16. In the Supreme Court (Gratiaen and Gunasekara JJ.) it was agreed by the parties that there should be incorporated into the evidence as to the relevant Indian Law certain additional decisions of the Privy Council and the Courts in India which had not been referred to in the District Court. pp. 39–41. *p. 322, l. 47–p. 323, l. 1. *pp. 421–422.

17. The Supreme Court allowed the Administrators' Appeal. The Judgment was delivered by Gratiaen J. The following passages appear in the Judgment of the learned Judge :— pp. 39–41.

" The assessees claim exemption under Section 73 from duty in respect of the deceased's estate on the ground that they have established the following facts :— p. 38, ll. 33–46.

(A) that he continued, until he died, to be a member of a Hindu undivided family ;

(B) that all the property in his possession at that time was the joint property of the undivided family.

If both these propositions be established, Section 73 admittedly operates even if, but for the statutory exemption, the property would have " passed on his death " within the meaning of Section 6 of the Ordinance.

It is beyond argument, under the Mitakshara law which governs the case, Arunachalam Chettiar (Snr.) did continue until the time of his death to be a ' member of a Hinu undivided family ' . . .

I must assume, for the purpose of this appeal, that our decision in the connected case " (viz. : the case now the subject of Appeal No. 16 of 1955, now pending before their Lordships) " correctly explains the concept of ' joint property ' belonging to a Hindu undivided family. An undivided family, being an entity consisting not merely of its co-parcenary members but also of p. 39, l. 36–p. 40, l. 8.

others, must be regarded as ' the true owner ' of the joint property ; the co-parceners for the time being collectively constitute, so to speak, ' the holding members ' of the larger entity ; and the karta for the time being is the ' managing member.' To what extent, if any, can the temporary reduction of the ' Co-parcenary unit ' to a single individual affect the ownership of what had previously been the joint property belonging to the entire undivided family whose corporate existence has admittedly not been brought to an end ? It seems to me that we can only answer this question by adopting the *ratio decidendi* of our earlier decision and following it to its logical conclusion.

If it be correct to say that, when two or more co-parceners exist, they do not own the joint property in undivided shares, I do not see how it can logically be concluded that, when only when one of them remains, he automatically becomes the owner of the entire property which he and his co-parceners had previously held for the benefit of the true owner, namely, the undivided family. On the contrary, it seems to me that, so long as the co-parcenary unit (irrespective of the number of persons who comprise it at any point of time) continues to hold that property, there can be no change of ownership until the family, as a corporate entity, has itself finally ceased to exist . . .

p. 40, l. 51–p. 41, l. 8.

. . . I cannot but conclude that so long as a single surviving co-parcener refrains from exercising his power to place the property beyond the reach of the undivided family by alienation, the property continues to belong to the entire family. Although, therefore, Arunachalam Chettiar (Snr.) at the time of his death was ' competent to dispose ' of the joint property throughout the relevant period following his son's death, and although the joint property would, for that reason, normally be deemed to have ' passed ' on his death within the meaning of section 6 of the Ordinance so as to attract estate duty, the exempting provisions of Section 73 protect the property from taxation . . .

p. 41, ll. 20–34.

. . . to my mind, it would make a mockery of the undivided family system if the temporary reduction of the co-parcenary unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving co-parcener.

By enacting Section 73, the legislature has now given formal recognition to the concept of an undivided family (in spite of constant fluctuations in its composition) as an entity capable of owning property. The term ' of an undivided family ' in Section 73 means ' belonging to an undivided family.' Nevertheless, it has been argued for the Crown, the phrase ' joint property ' implies that there should always be at least two co-parceners actually alive to hold the property in ' community of interest and unity of possession.' I disagree. The word ' joint ' in this context merely emphasises the element of unity attaching to the entire undivided family which is the true owner of the property concerned."

The learned Judge therefore decided that the Appeal should be allowed and in place of the Judgment of the learned trial Judge there should be substituted a decree (A) declaring that no estate duty was payable under the Estate Duty Ordinance (Cap. 187) in respect of the estate of Arunachalam Chettiar (Snr.) and (B) ordering the Crown to refund to the Administrators the sum of Rs. 700,402/65 with legal interest thereon from the date on which these proceedings were instituted in the District Court. p. 41, ll. 35–42.

The learned Judge expressed no opinion on the subsidiary issues. p. 41, ll. 44–46.

Gunasekara, J., agreed. p. 41, l. 50.

The Administrators were granted their costs in the Supreme Court and in the Court below. p. 41, l. 43.

The Respondents submit that the said Judgment is right.

18. On the 25th February, 1954, the Supreme Court granted conditional leave to appeal to Her Majesty in Council. Final leave to appeal was granted on the 4th June, 1954. p. 44. p. 46.

19. By Order of the Supreme Court dated the 10th August, 1956, the present Respondents were substituted for the Administrators.

20. The Respondents submit that the Judgment of the Supreme Court should be upheld and this Appeal dismissed with costs for the following amongst other

REASONS

(1) BECAUSE the Judgment of the Supreme Court is right for the reasons stated by Gratiaen, J., and for other good and sufficient reasons.

(2) BECAUSE the Judgment of the District Court is wrong.

(3) BECAUSE the deceased Arunachalam Chettiar (Sr.) continued, until he died, to be a member of a Hindu undivided family and the property in question was at the date of his death joint property of the undivided family, and therefore no estate duty is payable thereon by reason of the provisions of Section 73 of the Estate Duty Ordinance, Cap. 187.

(4) BECAUSE if any estate duty is payable the Mysore Government Securities are not negotiable in Ceylon and therefore not part of the Ceylon estate of the deceased.

D. N. PRITT.

RALPH MILLNER.

J. D. M. DERRETT.

No. 17 of 1955.

In the Privy Council.

ON APPEAL

from the Supreme Court of Ceylon.

BETWEEN

THE ATTORNEY-GENERAL OF CEYLON . . . *Appellant*

AND

1. AR. ARUNACHALAM CHETTIAR
2. AR. RAMANATHAN CHETTIAR
3. AR. VEERAPPA CHETTIAR

(Substituted for (1) V. RAMASWAMI IYENGAR and (2) K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased)

Respondents.

Case for the Respondents.

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