Privy Council Appeal No. 17 *of* 1951

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

v.

Valliyammai Atchi, Executrix of the last will and testament of K. M. N. S. P. Natchiappa Chettiar, deceased - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MAY, 1952

Present at the Hearing:

LORD PORTER
LORD OAKSEY
LORD RADCLIFFE
LORD ASQUITH OF BISHOPSTONE
SIR LIONEL LEACH

[*Delivered by* SIR LIONEL LEACH]

This is an appeal from a decree of the Supreme Court of Ceylon, dated the 24th June, 1949, dismissing an appeal by the appellant, the Attorney General of Ceylon, from a decree of the District Court of Colombo, dated the 7th May, 1947, and allowing a cross appeal by the respondent, the executrix of the will of her husband, K. M. N. S. P. Natchiappa, a Nattukottai Chettiar, who died on the 30th December, 1938. The deceased, who was the managing member of a Hindu undivided family domiciled in South India, had for many years carried on business in Ceylon and by his will, which is dated the 3rd December, 1938, he purported to dispose of the assets of the business on the footing that he was the absolute owner thereof. Under the Ceylon Estate Duty Ordinance (No. 1 of 1938) estate duty is payable on the value of the Ceylon estate of a person dying on or after the 1st April, 1937, provided that the value exceeds Rs.20,000, but the enactment does not apply where the deceased is a member of a Hindu undivided family and leaves no separate estate. In this case the value of assets of the business far exceeded Rs.20,000, and the Commissioner appointed to administer the Ordinance decided, contrary to the contention of the respondent, that they belonged to the deceased in his individual capacity, not to the undivided family, and consequently he made an assessment. Pursuant to the right of appeal conferred by section 34 of the Ordinance the respondent appealed to the District Court of Colombo. The District Judge held that the property belonged to the joint family and set aside the Commissioner's order. By virtue of section 43 the appellant appealed to the Supreme Court, which upheld the judgment of the District Court. The question to be decided in the appeal to Her Majesty in Council is whether the Courts in Ceylon were right in overruling the Commissioner.

Nattukottai Chettiars are money lenders and traders and for many years the family to which the deceased belonged had transacted business in Ceylon. The deceased's paternal great-grandfather was one Kumarappa

who had four sons, one of whom was named K. M. Nachiappa (referred to throughout the proceedings as " Nachiappa No. 1 "). Nachiappa No. 1 had two sons, Nachiappa (conveniently described as Nachiappa No. 2) and Suppramanian, the father of the deceased. Nachiappa No. 1 died before 1890. Suppramanian died in the month of March, 1932. Nachiappa No. 1 had carried on business in Ceylon under the *vilasam* of K.M.N. and after his death his two sons continued to do business there under the same *vilasam*.

Nachiappa No. 1 was joint with his sons, Nachiappa No. 2 and Suppramanian, who themselves remained joint until the 22nd January, 1912, when they entered into a deed of partition. There are indications that arrangements for partition were made before that date, but for the purpose of the appeal the severance of joint status may be taken to be the 22nd January, 1912. Nachiappa No. 2 had five sons and Suppramanian one son (the deceased) and three daughters. The deceased had two wives. By his first wife he had five daughters and by his second wife (the respondent) he had five sons. After the partition Suppramanian did business in Ceylon under the *vilasam* of K.M.N.S.P. When he retired to India the deceased took over the management of the business and continued it after his father's death.

On the 30th March, 1939, the respondent's auditor wrote to the Commissioner stating that the deceased was a member of the Hindu undivided family of K.M.N.S.P. and requesting him to certify that by reason of section 73 of the Ordinance estate duty was not payable. Section 73, as amended by the Estate Duty (Amendment) Ordinance (No. 76 of 1938), reads as follows:—

> " Where a member of a Hindu undivided family dies, no estate duty shall be payable—
>
> (*a*) on any movable property which is proved to the satisfaction of the Commissioner to have been the joint property of that family ; or
>
> (*b*) on any immovable property, where it is proved to the satisfaction of the Commissioner that such property, if it had been movable property, would have been the joint property of that family."

The reply to the letter of the 30th March, 1939, was a request for the delivery of a declaration in the form prescribed by section 29. The respondent complied and declared the value of the estate to be Rs.25,27,470.25, but claimed that the property was exempt from estate duty. The claim for exemption was disallowed and under a provisional assessment the amount of duty to be paid by the estate was fixed at Rs.2,78,021.70, which the respondent was compelled to pay. An additional assessment followed and here the amount of duty was fixed at Rs.2,90,284.12. The respondent filed notices of objection to these assessments, but on the 11th March, 1941, the Commissioner informed her by letter that he had determined to maintain the assessment, subject to certain variations, which were of a minor nature and call for no comment.

At the time the Commissioner decided to maintain the assessment the Ordinance contained no provision compelling him to hear evidence or receive documents in evidence. By an amending Ordinance (No. 8 of 1941) promulgated after the institution of the appeal to the District Court of Colombo the position in this respect underwent considerable modification. In his judgment the District Judge states that according to the appellant the Commissioner had before him only four documents, namely the notice of objection to the provisional assessment, the notice of objection to the further assessment, the declaration of the respondent under section 29 of the Ordinance and a letter from the respondent's auditor forwarding the declaration. The Assessor of Estate Duty, a subordinate of the Commissioner, gave evidence and stated that the Commissioner did not call for any evidence to be placed before him because he had in mind a decision which he had made in an income tax

appeal. Mr. Rewcastle, in supporting the present appeal, has contended that the Commissioner had certain other documents before him when he made the assessment. Accepting this to be the case, it is an undoubted fact that the Commissioner did not call for any evidence, nor did he ask the respondent to satisfy him that her contention was correct. The proceedings in the District Court disclosed that there was much more evidence than that before the Commissioner and evidence of a nature which threw an entirely different light on the case.

Section 34 of the Estate Duty Ordinance is in these terms :—

> "Any person aggrieved by the amount of any assessment of estate duty made under this Ordinance, whether on the ground of the value of any property included in such assessment or the rate charged or his liability to pay such duty or otherwise, may appeal to the appropriate District Court in the manner hereinafter provided."

The section is to be read in conjunction with section 40 which says :—

> "Upon the filing of the petition of appeal and the service of a copy thereof on the Attorney-General, the appeal shall be deemed to be and may be proceeded with as an action between the appellant as plaintiff and the Crown as defendant ; and the provisions of the Civil Procedure Code, and the Stamp Ordinance, shall, save as hereinafter provided, apply accordingly :
>
> Provided that no pleading other than the petition of the appellant shall be filed in any action unless the court by order made in that action otherwise directs ;
>
> "Provided, further, that the decree entered in any action shall specify the amount, if any, which the appellant is liable to pay as estate duty under this Ordinance."

When the appeal came on for hearing the Attorney General raised certain preliminary objections. He contended that the law applicable was the law of Ceylon, so that as regards movable property the law of the deceased's domicile was irrelevant ; that no appeal lay under section 34 against a decision of the Commissioner under section 73 ; that nothing could be ventilated before the Court which had not previously been put before the Commissioner ; that the respondent was estopped from asserting that the property in question belonged to a Hindu undivided family by reason of representations made by the deceased as the representative of his father Suppramanian to the effect that the latter on his death had left no property ; that certain findings of the Board of Review in income tax proceedings operated as *res judicata ;* and that as the respondent had obtained probate on the representation that the deceased had executed a valid will and was competent to dispose of the property referred to therein she could not be allowed to be heard to the contrary. The District Judge, in an order dated the 15th December, 1942, held that a non-Ceylon domicile did not exclude the operation of the Estate Duty Ordinance upon movable property in Ceylon and, subject to section 73, what constituted the passing of property on a death had to be determined according to the law of Ceylon, that by reason of section 34 a person aggrieved by a decision holding him liable to pay duty was entitled to appeal and the section covered the appeal before the District Court. The question whether there was a Hindu undivided family had been submitted to the Commissioner for his decision and the fact that he had not given a ruling did not preclude the question being raised in Court. The District Judge overruled the contentions that the findings of the Board of Revenue operated as *res judicata* and that the respondent was estopped from disputing the validity of the will.

The judgment of the District Judge on the preliminary objections was carried to the Supreme Court on appeal, but without success, and so far as these objections were concerned the matter rested there. The judgment of the Supreme Court on the preliminary questions was delivered on the 1st May, 1944, and on the 15th November, 1944, the further hearing of the case was begun before the same District Judge. It was

continued on the 4th December, 1944, but after that there was no sitting of the Court until the 10th September, 1946, when the matter came before a different District Judge. In the course of the further proceedings the appellant took up the position that, although it had been decided that there was a right of appeal to the District Court, it was not open to the Court to consider any evidence other than that which the Commissioner had before him. The District Judge rejected this contention. Having heard all the evidence adduced by the parties he held that the deceased had not died possessed of separate estate. The property which he had purported to dispose of by his will belonged to the joint family of which he was the head. In accordance with his findings the District Judge made a declaration that the property assessed by the Commissioner as being liable to estate duty was property falling within the provisions of section 73 of the Estate Duty Ordinance and consequently no sum was payable in respect of it as estate duty. He did not, however, direct a refund of the amount which the respondent had been compelled to pay, as he was of the opinion that he had no jurisdiction to do so. The Supreme Court concurred in the findings of the District Judge, except with regard to the question of refund. The Supreme Court held that here the District Judge had erred and directed the appellant to pay back what had been received from the respondent. The correctness of the decision of the Supreme Court that it had the power to order a refund has not been challenged before their Lordships.

The learned District Judge arrived at his finding that the Ceylon property belonged to the joint family and not to the deceased personally after an exhaustive analysis of the oral and documentary evidence led before him and the Supreme Court in a carefully considered judgment agreed with him. The conclusions arrived at by the Supreme Court were stated by Gratiaen, J., Wijeyewardene, C.J., expressing his agreement. In referring to the will executed by the deceased Gratiaen, J., observed that the motive was to preserve the joint property of the undivided family in the hands of succeeding generations of its male members in such a way that, so far as business acumen and legal ingenuity could achieve the desired end, the laws of Ceylon should in no way prevent the joint property of a Hindu undivided family remaining within the family by survival. He went on to say that he was in complete agreement with the District Judge that the evidence in the case convincingly established that the business carried on in Ceylon by Natchiappa No. 2 and Suppramanian under the *vilasam* K.M.N. was the joint property of the undivided family of which they were both members and that after the division of the property in 1912 Suppramanian continued to carry on the identical business under the new *vilasam* K.M.N.S.P., not on his own account, but as the joint property of the new undivided family of which he was then the head. When Suppramanian retired to India and after his death the business remained in the hands of his son, the deceased, as joint family property and not as separate property possessed by him for his own benefit to the exclusion of the family. In the judgment of the learned Judge as it appears in the printed record the *vilasams* are referred to as K.L.M. and K.L.M.S.P. respectively, but it is obvious that these are mistakes for K.M.N. and K.M.N.S.P.

Mr. Rewcastle suggested that there was not sufficient evidence to discharge the burden which lay upon the respondent of proving that the property belonged to the joint family, but their Lordships who have been taken through the material parts of the evidence, cannot accept the argument. They consider that there is ample evidence to support the finding and they can see no reason which would justify them in departing from their usual practice of refusing to review the evidence for a third time. In delivering the judgment of the Board in *Srimati Bibhabati Devi* and *Kumar Ramendra Narayan Roy*, 1946 A.C. 508, Lord Thankerton pointed out that in order to obviate the practice there must be some miscarriage of justice or violation of some principle of law or procedure, which is certainly not the case here. The principles of Hindu law which have application are not in dispute and they have been correctly applied.

A further contention pressed on behalf of the appellant was that the appeal to the District Court was limited to the question whether the Commissioner had misdirected himself on the evidence before him and therefore the District Judge had erred in determining the appeal as if it were a new trial. This argument ignores the provisions of section 40 of the Ordinance. Not only does section 40 direct that the appeal shall be deemed to be an action and may be proceeded with as such, it expressly applies thereto the provisions of the Civil Procedure Code, which includes directions with regard to the procedure to be followed at the trial of an action and of the calling of evidence by the parties. If further indication that it was the intention of the Legislature to allow an appellant to lead evidence in the District Court is wanted it is provided by the Estate Duty Amendment Ordinance No. 8 of 1941, which came into force on the 26th April, 1941. One of the amendments is the addition to the Ordinance No. 1 of 1938 of section 36A, which requires an appellant to transmit to the Commissioner a list specifying the documents upon which and the names or designations of the persons upon whose evidence the appellant proposes to rely in support of his appeal to the District Court. Another amendment is the addition to section 39 of this sub-section:—

> "(2) Save with the consent of the Court and subject to such terms as the Court may determine, the appellant shall not be allowed at the hearing of his appeal—
>
> (*a*) to produce any document which is not included in the list referred to in section 36A, or to adduce the evidence of any witness who is not mentioned in the list or:
>
> (*b*) to produce any document which he has failed to produce before the Commissioner when required to do so under paragraph (*a*) of section 37 (2), or to adduce the evidence of any witness whose evidence was not tendered to the Commissioner when called for under that paragraph."

In their Lordships' opinion there is no room for doubt that the Legislature throughout intended that an appellant should have the right to lead evidence when he came before the District Court to contest the validity of an order of assessment passed by the Commissioner.

Their Lordships consider that the judgment of the Supreme Court is right and they will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal.

(15467) Wt. 8096—1 100 6/52 D.L./Pl/3

In the Privy Council

THE ATTORNEY-GENERAL OF CEYLON

v.

VALLIYAMMAI ATCHI, EXECUTRIX OF THE LAST WILL AND TESTAMENT OF K. M. N. S. P. NATCHIAPPA CHETTIAR, DECEASED

DELIVERED BY SIR LIONEL LEACH

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1952