16, 1957

No. 16 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

RECORD.

1. This Appeal is from a Judgment of the Supreme Court of Ceylon dated the 12th October, 1953, dismissing an Appeal from a Judgment of the District Court, Colombo, dated the 8th November, 1949, whereby the original Respondents' Petition of Appeal against an assessment of estate duty was allowed and Judgment entered for them for the sum of Rs. 283,213/24 which had been paid by them as estate duty, with legal interest. pp. 318–331. pp. 286–312. pp. 15–18.

2. The principal issue to be determined on this Appeal is whether the property assessed for duty, which was property of a Hindu undivided family, is subject to estate duty as being either " property passing on the death of the deceased " within the meaning of Section 7 of the Estate Duty Ordinance, No. 8 of 1919, or " property of which the deceased was at the time of his death competent to dispose " and/or in which the deceased had an interest " ceasing on his death " and therefore covered by the provisions of Section 8 (1) (*a*) and/or 8 (1) (*b*) of the said Ordinance.

3. At the time material to this case, the Estate Duty Ordinance in force was Ordinance No. 8 of 1919. The relevant portions of the said Ordinance are as follows :—

> " 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 . . .
>
> " Section 2.
>
> (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 exclusively of any power exercisable in a fiduciary capacity under a disposition not made by himself.
>
> " Section 17.
>
> (6) The value of the benefit accruing or arising from the cessor 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."

The said provisions appear to be based upon corresponding provisions of the Finance Act, 1894, 57 and 58 Vict. Ch. 30.

p. 15, ll. 27–30.
p. 33, l. 36–p. 34, l. 4.

4. The original Respondents (who are hereinafter called the Administrators) were the Administrators of the estate of one Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased, who died on the 23rd February, 1938. This appeal is concerned not with any question of the liability

of the estate of the said Arunachalam Chettiar to estate duty, but with a corresponding question relating to the estate of his son who predeceased him, dying on the 9th July, 1934. The father and the son (whose name was the same as that of his father) are hereinafter called Arunachalam Chettiar Sr. and Arunachalam Chettiar Jr. respectively.

5. By Notice of Assessment dated the 31st October, 1938, the Commissioner of Estate Duty assessed the estate duty alleged to be payable in respect of the assets of the alleged estate of the deceased Arunachalam Chettiar Jr. at Rs. 215,000. There was later sent a substituted Notice of Assessment for the same amount dated the 10th November, 1938, and cancelling the previous Notice of Assessment dated the 31st October, 1938. pp. 19, 358.

6. A Statement of Objections to the Assessment, dated the 8th December, 1938, was sent by the Administrators to the Commissioner of Estate Duty. Later an Additional Notice of Assessment dated the 9th May, 1941, was sent to the Administrators, who put forward a further Statement of Objections dated the 2nd June, 1941. 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 a 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. p. 360. pp. 20, 414. p. 416. pp. 416–418. pp. 22, 418. pp. 22, 419.

7. By a Petition of Appeal dated the 14th May, 1942, in the District Court of Colombo the Administrators instituted pp. 15–17.

THE PRESENT SUIT.

In the said Petition the Administrators stated (among other reasons) the following reasons for appealing against the assessment of estate duty as follows :—

" (1) The Appellants " (i.e. the Administrators) " state that they are not the proper persons against whom assessment in respect of the alleged estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar deceased " (i.e. Arunachalam Chettiar Jr.) " can in law be made. p. 16, l. 25 *et seq.*

(2) The Appellants are not liable to pay any Estate Duty on the alleged Estate of the said deceased.

(3) The said deceased left no estate in Ceylon liable to estate duty.

(4) The said deceased was a member of an undivided Hindu family which carried on the business of a moneylender, rice merchant etc., under the Vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. in Ceylon and the deceased was not entitled to any definite share in the assets of the said family. His interest therein, if any, ceased on his death.

(5) No estate duty is payable on the joint property of a Hindu undivided family when a member of such family dies.

* * * * *

(7) The Appellants state that the assessment is bad and invalid in law as the said deceased left no estate belonging to him on which any duty is payable.

(8) On the death of the said deceased no properties passed to any person.

(9) The said deceased was a domiciled Indian and was governed by the Mitakshara school of Hindu law.

(10) Under Section 73 of the said 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 sought to be charged with duty if they had been movable properties would have been the joint properties of that family.

(11) The Appellants plead as a matter of law that the said Commissioner 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 joint properties in Ceylon to wit :—the business carried on under the Vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. and assessed Income Tax on that basis.

(12) (A) The valuation of the estate is wrong.

(B) That the Assessor should not include the sum of Rs. 100,000/- in fixed deposit in the Bank of Mysore and the sum of Rs. 40,120/25 due by the firm of T.N.V. of Nagapatam and the sum of Rs. 13,050/- being the interest on the above said amounts as part of the assets of the Ceylon estate of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar.

(C) The said sums are not in Ceylon and cannot be deemed to be assets in Ceylon in any sense of the term.

(D) That the Assessor cannot assess the value of a business but can only assess the Ceylon estate of the deceased, if any, and levy duty thereon."

* * * * *

p. 18, ll. 1-18. 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 that might thereafter be paid as duty in pursuance of the assessment.

(C) A reduction of the assessment in respect of certain specified property.

(D) Other and further relief.

8. After the commencement of the suit the Administrators paid under protest Rs. 283,213/24 as estate duty including interest. p. 35, ll. 35–36; p. 43, ll. 43–p. 44, l. 7. p. 52, ll. 3–4.

9. On the 8th March, 1948, it was agreed between the parties that this suit should be consolidated with another suit relating to duty alleged to be payable on the estate of the deceased father Arunachalam Chettiar (Sr.) —which suit is now the subject of Appeal No. 17 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 present suit should be taken first, that the evidence led in this suit should be regarded as having been led in the other suit, and that a copy of the proceedings in this suit should be filed in the other suit. p. 23, ll. 23–34; p. 286, ll. 12–15.

10. On the said 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. 1–3. p. 340.

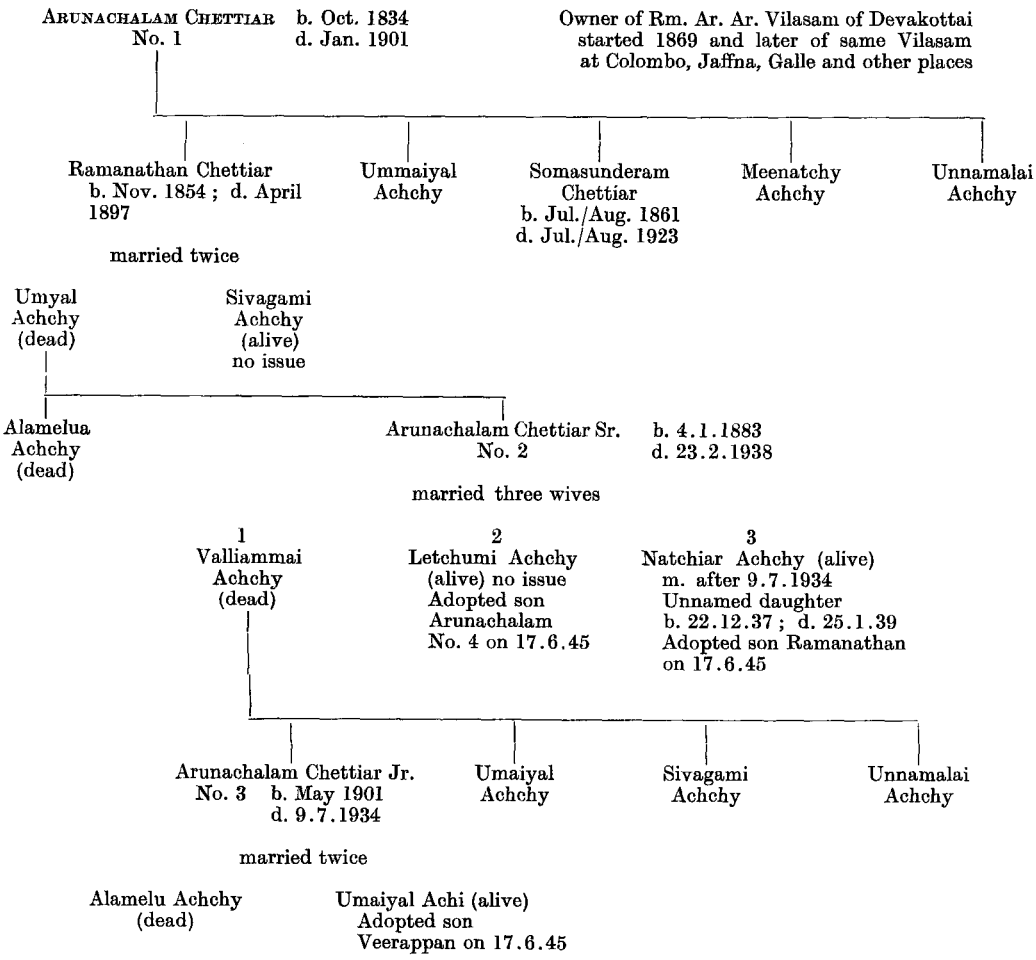
" The pedigree of the family, so far as is relevant to this case is as set out in document marked A, and filed of record. The deceased Arunachalam Chettiar's grandfather " (i.e., the grandfather of Arunachalam Chettiar Sr.) " was also one Arunachalam Chettiar. He was for convenience referred to in evidence 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. Sm. 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 Unnamalai 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 Natchier Achchy while his second wife was alive, with the object of getting a son. Natchier 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." p. 286, ll. 20–p. 340.

The Pedigree referred to above is the following :—

p. 340.

PEDIGREE

GENEALOGICAL TABLE



p. 25–27 ; p. 37.

11. Issues were framed on the 8th and 9th March, 1948. These included the following :—

p. 25.

" 1. Are the Appellants the proper persons on whom assessment in respect of the alleged estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar (Jr.) can in law be made ?

2. Are the Appellants liable to pay any estate duty on the said estate ?

pp. 26 and 27.

3. Did the deceased " (i.e. Arunachalam Chettiar Jr.) " leave an estate in Ceylon liable to estate duty ? 10

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

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

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

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

6. If any portions of Issue (4) or of Issue (5) is answered in favour of the Appellant, is estate duty payable on the property that has been assessed ?

* * * * *

14. On the death of the deceased did any property pass within the meaning of the Estate Duty Ordinance of 1919 or 1938 ?

15. If issue 14 is answered in the negative, is any estate duty payable ?"

12. The following facts were admitted by both sides :—

"(i) That for the purposes of the payment of income tax in Ceylon during the lifetime of Arunachalam Chettiar (Jr.) the returns of income derived by him and his father were made on the basis that they were members of a Hindu undivided family ; pp. 27–28. p. 51, ll. 1–21. p. 57, ll. 34–37.

(ii) That during the aforesaid period the income of Arunachalam Chettiar (Jr.) 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 (Jr.) 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 (Jr.) 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 (Jr.) 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 (Jr.) 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 (Sr.) 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.

13. 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, and that he had not applied for administration of the estate of Arunachalam Chettiar (Jr.). 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 7th December, 1948. It was common ground that both Arunachalam Chettiar (Sr.) and Arunachalam Chettiar (Jr.) being Natukottai Chettiars of South India, were governed by the Hindu law of the Mitakshara school.

p. 33, l. 39–p. 34, l. 4.

p. 35, ll. 38–39.

pp. 341–344, 347.
pp. 59–190.

14. The case for the Crown was that the portion of the property of the joint family to which Arunachalam Chettiar (Jr.) would have been entitled in the event of a partition of the joint family property is liable to estate duty under the provisions of section 8 (1) (*a*) and/or (*b*). This case rested upon the contention that such property was property of which Arunachalam Chettiar (Jr.) was at the time of his death " competent to dispose " and/or property in which he had an interest which ceased on his death with a corresponding benefit accruing to the surviving members of the family by the cesser of his interest.

pp. 286–312.

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

p. 291, l. 10–p. 294, l. 22.

(1) That it is quite manifest from the relevant authorities that under the Hindu law of the Mitakshara school a coparcener's power of disposal of the joint property of an undivided family is of a very limited character. On consideration of the nature and extent of such power, and of the limitations upon it, it must be held that the interest of a coparcener in the joint family property is not property of which he is " competent to dispose " within the meaning of Section 8 (1) (*a*) of the Ordinance.

p. 294, ll. 10–13.

p. 294, l. 23–p. 298, l. 24.

(2) That under the Hindu law of the Mitakshara school relating to joint family property of an undivided family the right of a coparcener to maintenance which has not been converted into a charge on the joint family property is only in the nature of a personal claim to be maintained out of joint family property without reference to any particular property or to any specific class of properties ; that it is an interest which is variable, usually at the discretion of the karta (manager) ; and that the only benefit that may accrue on the death of the person entitled is a benefit to another person or other persons entitled to maintenance and not a benefit to the property. The learned Judge therefore held that the interest of a coparcener in the joint family property is not an " interest ceasing on death " within the meaning of Section 8 (1) (*b*) of the Ordinance and is outside the provisions of the said subsection.

p. 298, ll. 20–24.

16. The learned Judge therefore held in favour of the Administrators p. 298, ll. 20–24. in the following terms :—

> " I therefore hold that in the case of Arunachalam Chettiar (Jr.) there was no estate which was liable to tax either on the footing that Arunachalam Chettiar (Jr.) was competent to dispose of it, or on the footing that he had an interest in property which ceased on his death."

Judgment was accordingly entered for the Administrators in the sum of p. 313, ll. 15–21. Rs. 283,213/74 estate duty paid with legal interest from the date of action till the date of decree and thereafter on the aggregate amount of decree until payment in full, with costs.

The Respondents submit that the said Judgment is right.

17. The Crown appealed to the Supreme Court, and in their Petition pp. 314–317. of Appeal, dated the 16th November, 1949, they set out the following grounds of appeal :—

> " (A) The said order and judgment are contrary to law and p. 317, ll. 4–30. the weight of evidence ;
>
> (B) The property assessed for estate duty is property which passed on the death of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar under the provisions of the Estate Duty Ordinance No. 8 of 1919 and became liable to the payment of estate duty under the said Ordinance ;
>
> (C) The interest of each of the several co-parceners in the property of a Hindu undivided family is property passing on death within the meaning of sections 7 and 8 of the said Ordinance ;
>
> (D) The learned Judge came to a wrong conclusion in holding on the evidence led before him that the deceased's interest in the coparcenary estate of the Hindu undivided family of which he was a member was not a definite share ;
>
> (E) In any event in view of the finding of the learned Judge with regard to Issue No. iv (B), namely that the deceased could on partition have asked for a definite share of the coparcenary estate, the learned Judge came to a wrong conclusion in holding that the interest which the deceased had in the said estate was not property which passed on his death under the provisions of the said Ordinance ;
>
> (F) The learned Judge has failed to give due weight to the evidence adduced on behalf of the Crown as regards the nature of the interest of one of several coparceners in the property of a Hindu undivided family ;
>
> (G) It is not open to the Court in these proceedings to make any order save and except an order specifying the amount of estate duty, if any, which is payable."

It appears from paragraph (C) of the said grounds that the Crown now put forward the contention that the property in question was property

which passed on the death of Arunachalam Chettiar (Jr.) under the provisions of section 7 of Ordinance No. 8 of 1919 and did not confine their case to section 8 of the said Ordinance as they had done in the District Court.

p. 322, l. 47–p. 323, l. 3, and pp. 421–422.

18. 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. 318–331.

19. The Supreme Court dismissed the appeal. The Judgment was delivered by Gratiaen J. who dealt with the Appellant's contentions as follows :—

(1) With regard to the contention of the Crown that the property in question " passed " on the death of Arunachalam Chettiar (Jr.) within the meaning of Section 7 of the Ordinance, the learned Judge stated *inter alia* as follows :—

p. 327, l. 44–p. 328, l. 42.

" Applying this line of reasoning, I would say that, so long as the status of a Hindu undivided family remains intact, and so long as there has been no division of title or separation of interests in respect of the whole or any part of the joint property, the true relationship is as follows :—

" 1. The ' co-parceners ' for the time being collectively hold the joint property for the benefit of all the members then living (including themselves) and of members thereafter to be born; to this extent, the undivided family, in spite of fluctuating changes in its constitution, may properly be regarded as corporate ' entity ' which is ' the true owner ' of the property to the exclusion of its individual members ;

2. That the male ' co-parceners ' for the time being constitute at any particular point of time a ' hedge of trustees ' who, while enjoying community of interest and unity of possession in the property hold it collectively—indeed, as a subdivision of the larger group—for the benefit of the entire family ; the powers attaching to the management of the property, and the obligations towards the individual members who constitute the undivided family are centred in the karta who is the head of the family for the time being ; but in certain respects the power of alienation can only be exercised by all ' co-parceners ' acting collectively ;

3. That upon the death of any male ' co-parcener ' his ' interest ' is automatically extinguished, and the property continues to be held by the surviving ' co-parceners ' for the benefit of the undivided family ; in other words, the interest which they enjoy upon his death is in truth a ' pre-existing interest ' no more and no less (see A.I.R. 1941 (P.C.) 72 at 78).

The position as set out above represents, in my opinion, the true distinction between the property rights of the family unit on the one hand and of its individual ' co-parcenary '

members on the other, so long as the family remains undivided in status. This distinction is preserved until there has occurred either a complete or partial ' division of title or separation of interests ' between the ' co-parcenary ' members, in one or other of the modes recognised by the Mitakshara law. The ' co-parceners ' are no doubt invested with power to remove the ' hedge ' which protects the property rights of the so-called ' corporation.' It is also possible, as an alternative, to pass some part of the property over the protecting ' hedge.' But, generally speaking, the concept of individual ownership of joint property is ruled out while the corporate existence of the family remains intact.

In this view of the matter, it follows that, during the lifetime of Arunachalam Chettiar (Jr.) there had been neither a complete nor a partial division of title or separation of interest in the joint property of the undivided family of which he was at all material times a ' co-parcenary ' member. Upon his death, therefore, no effective change occurred in the title or possession of the joint property belonging to the undivided family. His father who survived him did not, in consequence of that event, receive any ' property ' which he did not have before.

In the result, section 7 does not apply."

(2) Turning to the contention that there was a " cesser " of the deceased's " interest " so as to bring the property within the provisions of Section 8 (1) (*b*) of the Ordinance the learned Judge said as follows :—

" I have so far concluded that an actual ' passing ' of property did not take place within the meaning of Section 7. I therefore proceed to consider whether there was at any rate a notional ' passing ' under section 8 (1) (*a*) or section 8 (1) (*b*). The latter section can more conveniently be disposed of first. Was there a ' cesser ' of the deceased's (or anyone else's) ' interest ' in the property upon his death, and if so, did a ' benefit accrue or arise ' to his father by reason of that cesser ? The precise nature of an ' interest ' whose cesser attracts estate duty if the second condition laid down by section 8 (1) (*b*) is also fulfilled, can only be understood by an examination of the connected section 17 (6). The deceased or someone else must have enjoyed in respect of the property a beneficial interest capable of valuation in relation to the income which the property yields. p 329, ll. 20–46.

In the present case, the deceased did not enjoy during his lifetime an interest which ' extended ' either to the whole or to a fractional part of the income : A.I.R. 1941 (P.C.) 120 at 126. He 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

(*sic*) 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 section 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 ' co-parcener ' when the deceased's ' interest ' lapsed. Section 8 (1) (*b*) is therefore inapplicable to the present case."

(3) The contention that the property in question was property of which the deceased was " competent to dispose " and that Section 8 (1) (*a*) applies, was dealt with by the learned Judge *inter alia* as follows :—

p. 329, l. 46–p. 330 l. 35.

" There remains the alternative submission which was based on section 8 (1) (*a*). The arguments presented on behalf of the Crown, if I correctly understood them, were to the following effect :—

(A) that (having regard to the recognition now given to the rights of purchasers for value) a ' co-parcener ' is at any point of time ' competent to dispose ' of a fractional share of the joint property for value, the appropriate fraction being ascertained by reference to the total number of ' co-parceners ' then alive ;

(B) that, in the alternative, a ' co-parcener ' may at any time form an unilateral intention to separate himself from the undivided family and to communicate that decision to the other ' co-parcener ' ; he would thereupon become vested with a ' definite and certain share ' of which he would be ' competent to dispose ' in any way he pleased.

I reject the first of these submissions. An alienee for value does not become vested immediately with a definite share *in specie* of any part of the joint property. No share is ' carved out,' so to speak, of the joint property, until the Court has subsequently ' worked out the equities ' between the purchaser and the non-alienating ' co-parceners ' in appropriate partition proceedings. Before that occurs, it cannot be said that there is actually in existence any ' property ' of which a ' co-parcener ' is ' competent to dispose ' within the meaning of section 8 (1). (*a*). I have assumed in this connection, although I do not hold, that the section is satisfied if a man can ' dispose of ' specific property only for valuable consideration but not in any other way.

With regard to the alternative submission, I concede that, upon the communication of his unilateral decision to separate himself in status and title from the undivided family, a ' co-parcener ' immediately becomes ' competent to dispose ' of the definite share which he thus acquires for the first time. A.I.R. 1916 (P.C.) 104. But no such ' competence ' exists until the necessary disposing qualification (i.e., by the formation of an intention followed by its communication to the others) has first been attained. In the facts of the present case, Arunachalam

Chettiar (Jr.) had, until he died, formed no intention to separate himself from the family; still less had he communicated such an intention to his father; in the circumstances, he enjoyed at best an option (which he could have exercised) of attaining competency to dispose of a fractional share of the property, and that option, being personal, died with him. A man is not 'competent' to do something until he has first placed himself in a position to do it effectively."

(4) Finally, the learned Judge held that the Administrators could not be made accountable for any estate duty levied under Section 8 (1) (*a*) in respect of property in question because (i) they are the administrators of the estate of Arunachalam Chettiar (Sr.) and not of any estate of Arunachalam Chettiar (Jr.) and (ii) such "interests" as the latter enjoyed in the property during his lifetime were automatically extinguished when he died. p. 331, ll. 18–33.

In the result, the learned Judge held that the Crown's claim to estate duty fails and that the appeal must be dismissed with costs. p. 331, ll. 34–38.

Gunasekara, J., agreed.

The Respondents submit that the said Judgment is right.

20. On the 18th February, 1954, the Supreme Court granted conditional leave to appeal to Her Majesty in Council. Final leave to appeal was granted on the 28th May, 1954. p. 337. p. 339.

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

22. 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 District Court is right for the reasons given by the learned trial Judge and for other good and sufficient reasons.

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

(3) BECAUSE there are concurrent findings of fact in favour of the Respondents as to the relevant principles of Hindu law applicable to this case.

(4) BECAUSE the property in question was joint property of a Hindu undivided family and the interest of Arunachalam Chettiar (Jr.) therein was that of a co-parcener. The said property was therefore not

property which " passed " on the death of Arunachalam Chettiar (Jr.) within the meaning of section 7 of the Estate Duty Ordinance, No. 8 of 1919.

(5) BECAUSE owing to the limited character of the power of a co-parcener to dispose of joint property of a Hindu undivided family and the absence of any intention on the part of Arunachalam Chettiar (Jr.) to separate himself in status from the undivided family the property in question was not property of which Arunachalam Chettiar (Jr.) was at the time of his death " competent to dispose " within the meaning of Section 8 (1) (*a*) of the Estate Duty Ordinance No. 8 of 1919.

(6) BECAUSE the nature of the right of a co-parcener of a Hindu undivided family in relation to the joint property of the family is such that those rights are not an " interest ceasing on the death " of the co-parcener, nor is there any " benefit " or (at any rate) any benefit which can be valued in terms of money, accruing or arising " by the cesser of such interest." The property in question was therefore not property to which Section 8 (1) (*b*) of the Estate Duty Ordinance No. 8 of 1919 applied.

(7) BECAUSE the original Respondents were not the Administrators of the estate of Arunachalam Chettiar (Jr.).

D. N. PRITT.

RALPH MILLNER.

J. D. M. DERRETT.

No. 16 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

LEE & PEMBERTONS,
46 Lincoln's Inn Fields,
London, W.C.2,
Solicitors for the Respondents.

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