17, 1957

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) . . . *Respondents.*

Case for the Appellant.

RECORD.

1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon, dated the 12th October, 1953, setting aside, so far as it concerns the subject-matter of this appeal, a Judgment and Order of the District Court of Colombo, dated the 8th November, 1949, whereby an appeal against an assessment to estate duty made under the Estate Duty Ordinance (C. 187) in respect of the Ceylon estate of one Rm. Ar. Ar. Rm. Arunachalam Chettiar (hereinafter called "Arunachalam Senior") was dismissed, with costs. No. 17, pp. 37–42.

In place of the Judgment and Order set aside the Supreme Court entered the Decree which is referred to in paragraph 20 hereof.

2. As stated in greater detail in the Appellant's Case in the connected appeal (P.C.A. No. 16 of 1955) Arunachalam Senior and his only son (conveniently referred to as "Arunachalam Junior") were Nattucottai Chettiars and the co-parcenary members of a joint Hindu family governed in matters such as succession, inheritance, adoption, marriage, etc., by the Mitakshara system of Hindu Law, as was recognised, and given effect to, on the material dates, in South India. The other members of the family, on the said dates, were females, with, it is submitted, rights limited to maintenance and residence. No. 16, p. 286; p. 287, ll. 18–20. No. 17, pp. 30–31.

No. 16, p. 340 (Ex. A1).

Arunachalam Junior died on the 9th July, 1934, intestate and without issue, and leaving him surviving his widow. He predeceased his father, Arunachalam Senior, who died on the 23rd February, 1938, testate, and leaving him surviving his two widows, a widowed daughter-in-law (Arunachalam Junior's widow), three married daughters, an infant daughter, step-mother and elder sister.

No. 16, pp. 349–355 (Ex. A2).

3. In his will, dated the 8th January, 1938, Arunachalam Senior, then the sole surviving member of the former co-parcenary and, as such,

No. 16, p. 349, ll. 42–49.

in possession of the entire joint family property, purported to give powers of adoption to his two widows and to his widowed daughter-in-law, giving

No. 16, p. 349, ll. 29–31.

to each a power to adopt a son *to herself* (contrary, it is submitted, to his relevant personal law). He empowered his executors to choose, in consultation with the three widows aforesaid, satisfactory boys for adoption who would, after adoption, " in equal shares own, possess and enjoy the

No. 16, p. 353, ll. 41–43.

movable and immovable properties, cash, jewels, silverwares, utensils, etc. concerning the Estate." He gave to his executors complete charge of his estate and trusts with very wide powers of management.

No. 16, p. 356, ll. 29–37 (Ex. R5).

The validity of the will was challenged by the testator's widowed daughter-in-law in the Court of the Subordinate Judge of Devakotta,

No. 16, p. 357 (Ex. R6).

India, and, on her application, that Court, on the 18th August, 1938, appointed the predecessors of the present Respondents as Receivers of the entire estate of Arunachalam Senior. The Receivers subsequently took

No. 16, p. 56, ll. 4–17.

possession of the Ceylon estate of Arunachalam Senior into which of

No. 17, p. 12, ll. 39–40.

course had fallen the Ceylon estate of his son. Letters of Administration in respect of the entire estate in Ceylon were issued to the Receivers by the District Court in Colombo in Case No. 8727 (Testamentary).

These connected appeals arise out of separate Notices of Assessment which were served upon the said Administrators in respect of (1) property passing on the death of the son and (2) that passing on the death of the father.

4. The present appeal is concerned with the liability to estate duty of the estate in Ceylon of Arunachalam Senior and the main question for determination is whether the property assessed to estate duty as property passing on the death of the said Arunachalam Senior was, on the evidence and the authorities, satisfactorily proved to be the joint property of a Hindu undivided family and, therefore, exempt from payment of duty under Section 73 of the Estate Duty Ordinance (C. 187).

If the answer of the Board to this question is in the negative (as, in the Appellant's respectful submission, it ought to be) then certain subsidiary questions left undecided by the Supreme Court may arise for decision. These subsidiary questions are included among the Issues framed in, and answered by, the District Court (see paragraphs 8 to 10 hereof).

5. Relevant portions of the Estate Duty Ordinance (C. 187) are included in an Annexure hereto. A genealogical table of the family is included in the " Case for the Appellant " in the connected appeal No. 16 of 1955.

6. The facts are as follows :—

By his Notice of Assessment, dated the 5th October, 1939, addressed to the present Respondents' predecessors (Administrators of the estate in Ceylon of Arunachalam Senior—hereinafter also called " the assessees ") the Assessor, Estate Duty, Colombo, notified the assessees that the estate duty payable in respect of the estate in Ceylon of Arunachalam Senior had been assessed at Rs.449,611.52 ; and by his Additional Notice of Assessment, dated the 9th May, 1941, similarly addressed, he increased the assessment from Rs.449,611.52 to Rs.639,361.76. No. 17, pp. 15–16. No. 17, pp. 16–18.

The assessees objected to the said assessment and, in terms of Section 35 of the Estate Duty Ordinance (C. 187) (hereinafter called " the 1938 Ordinance "), lodged with the Commissioner of Estate Duty, Income Tax and Stamps (hereinafter called " the Commissioner ") a written notice of their objection setting out various grounds upon which it was based. The Commissioner, however, decided to maintain the assessment, subject to the exclusion therefrom of a half share of certain specified Estates and the assessees were so notified by his letter, dated the 16th April, 1942. The exclusion of the said half share resulted in the assessment being reduced from Rs.639,361.76 to Rs.633,601.76, and this was notified to the assessees by an Amended Notice of Assessment, dated the 29th April, 1942. No. 17, p. 13, ll. 12–16 ; pp. 65–67 (Ex. A47). No. 17, p. 18, ll. 29–40. No. 17, p. 19.

The assessees paid, without prejudice, a sum of Rs.459,429.76 as estate duty and appealed against the assessment. No. 17, p. 13, ll. 25–26.

7. By their petition of appeal, dated the 14th May, 1942, filed in the District Court of Colombo, the assessees set out several grounds upon which they objected to the assessment and prayed for judgment : (A) setting aside the said assessment ; (B) declaring that Arunachalam Senior's estate was not liable to pay estate duty and ordering the refund of the amount already paid and which might thereafter be paid in pursuance of the assessment together with interest ; or alternatively (C) reducing the value of the estate by the amount, if any, paid or payable as duty on Arunachalam Junior's estate ; and (D) reducing the said assessment by the deletion therefrom of the value of certain Mysore Government Securities and by granting relief because of quick succession under Section 18 of the 1938 Ordinance. No. 17, pp. 12–15. No. 17, p. 14, l. 45, to p. 15, l. 10.

8. Of the several Issues on which the assessees' appeal went to trial the learned District Judge, after a consideration of all the evidence in the case, answered Issues (1) to (5) as follows :— No. 17, pp. 20–21, 31–32.

" (1) (A) Was the deceased a member of an undivided Hindu family which carried on business in Ceylon of moneylenders, rice merchants, etc., under the vilasams of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. ? " No. 17, p. 31, ll. 33–36.

Answer : " Yes." No. 17, p. 29, l. 5.

No. 17, p. 31, ll. 37–38. "(1) (B) Was the deceased not entitled to any definite share in the assets of the said family ? "

No. 17, p. 29, ll. 6–7. *Answer :* " When his son was alive he was not entitled to any definite share."

No. 17, p. 31, ll. 39–40. "(1) (C) Did the deceased have no interest in the assets of the said family which passed on his death ? "

No. 17, p. 29, ll. 8–10. *Answer :* " He had an interest in the assets of the property which once belonged to a joint family and which, on his son's death, became his exclusive property. It passed on his death."

No. 17, p. 31, ll. 41–43. "(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 ? "

No. 17, p. 29, l. 11. *Answer :* " No. Not at the time of his death."

No. 17, p. 31, ll. 44–46. "(3) If any portions of Issue (1) or if Issue (2) is answered in favour of the Appellants " (the assessees), " is estate duty payable on the property that has been assessed ? "

No. 17, p. 29, l. 12. *Answer :* " Does not arise."

No. 17, p. 32, ll. 1–3. "(4) If Issue (3) is answered in favour of the Respondent " (the present Appellant) " what is the value of the interest of the deceased in the property that has been assessed ? "

No. 17, p. 29, l. 13. *Answer :* " Total value of the property."

No. 17, p. 32, ll. 4–6. "(5) If Issue (2) is answered in favour of the Appellants is the alleged estate in question exempt from estate duty by virtue of Section 73 of Ordinance 1 of 1938 ? "

No. 17, p. 29, l. 14. *Answer :* " Does not arise."

9. The Answers of the learned District Judge to Issues (6) to (8) were as follows :—

No. 17, p. 32, ll. 7–10. "(6) (A) Had the Crown for purposes of income tax accepted the position of the deceased that all his income in Ceylon was the income from the joint property of an undivided Hindu family of which he was a member ? "

No. 17, p. 29, l. 15. *Answer :* " Yes."

No. 17, p. 32, ll. 11–12. "(6) (B) If so, is the Crown estopped from denying that the said estate is joint property of an undivided Hindu family ? "

No. 17, p. 29, ll. 16–17. *Answer :* " No ; particularly in view of the decision in the 45 N.L.R.* case."

*at p. 230.

No. 17, p. 32, ll. 13–14. "(7) On the death of the deceased did any property pass within the meaning of the Estate Duty Ordinance No. 1 of 1938 ? "

No. 17, p. 29, l. 18. *Answer :* " Yes."

" (8) If Issue (7) is answered in the negative is any estate duty payable ? " No. 17, p. 32, ll. 15–16.

Answer : " Does not arise." No. 17, p. 29, l. 19.

10. The remaining Issues (9) to (14) were answered by the learned District Judge as follows :—

" (9) Are the items referred to as ' Mysore Government Securities ' liable to be included as part of the Ceylon estate of the deceased ? " No. 17, p. 32, ll. 17–19.

Answer : " Yes." No. 17, p. 29, l. 20.

" (9) (A) In any event are these items properly included in the estate to be assessed for the purpose of ascertainment of the rate payable ? " No. 17, p. 32, ll. 20–22.

Answer : Will not arise in view of my Answer to (9)." No. 17, p. 29, l. 1.

" (9) (B) In any event is the amount paid as succession duty in Mysore deductible in assessing the value of the Mysore Bonds under Section 23 of the Ordinance " (Deduction for foreign estate duty) ? No. 17, p. 32, ll. 23–25.

Answer : As these claims for deductions were not made in the petition of appeal or in the statement of the Commissioner of Estate Duty, I hold that they cannot be raised at this stage. No. 17, p. 29, ll. 22–24.

" (10) Are the Appellants " (the assessees) " liable to pay interest on the assessed duty for any period anterior to the date of assessment ? " No. 17, p. 32, ll. 31–32.

Answer : " Yes." No. 17, p. 29, l. 25.

" (11) In the event of the Appellants being found liable to pay duty on the estate of the son of the deceased— No. 17, p. 32, ll. 33–36.

(A) Is the amount of that duty deductible from the assets of this estate ?

(B) Are the Appellants entitled to relief by virtue of quick succession ? "

Answer to (11) (A) *and* (11) (B) *:* " Does not arise in view of my findings in 37T " (the connected appeal P.C.A. 16 of 1955) " that the son's estate is not liable for duty." No. 17, p. 29, ll. 26–29.

" (12) Has any claim for refund been made to the Commissioner of Estate Duty in terms of Section 58 of the Estate Duty Ordinance ? " No. 17, p. 32, ll. 37–38.

Answer : " No." No. 17, p. 29, l. 30.

" (13) If the Answer to Issue (12) is in the negative is it open to the Court to make an order for a refund in terms of prayer (B) in the petition of appeal ? " (See paragraph 7 hereof.) No. 17, p. 32, ll. 39–41.

Answer : " Yes." No. 17, p. 29, l. 31

" (14) What amount if any of the duty paid is repayable ? " No. 17, p. 32, l. 42.

Answer : " Nil." No. 17, p. 29, l. 32.

11. At the commencement of the trial of the connected appeal certain admissions (more particularly concerned with Ceylon income tax returns and assessments in respect of the joint income of Arunachalam Senior and Arunachalam Junior as members of a Hindu undivided family and with the property being the joint family property when both were alive) were made by both sides in respect of both appeals and these are referred to in paragraph 12 of the Case for the Appellant in the connected appeal No. 16 of 1955.

No. 16, p. 23, ll. 23–34. 12. Evidence in support of their respective cases was adduced by both sides after it had been agreed between them that, in order to avoid overlapping and for the convenience of all concerned, evidence should be led only in the connected case and that such evidence should be regarded as having been led also in the present case, subject to the right of either side in the present case to lead any additional evidence.

Summaries of the evidence of the Hindu Law experts on both sides are included as Annexures " B " and " C " to the " Case for the Appellant " in the connected appeal No. 16 of 1955. Particularly relevant to the present appeal are topics such as the nature of a co-parcener's interest in the property of a joint Hindu family governed by the Mitakshara system of Hindu Law and the nature of the interest of a sole surviving member of a former co-parcenary in the co-parcenary property which is in his possession. The views of the experts on such matters will be found in the said Summaries.

No. 16, pp. 286–312. 13. By his Judgment, dated the 8th November, 1949, the learned
No. 16, p. 310, ll. 30–32. District Judge held that the Ceylon estate of Arunachalam Senior was liable to the payment of estate duty as property which must be deemed to have passed on the death of the deceased, being property of which, at the time of his death, he was competent to dispose within the meaning of
No. 16, p. 310, ll. 28–30. Annexure. Section 6 (*a*) of the 1938 Ordinance and the definition of the term
No. 16, p. 307, ll. 48–51. No. 17, p. 29. " competent to dispose " in Section 77 (2) thereof; and that it was not exempt from the payment of estate duty under Section 73 of the Ordinance as being the joint property of a Hindu undivided family.

The learned Judge delivered one single Judgment for both cases, but he answered the Issues framed in each case separately.

His Answers to the Issues framed in the present case have already been set out (see paragraphs 8 to 10 hereof).

No. 16, p. 299, ll. 11–18. 14. The learned District Judge said that the question for decision in this case was " whether after the death of Arunachalam Chettiar (Junior) the property which, while he was alive, was admittedly the property of a Hindu undivided family, after his death continued to be the joint property of a Hindu undivided family or whether it was Arunachalam Chettiar (Senior's) separate property. If the former, Annexure. Section 73 would apply; if the latter, it would not, and the whole estate would become liable for duty on the death of Arunachalam Chettiar (Senior)."

No. 16, p. 299, ll. 18–22. The learned Judge referred to the incidents of joint possession of co-parcenary property and of a co-parcener's separate property. In

respect of the latter, the absolute powers of a co-parcener were, in the learned Judge's opinion, similar to those of ownership. On the provisions of the said Section 73 and the meaning to be attached to the expression "property of a Hindu undivided family" he referred to the leading authorities and to the conflicting views of the experts who had given evidence in the case. He was clear that the exposition of the law by Mr. Raja Iyer in his evidence for the Crown was correct and that "the term joint family property when used in an enactment must be read to mean co-parcenary property." Continuing, he said :—

No. 16, p. 299, l. 45, to p. 300, l. 37.

No. 16, p. 300, ll. 38–43.

> "In regard to separate property different rules of succession would apply, and when in an Estate Duty Ordinance exemption is provided for joint family property, it must, in my view, clearly be intended to cover only the property of the family which is vested in the co-parceners."

No. 16, p. 300, ll. 44–47.

15. The learned District Judge referred to, but did not accept, the argument advanced by the assessees (and their Hindu Law expert) that the property of a Hindu joint family vests in the family as a unit and that the co-parceners, like the female members of the family, have only a right to maintenance. He accepted instead the opinion of Mr. Raja Iyer (the Hindu Law expert for the Crown) that such property is vested in the co-parceners, their right to maintenance being based upon rights in the property as co-sharers, while the right to maintenance of the female and other members is of a personal nature and not a charge upon the property—an opinion which, in the learned Judge's view, was supported by the observations of the Board in *Commissioner of Income Tax, Punjab, etc.* v. *Krishna Kishore* A.I.R. [1941] P.C. 120, at p. 126, and in *Kalyanji Vithaldas* v. *Commissioner of Income Tax, Bengal* A.I.R. [1937] P.C. 36. The learned Judge referred in some detail to the last-mentioned case in which, he pointed out, Sir George Rankin, delivering the Judgment of the Board, "places ancestral property in the hands of a sole surviving co-parcener in the same position as separate property"—a view which was also in evidence in *Commissioner of Income Tax, Bombay* v. *A. P. Swamy Gomedalli* A.I.R. [1937] P.C. 239 in which "the Privy Council held that the income derived by a sole surviving co-parcener is liable to taxation as his separate income on the footing that the property in those circumstances should be regarded as separate property."

No. 16, p. 301, ll. 7–20.

No. 16, p. 301, l. 17, to p. 302, l. 24.

No. 16, p. 301, ll. 36–37.

No. 16, p. 302, ll. 24–30.

The learned Judge, for reasons that he gave, rejected the argument advanced on behalf of the assessees (and supported by the evidence of Mr. Bashyam, their Hindu Law expert) that once property is ancestral property it must always be regarded as joint family property unless and until the family as a unit ceases to exist, which event can never occur so long as there is a mother in existence who is capable in nature, or in law, of begetting a son.

No. 16, p. 302, l. 31, to p. 304, l. 11.

16. After an examination of the authorities—among them several Privy Council decisions—and a consideration of the evidence of the Hindu Law experts* the learned District Judge said :—

*Summaries of this evidence appear as Annexures "B" and "C" to the Appellant's Case in the connected appeal.

> "... The only basis on which it would be possible to explain the powers of a sole surviving co-parcener to deal with property as

No. 16, p. 305, ll. 42–47.

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. Once that contingency has arisen his powers as full owner cease to exist . . .

No. 16, p. 307, ll. 33–51.

" What we have to consider in this case is the nature of the property as it existed at the time of Arunachalam Chettiar (Senior's) death . . . On the date of death . . . there was no male member brought into the family in law or nature who could take an interest in the co-parcenary property. It was, therefore, at that point of time at least, the absolute property of Arunachalam Chettiar (Senior) subject to the potentiality of it becoming joint family property in the event of Arunachalam Chettiar (Senior) 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."

17. Concluding, on the nature of the property as it existed at Arunachalam Senior's death and the nature and extent of Arunachalam Senior's interest in it, the learned District Judge said that even if the estate left by Arunachalam Senior did not come within the definition of " Ceylon estate " as set out in Section 77 (1) of the 1938 Ordinance and did not " pass " on his death, the property must still, under Section 6 (*a*) of the Ordinance, be " deemed to pass " on his death for it undoubtedly was property which, at the time of his death, he was competent to dispose. The learned Judge pointed out that at that time—which was the relevant time for purposes of estate duty—the deceased's powers of disposition in regard to the Ceylon estate (which did not include the ancestral house) were unlimited and certainly within the definition of the term " competent to dispose " in Section 77 (2) of the Ordinance. He held, therefore, that the Ceylon estate of Arunachalam Senior was liable to the payment of estate duty.

No. 16, p. 310, ll. 16–21.

Annexure.

Annexure.

No. 16, p. 310, ll. 23–30.

Annexure.

No. 16, p. 310, ll. 33–40.

18. The learned District Judge next referred to the argument on behalf of the assessees that even if it be held that Arunachalam Senior's property is liable to estate duty, the Estate Duty Department could not include in his Ceylon Estate certain Mysore Government Promissory Notes—which had been found among the deceased's assets in Ceylon but had not been established to be negotiable in Ceylon. The learned Judge rejected the argument. He was of the clear opinion that the Promissory Notes in question were within the definition of a " promissory note " in the Bills of Exchange Ordinance (C.68) and, as negotiable instruments, were capable of being sold, and transferred, in Ceylon and were, therefore, subject to the accepted rule of law that if foreign negotiable instruments can be sold and effectually transferred by acts done in the country where they happen to be then they must be treated as assets in their character as saleable chattels in that country. He held, therefore, that the Notes in question formed part of the Ceylon estate of Arunachalam Senior.

No. 16, p. 311, ll. 34–36.

No. 16, p. 311, ll. 8–19 ; p. 312, ll. 5–11.

No. 16, p. 312, ll. 11–12.

19. Aggrieved by the Judgment and Order of the learned District Judge, in so far as it was concerned with the subject-matter of the present

appeal, the assessees appealed therefrom to the Supreme Court of Ceylon on the several grounds stated in their petition of appeal, dated the 17th November, 1949. No. 17, p. 33, l. 41, to p. 35, l. 49.

20. By their Judgments, dated the 12th October, 1953, the learned Judges of the Supreme Court (Gratiaen and Gunasekara, JJ.) set aside the Judgment and Order of the District Court appealed from, and, in its place, directed the substitution of a decree declaring that no estate duty was payable under the 1938 Ordinance in respect of the estate of Arunachalam Senior and ordering the Crown to refund to the assessees the sum of Rs.700,402.65 with legal interest thereon from the date on which the proceedings were instituted in the District Court. Further, the assessees were awarded their costs in both Courts. No. 17, pp. 37–41. No. 17, p. 41, ll. 37–50.

21. Delivering the main Judgment of the Supreme Court, Gratiaen, J. (with whom Gunasekara, J. agreed) said that the assessees claimed exemption, under Section 73 of the 1938 Ordinance, from estate duty in respect of Arunachalam Senior's estate on the ground that they had established that: (A) until he died the deceased had continued to be a member of a Hindu undivided family; and (B) all the property in his possession at that time was the joint property of the undivided family. No. 17, p. 38, ll. 33–43.

The learned Supreme Court Judge said that it was beyond argument that, under the Mitakshara Law, Arunachalam Senior continued until the time of his death to be a member of a Hindu undivided family. Further, he expressed the view that the undivided status of the family continued even after his death because of the possibility of the line being continued as a result of adoptions by his widows. No. 17, p. 38, l. 44, to p. 39, l. 13.

The learned Judge referred to the view of the Court below that when, on the death of his son, Arunachalam Senior had become the sole surviving member of the former co-parcenary, the joint family property had become vested in him absolutely until the contingency of an addition of a male member, whether in nature or in law, arose. This view was in accordance with the opinion of the Crown's expert witness, Mr. Raja Aiyar, who had said also that the terms "joint family property" and "co-parcenary property" were synonymous; but was in conflict with the opinion of the expert witness for the assessees, Mr. Bhashyam, whose view was that the circumstances that the co-parcenary unit of an undivided family has at any point of time been reduced to a single individual does not divest the family of its joint property—that, in such circumstances, the joint family with its joint estate continues. No. 17, p. 39, ll. 14–24. No. 17, p. 39, ll. 25–30.

22. Called upon the resolve the conflict in the expert evidence of two distinguished lawyers, the learned Supreme Court Judge (Gratiaen, J.) said that the problem could only be solved by reliance being placed again on the *ratio decidendi* of the earlier decision of the Supreme Court in the connected appeal and following that reasoning to its logical conclusion. (The learned Judge had stated earlier that the basis of that decision was "that under the Mitakshara law, the joint property belonged to the entire family group to the exclusion of its individual members.") No. 17, p. 39, ll. 43–49. No. 17, p. 37, ll. 43–45.

No. 17, p. 39, l. 36, to p. 40, l. 8.

Expressly proceeding upon the assumption (which, it is respectfully submitted, was an erroneous one) that the Court's prior decision in the connected case correctly explained the concept of "joint property" belonging to an undivided family, the learned Judge expressed the view

No. 17, p. 40, ll. 4–8.

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'" (i.e., joint family property), "there can be no change of ownership until the family, as a corporate entity, has ceased to exist."

No. 17, p. 40, ll. 19–30.

23. On the "unfettered powers of alienation" of a single surviving co-parcener the learned Supreme Court Judge (Gratiaen, J.) said :— 10

> "There is nothing except the dictates of his own conscience to prevent a single co-parcener from frittering away the joint estate, to the detriment of the other members of the family (be they alive or yet unborn).

No. 17, p. 40, ll. 31–35.

> "Some of the authorities referred to by the experts, in discussing a single co-parcener's extensive powers of alienation, certainly use words suggesting that he is, in a certain sense and for all practical purposes, regarded as 'the owner of the joint property' or as 'in the position of full owner.'"

No. 17, p. 40, ll. 35–41.

But this, in the learned Judge's opinion, "does not mean that he is 20 in truth the absolute owner of the joint property to the exclusion of the quasi-corporation to which an undivided family is often equated. His responsibilities and obligations as manager or *karta* of property in his possession are not extinguished, and general members still enjoy the right, based on their continued membership of the undivided family, to be maintained by him out of the common fund."

In the Appellant's respectful submission the learned Judge was in error in his conclusions which were arrived at by first attributing to the property in the possession of a single surviving co-parcener its previous character of jointness and then defining and limiting the co-parcener's 30 rights in relation thereto.

24. The learned Supreme Court Judge (Gratiaen J.) concluded—

No. 17, p. 40, l. 51, to p. 41, l. 8.

> "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 (Senior) at the time of his death was 'competent to dispose' of the joint property throughout the relevant period following the son's death, and although the joint property would, for that reason, normally be deemed to have 'passed' on his death within the 40 meaning of Section 6 of the Ordinance so as to attract estate duty, the exemption provisions of Section 75 (*sic.* 73) protect the property from taxation."

Annexure.

No. 17, p. 41, ll. 25–32.

Annexure.

25. In conclusion, the learned Supreme Court Judge (Gratiaen J.) said that by enacting Section 73 of the 1938 Ordinance the legislature had formally recognised the concept of an undivided family as an entity owning

property. He rejected therefore the reasoning " that 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.' " He held that the learned District Judge was wrong in deciding that the property in question was not exempt, under the said Section 73, from payment of estate duty. No. 17, p. 41, ll. 35–37.

The Appellant respectfully submits that even if the terms of Section 73 justify the inference that thereby the legislature had formally recognised the concept of a Hindu undivided family owning property they cannot be so interpreted as to justify the further inference or assumption (which, it is submitted, is contrary to the relevant law) that the property of a Hindu undivided family consisting of a single surviving male co-parcener and female members is held jointly by them all. Annexure.

26. A Decree in accordance with the Judgment of the learned Judges of the Supreme Court was entered on the 12th October, 1953, and against the said Judgment and Decree this appeal is now preferred to Her Majesty in Council, the Appellant having been granted leave to appeal by two decrees of the Supreme Court dated respectively the 25th February, 1954, and the 4th June, 1954. No. 17, p. 42. No. 17, pp. 44, 46.

27. The present Respondents Nos. 1 to 3 inclusive were, by Order of the Supreme Court, dated the 10th August, 1956, substituted or entered of record in place of the two previous Respondents (1) V. Ramaswami Iyengar ; and (2) K. R. Subramania Iyer, Administrators of the Estate in Ceylon of Rm. Ar. Ar. Rm. Arunachalam Chettiar (Arunachalam Senior).

In the Appellant's respectful submission this appeal ought to be allowed, with costs throughout, the said Judgment and Decree of the Supreme Court, dated the 12th October, 1953, should be set aside and, in so far as it is concerned with the subject-matter of this appeal, the Judgment and Order of the District Court dated the 8th November, 1949, restored for the following among other

REASONS

(1) BECAUSE the property in respect of which the assessment was made was the Ceylon Estate of Arunachalam Senior within Section 3 of the 1938 Ordinance and, as such, passed on his death, or must be deemed to have passed on his death being property of which he was at the time if his death competent to dispose within the meaning of Section 6 (*a*) and Section 77 (1) (2) of the said Ordinance.

(2) BECAUSE, on a true interpretation and application of the Mitakshara Law (as, on the material dates, it was applicable to Nattucottai Chettiars in South India) and of the expert evidence in relation thereto which was given in this case Arunachalam Senior's rights in respect of the said property were those of full ownership.

(3) BECAUSE, on the said interpretation and application, Arunachalam Senior and Arunachalam Junior, as the co-parceners of the joint Hindu family of which they were members, jointly owned the family property when both were alive in equal, if undivided, shares, and when the son predeceased the father the latter became, as the sole survivor of the former co-parcenery, its absolute owner.

(4) BECAUSE, on the said interpretation and application, the said property in the hands of Arunachalam Senior as the sole surviving member of the former co-parcenary entirely lost its character of jointness and became instead his separate property in respect of which he could exercise unrestricted rights of disposition.

(5) BECAUSE, as the Supreme Court itself has found, Arunachalam Senior was, at the time of his death, competent to dispose of the property and if this be so it cannot reasonably be said that the property was nevertheless the joint property of an undivided family within the exemption provisions of the said Section 73.

(6) BECAUSE it was not established that the property in question was the joint property of a Hindu undivided family within the said Section 73.

(7) BECAUSE the Judgment of the Supreme Court was founded upon the erroneous basis of its earlier decision in the connected appeal that under the Mitakshara Law the joint property of a Hindu undivided family belongs to the entire family group consisting of both males and females to the exclusion of its individual members.

FRANK SOSKICE.

JOHN SENTER.

R. K. HANDOO.

ANNEXURE

THE ESTATE DUTY ORDINANCE
(C. 187)

Ordinance
No. 1 of 1938
(6th January, 1938)

* * * * *

Imposition of estate duty.

3. In the case of every person dying on or after the first day of April, nineteen hundred and thirty-seven, there shall, save as hereinafter expressly provided, be levied and paid upon the value of his Ceylon estate, a duty called estate duty :

Provided that no estate duty shall be payable when the value of the total estate of any such person does not exceed twenty thousand rupees.

* * * * *

What property is deemed to pass on death.

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 ;

* * * * *

Hindu undivided families.

*73. 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 ;

(*b*) on any immovable property, when 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.

* * * * *

Interpretation.

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

* * * * *

" Ceylon estate " means—

(*a*) in the case of a deceased person who was at the time of his death domiciled in Ceylon, all property settled or not settled which passes on his death wherever situate, except immovable property not situate in Ceylon ; and

(*b*) in the case of a deceased person who was not domiciled in Ceylon, all property in Ceylon, settled or not settled, which passes on his death.

* * * * *

---

*As substituted by Section 5 of the Estate Duty Amendment Ordinance No. 76 of 1938 which came into force on the 23rd December, 1938. As originally enacted Section 73 ran as follows :—

" Where a member of a Hindu undivided family dies no estate duty shall be payable on any property proved to the satisfaction of the Commissioner to be the joint property of that Hindu undivided family."

" property passing on the death " includes property deemed to pass on the death and 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;

* * * * *

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)

Respondents.

Case for the Appellant.

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