*Privy Council Appeal No.* 17 *of* 1955

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

*v.*

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

FROM

**THE SUPREME COURT OF CEYLON**

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

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*Present at the Hearing:*

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

[*Delivered by* VISCOUNT SIMONDS]

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Their Lordships have in their opinion in the preceding appeal No. 16 of 1955 stated the facts which are relevant to this appeal also and made some references to the relevant law. They do not repeat them here.

The question which arises in this appeal is whether an assessment made by the Commissioner of Estate Duty under the Estate Duty Ordinance No. 1 of 1938 in respect of the estate of one Rm. Ar. Ar. Rm. Arunachalam Chettiar can be upheld. This gentleman, who died on the 23rd February, 1938, shortly after the 1938 Ordinance came into operation, was in the previous, and will in this, opinion be called the father. The learned District Judge upheld the assessment but his decision was reversed by the Supreme Court of Ceylon. Hence this appeal by the Attorney General for Ceylon.

The 1938 Ordinance introduced a new provision in regard to Hindu undivided families. By S. 73 (in its unamended form) it provided 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".

The father, as appears from the facts stated in the previous opinion, became upon the death of his son in 1934 the sole surviving coparcener of a Hindu undivided family to which also a number of females belonged. No other coparcener came into existence during his lifetime, but at all material times there subsisted a power of adoption in his son's widow, a member of the family, and after his own death a similar power in his widows. These powers were in fact exercised after his death as appears from the table which is incorporated in the previous opinion. Moreover, at all material times the female members of the family had the right of maintenance and other rights which belong to female members of a Hindu undivided family.

The question then is a narrow one of construction, whether (a) the father was at his death a member of a Hindu undivided family and (b) the property of which he was the sole coparcener was the property of that Hindu undivided family. Upon (a) no doubt arises: it is conceded that he was a member of a Hindu undivided family. It must be observed that it was the same undivided family of which the son when alive was a member and of which the continuity was preserved after the father's death by the adoptions that have been mentioned. For his death did not put an end to the family line. Mr. Justice Gratiaen, in his judgment in the Supreme Court, quotes the language of this Board in two cases which appear to be apt to the present appeal. In A.I.R. 1918, P.C. 192, it was said: "Hindu lawyers do not regard the male line to be extinct "or a Hindu to have died without male issue until the death of his widow "renders the continuation of the line of adoption impossible", and in A.I.R. 1943, P.C. 196, it was said: "A Hindu undivided family cannot "be brought finally to an end while it is possible in nature and in law "to add a male member to it". These and similar quotations which might be multiplied supply the context in which the second part of the question must be considered, viz., whether, while the undivided family thus persists, the property in the hands (to use a neutral expression) of a single coparcener can properly be described as the "joint property of" that family.

The nature of the interest of a single surviving coparcener was the subject of exhaustive evidence by expert witnesses and their Lordships were referred to and studied numerous authorities in which in reference to his interest language was used not incompatible with his being regarded as the "owner" of the family property. But though it may be correct to speak of him as the "owner", yet it is still correct to describe that which he owns as the joint family property. For his ownership is such that upon the adoption of a son it assumes a different quality: it is such too that female members of the family (whose numbers may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which arise, notwithstanding his so-called ownership, just because the property has been and has not ceased to be joint family property. Once again their Lordships quote from the judgment of Mr. Justice Gratiaen: "To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary 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 coparcener". To this it may be added that it would not appear reasonable to impart to the Legislature the intention to discriminate so long as the family itself subsists between property in the hands of a single coparcener and that in the hands of two or more coparceners. It was urged that already the difference is there since a single coparcener can alienate the property in a manner not open to one of several coparceners. The extent to which he can alienate so as to bind a subsequently adopted son was a matter of much debate. But it appears to their Lordships to be an irrelevant consideration. Let it be assumed that his power of alienation is unassailable: that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it, and, if he does not alienate it, that is what it remains. The fatal flaw in the argument of the appellant appeared to be that, having labelled the surviving coparcener "owner", he then attributed to his ownership such a congeries of rights that the property could no longer be called "joint family property". The family, a body fluctuating in numbers and comprised of male and female members, may equally well be said to be owners of the property but owners whose ownership is qualified by the powers of the coparceners. There is in fact nothing to be gained by the use of the word "owner" in this connection. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as

"joint property" of the undivided family. Judging by that test their Lordships have no doubt that the Supreme Court came to the right conclusion.

Had their Lordships taken a different view from that of the Supreme Court it might have been necessary to review some at least of the large number of cases cited at the Bar, from which chosen passages appeared to favour the contentions of the appellant. But, as was said in the case of the previous appeal, the matters upon which the parties and their expert witnesses were agreed were of far greater significance than those upon which they differed, and their Lordships doubt whether, even if the appellant's evidence stood alone, they could have come to any different conclusion as to the meaning and scope of the words "joint property of that Hindu undivided family" as used in the 1939 Ordinance.

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

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**In the Privy Council**

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**THE ATTORNEY GENERAL OF CEYLON**

*v.*

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

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DELIVERED BY VISCOUNT SIMONDS

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