(1968) 01 KL CK 0013

High Court Of Kerala

Case No: O.P. No. 2413 of 1965

Balakrishna Menon and another		APPELLANT
	Vs	
Inspecting Assistant Commissioner of Agricultural Income Tax and Sales Tax (Spl) Kozhikode.		RESPONDENT

Date of Decision: Jan. 1, 1968

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 2(11), 2(11)
- Hindu Succession Act, 1956 - Section 17, 18, 2(m), 23, 24
- Transfer of Property Act, 1882 - Section 128, 2(m), 24, 8, 8(1)(c)

Citation: (1968) KLJ 589

Hon'ble Judges: T.S. Krishna Moorthy Iyer, J; P.T. Raman Nayar, J; K.K. Mathew, J

Bench: Full Bench

Advocate: K. Kuttikrishna Menon and A.P. Chandrasekharan, for the Appellant;

Final Decision: Allowed

Judgement

Raman Nayar, J. (for himself and Krishnamoorthy Iyer, J.)

1. The question is whether the tax due under the provisions of the (Kerala) Agricultural income tax Act, 1950 (for short, the Act) in respect of income derived by a sthanamdar from sthanam property is, after his death, leviable from the person or persons on whom the property has devolved. The tax, of nearly Rs. 85,000/-, assessed in this case was in respect of income derived during the period, 1-11-1956 to 31-3-1958, from the sthanam property of the Zamorin of Calicut by the then Zamorin, Sreemanavikraman Raja. On his death in May 1958, after the Hindu Succession Act came into force, the next Zamorin, Kunhammaman Raja, succeeded to the title, but the property devolved on the 692 members of the Zamorin''s family and on Sreemanavikraman Raja''s heirs in separate shares in accordance with

Section 7(3) of the Hindu Succession Act. However, it would appear that, by reason of Section 5(2) of Kerala Act 28 of 1959, Kunhammaman Raja, and, after him, the succeeding Zamorins, assumed management of the entire property until the present petitioners took over as receivers of court appointed in a partition suit between the several sharers. It was Kunhammaman Raja that was assessed to the tax-that was done u/s 24(2) of the Act- and he paid a sum of Rs. 18,000/- and odd towards the tax while his successor Zamorin, PX. CHferia Kunhunni Raja, paid Rs. 20,000/- and odd. For the balance of the tax, and for a penalty of Rs. 5000/- imposed on P.C. Cheria Kunhunni Raja demands have been made on the petitioners by the Inspecting Assistant Commissioner (the respondent herein) by his orders Ext. P-I, P-3 and P-5, and these orders the petitioners seek to quash. It is important to remember that, before the passing of the Hindu Succession Act, the estate of a sthanamdar in the sthanam property was akin to a Hindu widow''s estate-see Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, - and whatever might have been his limited powers of disposal during his lifetime, his estate determined completely with his death and no interest of his survived that event. The property, in the hands of the succeeding sthanamdar, was no more the estate of the deceased sthanamdar than property in the hands of a remainderman is the estate of the deceased life-estate holder. But, by reason of section 7(3) of the Hindu Succession Act, when a sthanamdar dies after the commencement of that Act, the sthanam property held by him devolves on the members of the sthani family and on his own heirs as if the property had been divided per capita immediately before his death among himself and the other members of the sthani family. In the share falling to him in that notional division, and devolving on his heirs, he must be regarded as having had a full estate, and that share, along with any other separate property he might have owned, would constitute his estate in the hands of his legal representatives. But, the shares devolving on the members of the sthani family, are in no sense the estate of the deceased sthanamdar. He never at any time had any interest in that that survived his death, and the Hindu Succession Act did not give him any. That, as held in Asst. Controller v Balakrishna Menon (1967 KLT 148) (F.B.), what passes on the death of a sthanamdar within the meaning of Section 5 of the Estates Duty Act, is the entire property which belonged to the sthanam and not merely the sthanamdar''s share in the notional division of section 7(3) of the Hindu Succession Act, is neither here nor there. The decision does not say that the property that so passes remains the estate of the deceased sthanamdar. That estate, as recognized by sub-section (1) of Section 7 of the Estates Duty Act read with the explanation to subsection (4) thereof, determines with the death of the sthanamdar, and it is only by reason of sub-section (1) of the section that the property is deemed to have passed on the sthanamdar''s death.

2. u/s 3 read with sections 17 and 18 of the Act, the liability to pay the tax assessed is, subject to certain exceptions as in sections 23 and 24, solely that of the person who derives the income, and there is no provision in the Act which makes the

liability a charge on the property from which the income is derived, or provides for recovery of the tax from the property as such, although of course, the defaulter''s interest in the property (which interest might range from full ownership to that of a mere licensee or trespasser, or, when the interest has ceased, as on the determination of a lease, to nothing) being part of his property, can be proceeded against. The argument that, because u/s 41(3) of the Act, an arrear of tax due from an assessee can be recovered as if it were an arrear of land revenue, the provisions of the Revenue Recovery Act making land security for the revenue due on it are attracted so as to make the land from which agricultural income is derived security for the tax assessed on such income even if the person liable to pay the tax has no subsisting interest in the land, is so obviously unsustainable that it scarcely needs refutation.

3. The only other provisions of the Act to which reference has been made as authorizing the recovery of the tax from the petitioners are sections 23 and 24. u/s 23, when a person in receipt of agricultural income from any land in the State has transferred his interest in such land to another person the tax due can, in certain circumstances, be recovered from the transferee. But this section, it is clear from its very wording, can apply only to transfers by act of parties and not, as in the present case, to a devolution by operation of law.

4. Under sub-section (1) of Section 24,

Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge the agricultural income tax assessed as payable by such person or any agricultural income tax which would have been payable by him under this Act if he had not died.

And, sub-section (2) of the Section provides for an assessment being made on the legal representative in respect of income derived by the deceased person. It is, as we have seen, under this sub-section that the assessment was made on Kunhammaman Raja. But, the person who derived the income and, in the first place, incurred the liability to pay the tax that might be assessed thereon was Sreemanavikraman Raja; and, as we have seen, so far as the sthanam property was concerned the only estate he left was a 1/693rd share in that property. That, and any other property he might have left, would, no doubt, be his estate in the hands of his legal representatives, and u/s 24 they would, no doubt, be liable to pay the tax which would have been payable by him if he had not died-even so only out of his estate to the extent to which it is capable of meeting the charge.

5. An interesting argument was developed in favor of it might not be quite correct to say, on behalf of the respondent in the course of the give and take of the hearing. It is this; The sthanam as such, as distinct from the human being who is the sthanamdar, is by itself a juristic person, if not under the general law then at least

for the purposes of the Act by reason of the definition of, "person" in section 2(m) thereof, the sthanamdar being only its visible human form. (To save confusion we shall hereafter refer to the sthanamdar in his personal capacity, in other words, as a human being, as sthani, and in his representative capacity, in other words as the juristic person of the argument, as sthanam). It was so the argument runs-the sthanam, not the then sthani, Sreemanavikraman Raja, that derived the income and thereby became liable to be charged with tax, and it was the sthanam, not the succeeding sthani, Kunhammaman Raja, that was assessed thereto. When, by subsection (3) of Section 7 of the Hindu Succession Act, the legislature made a gift, as it were, of the entire property of the sthanam to other persons, it could not have intended that those persons should take the property free of the liabilities of the sthanam and that the debts due by the sthanam should remain unpaid and irrecoverable, there being no property out of which they could be recovered. On the principle underlying section 128 of the Transfer of Property Act, the legislature could only have intended that the persons on whom the property devolved should take it subject to the liability to pay all the sthanam debts to the extent of the property. Therefore, the words, "sthanam property" occurring in the sub-section must be read as meaning the assets of the sthanam subject to the liabilities thereof. And, since the sthanam property is now in the hands of the petitioners on behalf of the persons on whom it has devolved, the petitioners must pay the tax assessed on and due from the sthanam from out of, and to the extent of the property.

6. Alternatively, and somewhat inconsistently, it is suggested that by giving away all the property of the sthanam on the death of Sreemanavikraman Raja, the legislature killed the sthanam-in law the word, "sthanam" means a position of dignity to which certain specific property is attached so that bereft of its property a sthanam ceases to exist in the eye of the law although in the popular eye it might continue to exist as a mere title or position of dignity. Therefore, the devolution of the property on the members of the sthani family and on the heirs of Sreemanavi-kratnan Raja was a case of succession to the estate of the sthanam. Kunhammaman Raja and the succeeding Zamorins, and the petitioners after them, took charge of the sthanam estate on behalf of all those who had succeeded to it. They are in the position of administrators, and it is as such legal representatives of the deceased sthani] that Kunhammaman Raja was assessed to tax under sub-section (2) of section 24, and the petitioners are now called upon to pay the tax so assessed under sub-section (1) of the section.

7. It should perhaps suffice to say that no such case can be founded on the pleadings. What the counter-affidavit filed on behalf of the respondent states is that the income subjected to assessment is the agricultural income from the sthanam properties of the Zamorin Raja for the previous year ending 31.3.1958 and that, during that period Sreemanavikraman Raja was the Zamorin Raja. On Sreemanavikraman Raja''s death, Kunhammaman Raja assumed management of the sthanam properties u/s 5(2)of Act 28 of 1958 assuming the title of Zamorin Raja.

Thereafter, the assessment was made on the Zamorin Raja (in other words on Kunhammaman Raja) u/s 24 of the Act on the income derived by the deceased sthanamdar (namely, Sreemanavikraman Raja) from the sthanam property. It is difficult to see how, from these averments, a case can be made out that it was the sthanam as a juristic person that derived the income and was assessed to the tax, or, alternatively, that Kunhammaman Raja was assessed to the tax as the legal representative of the deceased sthanam. On the contrary, on their plain language, what these averments mean is that it was the deceased sthani, Sreemanavikraman Raja, that derived the income, and that it was as his legal representative that the succeeding sthani, Kunhammaman Raja, was assessed to the tax.

8. We might however add that the respondent cannot be blamed for not having pleaded differently, for we do not think that any such case as has developed in the course of the hearing could plausibly have been pleaded. Section 2(m) of the Act defines, "person" thus:

person'' means any individual or association of individuals owning or holding property for himself or for any other, or partly for his own benefit and partly for another, either as owner, trustee, receiver, common manager, administrator, or executor or in any capacity recognized by law, and includes a Hindu undivided family, a firm or a company, an association of individuals, whether incorporated or not, and any institution capable of holding property;

We do not think that because any individual holding property in any capacity recognized by law is a person within the meaning of the definition, every capacity in which an individual might hold property is a separate person by itself. On a plain reading of the definition (forgetting, for the time being, the inclusive portion thereof) it is the individual or association of individuals holding property, not the capacity in which the property is held, that is invested with personality. If each capacity in which an individual holds property were to be a person by itself, the result would be that, in the case of an individual holding property in several capacities, the income derived in the several capacities could not be combined to arrive at his total agricultural income assessable to tax even if he is the beneficial owner of the entire income. Thus, on the basis of his separate incomes in his several capacities, he might escape assessment altogether although his true total income might be far above the amount exempt from tax. From section 8 of the Act, it would appear that the scheme of the Act is to regard the beneficial owner of the income as the person deriving the income and. therefore the person primarily liable to be assessed to tax, section 8 being only an enabling provision authorizing the levy of the tax also on a person receiving income in which he has the beneficial interest on behalf of the beneficial owner to the same extent to which the beneficial owner would be liable. It is therefore not necessary to invest each capacity in which a person holds property with a separate personality to prevent income derived by a person in a capacity which denies him all beneficial interest there in being reckoned

in arriving at his own total income.

9. We are however prepared to assume that a sthanam is a person within the meaning of the Act regarding it as an institution capable of holding property, a sort of corporation sole whether or not that be so under the general law. What follows? It must have derived income before it can be assessed to tax. But, as we have already seen, unlike the manager of a joint family who is only a joint owner of the family property and takes the income of the property for and on behalf of all the members so that the income in his hands is the property of the family, although he might not ordinarily be accountable in respect of it, a sthani is the sole, though a limited, owner of the sthanam property and like a Hindu widow (before the Hindu Succession Act did away with what was known as a widow''s estate) takes the income for himself in his own personal right. He does not take the income on behalf of the sthanam, and the sthanam as such gets no income from the sthanam property. All the income from the sthanam property is part of the sthani''s personal estate unless he has merged it with the sthanam property and, on his death, devolves on his personal heirs and not on the succeeding sthanamdar as representing the sthanam. It therefore follows that a sthanam as such can have no income so as to make it liable to be assessed to tax.

10. In our view, the person who derived the income and was liable to be assessed to tax was the then sthani, Sreemanavikraman Raja. With regard to his 1/693rd share in what was the sthanam property we think that the succeeding Zamorins, and now the petitioners, may well be regarded as his legal representatives since admittedly they have been in management of the entire property including Sreemanavikraman Raja''s share thereof. They are therefore, by reason of section24 of the Act, liable to pay the tax Sreemanavikraman Raja would have had to pay had be been alive, but that liability is, under the Section, limited to the value of Sreemanavikraman Raja''s estate, in other words, his l/693rd share in the property, and, towards that liability, credit must be given to the payments totaling to Rs. 38,000/- and odd already made.

11. We give the petitioners a declaration to this effect and quash the demands made on them. We make no order as to costs. We might perhaps mention that it was contended on behalf of the petitioners that the order of this court made in O.P. No. 768 of 1963 filed by one of the succeeding Zamorins. P.C. Cheria Kunhunni Raja, operates as res judicata and precludes the respondents from making the impugned demand. But there is no specific plea to this effect: nor is the order in O.P. No. 768 of 1963 or the pleadings therein before us. Therefore, we are unable to consider this contention.

Mathew J. (dissenting): The charging provision in the Agricultural Income- tax Act, 1950, hereinafter referred to as the Act, reads:

3(1). Agricultural income tax at the rate or rates specified in the schedule to this Act shall be charged for each financial year in accordance with and subject to the

provisions of this Act, on the total agricultural income of the previous year of every person".

The word ''person, is defined in Section 2(m) of the Act as follows:

''person'' means any individual or association of individuals owning or holding property for himself or for any other, or partly for his own benefit and partly for another, as owner, trustee, receiver, common manager, administrator, or executor or in any capacity recognized by law, and includes a Hindu undivided family, a firm or a company, an association of individuals, whether incorporated or not, and an institution capable of holding property.

2. I think, Sri. Manavikraman Raja held the properties from which the income was derived in his capacity as stanomdar and that capacity having been recognized by law, he was a ''person'' in that capacity for purpose of the charging section. An individual may hold properties in several capacities recognized by law and he will be a ''person'' in each of those capacities for the purpose of the charging section. This does not mean that the various capacities are ''persons.'' It only means that the individual is a separate ''person'' in each of these capacities for the purpose of the charging section. An individual holding property as trustee and deriving income therefrom, and owning property in his individual capacity and deriving income from it would be two different ''persons'' for the purpose of the charging section. The incomes of the two ''persons'' cannot be aggregated simply because the individual who receives them is the same. I think, the agricultural income tax is tax on a ''person'' in relation to his total agricultural income. Sub-section (1)(a) of Section 8 of the Act says:

In the case of agricultural income taxable under this Act which the court of wards, Administrator-General or Official Trustee or any receiver, administrator, executor, trustee, guardian or manager appointed by or under any law or by an order of court or by written agreement is entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from the Court of Wards, administrator-General, Official Trustee, or from such receiver, Administrator, executor, trustee, guardian or manager, as the case may be, in like manner and to the same amount, as it would be leviable upon and recoverable from the person on whose behalf such agricultural income is receivable, and all the provisions of this Act, shall apply accordingly.

This would highlight the measure of the liability of the trustee or the other persons mentioned in the sub-section and would indicate that the income derived from the trust property cannot be aggregated with the income derived from the property owned by the individual in his individual capacity for the purpose of assessment. Take the case of an individual holding properties in the capacity of guardian for two or more minors, who are co-owners having distinct and separate shares. The guardian will be treated and assessed as a separate ''person'' in respect of the share of the income of each of the minors. Suppose the guardian derives income from

lands owned by him in his individual capacity, he will be yet another ''person'' for the purpose of charging section. Section 8(1)(c) gives an option to the department to assess either the trustee or manager or the other persons mentioned in sub-section (a) or the beneficiary. I think, if at all section 8 (1) (c) shows anything, it shows that the department can assess the trustee or manager or the other persons mentioned and recover the tax from them or assess the beneficiary of the income and recover the tax from him. It will not show that the trustee or the other persons mentioned in the sub-section are not liable to be assessed and the tax recovered from them. If Sri. Manavikraman Raja in his capacity as stanomdar was a ''person'' for the purpose of the charging section, and received income from the stanom properties, I think, the liability,to pay the tax was of t hat ''person'', and that ''person'' could have been assessed and the tax recovered from that ''person'' and the properties held by that ''person'', namely, the stanom properties. The fact that he could have disposed of the income after receiving the same in any way he pleased did not alter the capacity in which he received it, or change, in the eye of the agricultural income tax law, the ''person'' who received it. That Sri. Manavikrama Raja could have received the income only in his capacity as stanomdar is clear from the fact that but for the fact that he was the stanomdar he could not have received it. Even assuming that a stanom is not a corporation sole and that Mr. J ustice Bhashyam Iyengar was wrong in holding that it is a corporation sole, I think, we have to postulate a personality for the stanom as could own properties and as it was capable, through the stanomdar, of altering into contracts and incurring liabilities binding on the properties. That the stanomdar has a dual capacity under the general law appears to be clear, for otherwise I see no reason why the debts incurred by him in his personal capacity should not bind the stanom and its properties.

3. Ex. P-5 would show that the department entertained no doubt as to the ''person'' who received the income or as to the ''person'' who should be assessed in respect of the income received. It says:

Here, the ''person'' assessed was the Zamorin Raja of Calicut and that too in respect the income derived from the stanom properties. Hence, the estate of the ''deceased person'' in this case is the estate of Zamorin Raja, i.e. the stanom properties.

I do not think that there is much substance in the contention of the petitioners that there was no case for the department that the income was received by Sri. Manavikraman Raja in his capacity as Stani.

4. At the close of the accounting year in question, Sri. Manavikraman Raja in his capacity as stanomdar and therefore the stanom incurred the liability to pay the tax to be assessed. The liability arose ex lege on the stanom and the stanom properties passed on the death of Sri. Manavikraman Raja to the persons mentioned in Section 7(3) of the Hindu Succession Act subject to that liability. Then, the question for consideration is whether the order of assessment was binding on those persons. On the death of Sri. Manavikraman Raja Kunhammaman Raja succeeded to the title of

Zamorin Raja. He was one of the persons entitled to a share in the stanom properties u/s 7 (3) of the Hindu Succession Act and was the person in whom the management of the entire stanom properties was vested by virtue of section 5 (2) of the Kerala Act 28 of 1958. He was therefore competent to represent the estate of the deceased ''person''. Legal representative means a person who in law represents the estate of a deceased and would include an inter-meddler. If an inter-meddler can be the legal representative of a deceased, I think that a person who was admittedly one of the legal representatives and in whom the entire management of the stanom properties was vested by law was competent to represent the estate of the deceased for the purpose of the assessment proceedings. In other words, Kunhammaman Raja being one of the persons entitled to a share in the stanom properties and invested by law with the management of the entire properties was competent to represent the estate of the deceased in the assessemnt proceedings.

5. In First Additional Income Tax Officer, Kozhikode Vs. Susheela Sadanandan and Another, , the Supreme Court had occasion to consider the question whether one of the legal representatives in management of the properties of a deceased person could represent the estate of the deceased for the purpose of re-assessment proceedings u/s 34 of the Indian income tax Act, 1922. The Court said:

The definition of a legal representative u/s 2 (11) of the CPC also runs on the same lines: It means a person who in law represents the state of a deceased person, and includes any person who intermeddles with the estate of the deceased. It has been held that one who intermeddles with the estate of the deceased person, even though it may be only with a part thereof, is a legal representative within the meaning of section 2(11) of the CPC and is liable to the extent of the property taken possession of by him. On the same analogy, it may be held that if all the executors or some of them administered the estate of a deceased without obtaining the probate, all of them or some of them who have administered the estate may be held to be the legal representatives of the deceased and liable to the extent of the property taken possession of by them. If it had been established that E.D. Sadanandan had alone been managing the entire estate, the court could have come to the conclusion that he was the legal representative of the deceased and, therefore, represented the estate in the assessment proceedings. But, unfortunately, as we have already indicated, no serious attempt was made by the parties to establish before the High Court by placing before it the necessary material that all or some of the executors, though they did not obtain probate of the will, had intermeddled with the estate wholly or in part.

It is said that Sri. Manavikraman Raja had no estate in the stanom properties after his death and that nothing passed on his death except his share in the properties under the notional division. I think, the Full Bench decision in Assistant Controller v. Balakrishrta Menon 1967 KLT 148 (F.B.) proceeds on the assumption that what passed on the death of the stanomdar was the entire property of the stanom. M.S.

Menon C.J. said:

Leach M.R. said in Parr v. Parr, 21 L.J. Ch.167, that the word "devolve" means to pass from a person dying to a person living and that "the etymology of the word shows its meaning". We entertain no doubt that it is in the sense indicated by the Master of the Rolls that the word "devolved" is used in the first portion of suo-section (3) of section 7 when it says that the sthanam property held by a Sthanamdar shall devolve upon the members of the family to which the Sthanamdar belonged and the heirs of the Sthanamdar. In other words, the words "as if the sthanam property had been divided pers capita immediately before the death of the stanomdar" do not attenuate the Sthanam property that passes on the death of a sthanamdar to a per capita share therein as contended by the appellant in Writ Appeal No. 276 of 1965 and by the respondents in Writ Appeal Nos. 119, 174, 179and 338 of 1965."

Quite apart from that, a stanomdar, although a limited owner, can subject the entire property of the stanom to be proceeded against for debts incurred by him and tending on the stanom. I think, to that extent Sri. Manavikraman Raja had an estate in the stanom properties which would enure beyond his life time. When you talk of the estate of a deceased person, what is really meant is the bundle of rights, powers, immunities and liabilities which survive the deceased. Suppose a decree had been obtained by a creditor for a debt binding on the stanom during the life time of Sri. Manavikraman Raja, could, he have executed it after his death against the stanom properties in the hands of the persons who took them u/s 7(3) of Hindu Succession Act. I think he could have: the reason being that Sri Manavikraman Raja had the capacity in law by incurring a binding debt to lay open the entire interest in the stanom property to be taken by the creditor. I do not know how far it is correct to say that Sri. Manavikraman Raja had no right to affect the destination of the stanom property beyond his life, as by incurring a binding debt, he could have given power to the creditor to sell the entire interest in the stanom property, even after his death.

6. In Venkateswara Iyer v Shekhari Varma (1881) 3 ILR Mad 384 the court said that debts incurred by a stani will be binding on his successor if they are incurred or the benefit or proper expenses of the stanom. I think, the liability here, being one arising ex lege, was binding on the stanom and therefore on the successor stani if section 7(3) had not been enacted. Just like any other liability binding on the stanom which could have been enforced against the properties of the stanom, the tax liability also could have been enforced.

7. The alternative question which may arise is whether if the stanom continued as a dignity or whatever it be, after the death of Sri. Manavikraman Raja and even after the properties devolved u/s 7(3) of the Hindu Succession Act, the person who took the properties before the order of assessment was passed @@@ to be bound by it. In other words, if it is assumed that the stanom continued @@@ nity or whatever it be, and that the assessment was on Kunhamman Raj as @@@ tfidar and that the

persons who took the properties are in the position of universal @@@ would the order of assessment bind those persons as they get the properties @@@ order of assessment was passed. It was suggested that even if they get @@@ properties subject to the liability to pay the tax to be assessed, that liability cannot be enforced except by means of a separate suit and so the proceedings under the Act would not be available to the department to enforce the liability. If the persons who got the stanom properties are collectively in the position of a universal donee, they are personally liable to discharge the debt or liability of the stanom to the extent of the properties got by them,

8. Assuming that they are not ''assessees'' within the meaning of the definition of that term in the Act, I think standing as they collectively do in a position similar to that of a universal donee, they are liable to pay the amount of the tax assessed to the extent of the properties received by them. A decree obtained against them would at best establish only an antecedent liability'' If a liability exists antecedent to the decree, the passing of a decree would only be a declaration by court of that liability. If under the general law, it is possible to postulate the liability of the persons who got the properties to pay the amount to be assessed, now that that liability has been quantified by the order of assessment it stands to reason to hold that the petitioners as officers of court cannot deny the liability and insist upon a suit being filed. The department has only made a demand to pay the tax on the joint receivers. The department has not yet taken any coercive proceedings for the recovery of the tax from them under the Act. I do not think, it is an answer to the demand that though the liability may be there, the department must establish it by a suit and that till it is so established they would not pay the amount. At any rate, I do not think that the petitioners would be entitled to an absolute declaration that the properties in respect of which they are appointed receivers are not liable to be proceeded against at all for the balance of the tax.

9. I have hitherto assumed that the persons now being represented by the petitioners got the properties subject to the liability of being proceeded against for the binding debts of the stanom. The fact that if the persons upon whom the properties devolved had alienated them the department could not have enforced the liability against the properties in the hands of the purchaser is not relevant as the liability is not being sought to be enforced against any property in the hands of the purchaser. Whether the case here presented is analogous to a succession inter vivos as in the case of a universal donee or to a universal succession as on death, I would never presume that the legislature intended the persons mentioned in section 7 (3) to take the properties rid of the liability of the stanom, as normally the legislature would not intend to interfere with the rights of third persons. I think, it would be unjust were it otherwise. The persons who took the properties are not bona fide purchasers for value, and on what principle can they claim to hold the property without subjecting them to the liability to be proceeded against and which @@@ the legislative intervention would have been subject to that liability.

I would dismiss the petition without any order as to costs.

BY COURT:

The petition is allowed in terms of the judgment of the majority.