

(1963) 03 MAD CK 0028

In the Madras High Court

Case No : Tax Case No. 185 of 1961 (Ref. 72 of 1961)

A. Ranganathan

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 04-03-1963

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : AIR 1963 Mad 432 : (1963) 49 ITR 137 : (1963) 2 MLJ 531

Hon'ble Judges : Srinivasan, J; Jagadisan, J

Bench : Division Bench

Advocate : M.R. Narayanaswami, for the Appellant; S. Ranganathan, for the Respondent

Judgement

Srenivasan, J.—This is a reference made to this Court u/s 64(1) of the Estate Duty Act, and the question of law referred to this Court is the

following:

Whether on the facts and in the circumstances of the case, the properties mentioned in schedules B, C, and D of the registered deed, dated 21-7-

1949, were correctly included in the estate of the deceased as property deemed to pass u/s 10 of the Act.

2. One Annadurai Aiyangar died on the 19th February 1954. He left surviving him his widow, three sons and three daughters. The applicant is the

eldest of the sons. He, as one of the accountable persons, furnished an account of the estate. In the original account filed by him, certain properties

were not included. In respect of one such item, a house property, the applicant claimed that it belonged to him exclusively, and with regard to the

rest, the contention was that the deceased Annadurai Aiyangar, who had acquired them, had thrown them into the family hotchpot so that those

items became the joint family property of Annadurai and his three sons. It was further claimed that in 1949 a partition had taken place. In that partition, no part of these properties had been allotted to Annadurai, with the result that there was no property belonging to the deceased which could pass on his death. The Assistant Controller of Estate Duty however held that according to the recitals in the document, the deceased Annadurai Aiyangar reserved to himself both the power of management of the properties as well as the right to enjoyment of the entire income therefrom during his lifetime. He thought that it was only a deed of settlement and that therefore the properties passed on the death of the deceased. He, however, accepted the contention that in respect of the property included in the A schedule, that item appeared to have been gifted away to a daughter absolutely, Annadurai only purporting to collect the income therefrom during his lifetime. He therefore excluded the A schedule properties. An appeal was taken to the Central Board of Revenue, which rejected the contentions advanced by the appellant and held that in so far as the properties covered by schedules B, C and D are concerned, the provisions of Section 10 of the Act were applicable and that they should be included in the principal value of the estate which passed on the death of Annadurai. On the application of the assessee, the question of law that has been set out earlier stands referred to this Court.

3. In view of the contentions raised, it is necessary to examine the scope of the document of the year 1949. This purports to be a partition agreement entered into by Annadurai Aiyangar and his three sons. According to the recitals of this document, the properties set out in schedule E were the joint family properties. Factually those properties were not divided by metes and bounds but were left to be enjoyed in common by the three sons. The document set out that the properties other than those found in the E schedule had been purchased with the separate earnings of Annadurai Aiyangar. Some of them had been purchased jointly in the name of Annadurai and his eldest son Ranganathan and were being enjoyed as joint family property. Annadurai Aiyangar had also transferred shares in several companies which he had purchased with his separate funds in the names of two of his sons. He had also taken mortgages jointly in his name and in that of his youngest son. The document further purported to

deal with a half right in the properties mentioned in schedules A and B which really belonged to the mother of the applicant, that is to say, the wife

of Annadurai. That lady had obtained those properties by virtue of a will executed by her father. Annadurai Aiyangar claimed to have discharged

some debts on those properties and as a result those properties were treated as joint family properties.

4. The document further proceeded to state that in lieu of the interest which the wife of Annadurai had in the property last mentioned, she had been

assigned a policy. Provision was also made for one of the daughters, Pankajavalli Ammal, by allotting to her the A schedule property. With regard

to the three sons, the provision is as under:

It is arranged that the properties mentioned in the B Schedule below should be enjoyed by the second person Sri A. Ranganathan; that A.

Varadarajan, the third person, should enjoy the C schedule properties; that the fourth person should enjoy the D schedule properties. . . ."

The last clause stated that the first person, that is, Annadurai Aiyangar should manage the properties during his lifetime and collect the income and

spend the money at his will.

5. The value of the B schedule properties, the enjoyment of which was given to Ranganathan, is only about Rs. 1500 while those given to the other

two sons, Varada-rajana and Krishnan, set out in the C and D schedules, is round about Rs. 10,000. It is explained that since the house property,

D. No. 104 New Street, Madurai, has been purchased in the name of Ranganathan, he was given a lesser share at this division.

6. The question is whether on these recitals the Central Board of Revenue was right in concluding that Section 10 of the Estate Duty Act had any

application. The Board observed, in dealing with the properties other than the house property referred to, thus,

As regards the other property, however, it is an admitted fact that the income from this property was returned and assessed to Income Tax in the

hands of the deceased. The provisions of Section 10 are therefore clearly applicable and I hold that the value of this property was correctly

included in the principal value of the estate." The Board also apparently rejected the contention that the properties had been thrown into the family

hotchpot and had become joint family properties. It thought that having regard

to the reservation in favour of Annadurai, it was not a partition at all but only a deed of settlement.

7. There is no dispute that excluding the A and E schedule properties and the interest of Kankammal, wife of Annadurai Aiyangar, in part of the A

and B schedule properties, all the other properties were originally purchased by Annadurai with his separate income. They were undoubtedly

separate properties to start with. What Annadurai purports to have done with those properties is that he threw them into the hotchpot and created

them as joint family properties. The right of a Hindu father and indeed any member of a coparcenary to merge with the joint family properties his

separate properties is beyond dispute. To impress the separate property with the character of joint family property does not require any document

and the mode of treatment of the property as joint family properties would be sufficient to achieve this end. A unilateral declaration by a member of

a coparcenary that he was bringing his separate acquisitions into the joint family properties is sufficient to impress those separate properties with

the character of joint family property. It has been so held in several decisions. It is not necessary for us to deal with that aspect of the matter

further. It should follow from this that Annadurai Aiyangar was entitled to declare that his separate properties were joint family properties. The

Board did not apparently deal with this aspect of the matter, but from the conclusion it reached, viz., that it was not a partition deed but only a

settlement deed, seems to have thought that the separate properties of Annadurai had not become joint family properties of the family. The

document in question contains a declaration by the father that he had, as and when the properties were acquired, immediately brought them into the

hotchpot and that thereafter those properties had always been treated as joint family properties. This statement is to our minds sufficient to impress

upon those properties the character of joint family properties, and the question would arise whether the father would be competent to make a

settlement or gift in respect of properties which were joint family properties.

8. If the properties were joint family properties and there was no partition effected by the document in question, it is obvious that under the law, on

the interest of a coparcener ceasing on his death, his property shall be deemed to pass u/s 7 of the Act. The only interest that could pass therefore

in relation to those properties is the fourth share to which Annadurai Aiyangar was entitled. It is undesirable that in respect of joint family properties

to which every member of the coparcenery has a right by reason of birth, the father could not dispose of them by gift even to the other members of

the coparcenery. Nor could he effect a settlement. The document is somewhat difficult to construe as it does not purport to make an allocation of

the properties to the various coparceners but only states that certain items should be enjoyed by the wife and certain others by other members and

conclude by stating that the management of the properties should continue to vest in the father, who would have absolute control over the income.

We are unable to see how such recitals can amount to a settlement of the properties or even to gifts. Except to the extent of declaring that the

properties which were originally the self acquisitions of Annadurai had become merged with the joint family properties and except to the extent of

the interest created in favour of Kanakammal, the wife of Annadurai, and pankajavalli, the daughter of Annadurai, the document has not achieved

what it purported to achieve, viz., partition among the several coparceners. Whatever that aspect of the matter may be, there is no doubt

whatsoever that after the property had become joint family property, it was not open to the father to apportion the property by way of gift even to

the other members of the coparcenery. It is obvious that Section 10, which deals with properties taken under a gift, has no application to the facts

of the case.

9. The correct view to take would appear to be that the family became divided on the date in question and that no partition by metes and bounds

was in fact effected. It should therefore follow that the deceased Annadurai Aiyangar was at the time of his death possessed of a fourth share in

the items of joint family properties and under the law it is only that share that could be deemed to pass on his death. Since we are not however

called upon to decide under what provision of law the assessment to estate duty could be made in this case, we content ourselves with stating that

the properties mentioned in schedules B, C and D could not be included in the estate of the deceased as property deemed to pass u/s 10 of the

Act. The applicant will be entitled to his costs. Counsel's fee Rs. 250.