

(1972) 01 MAD CK 0027

In the Madras High Court

Case No : Tax Case No. 189 of 1965 (Reference No. 96 of 1965)

A.N.K. Rajamani Ammal

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 10-01-1972

Acts Referred:

Estate Duty Act, 1953 — Section 2(15), 27(1)

Citation : (1972) ILR (Mad) 256 : (1972) 84 ITR 790 : (1972) 85 LW 336

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Srinivasan, D.S. Meenakshisundaram and K.C. Rajappa, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Ramaswami, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953. One A. N. Kandaswami Pillai died on October 19, 1957. His

widow, the applicant herein, as the accountable person under the Act filed a return u/s 7(1) disclosing the value of the coparcenary interest of the

deceased as Rs. 24,948. This return was submitted on the basis that the deceased was the karta of a Hindu undivided family consisting of himself

and his four sons and that the properties belonged to the joint family. The deceased was assessed to Income Tax in the status of a "" Hindu

undivided family "" from the year 1946-47. Income Tax assessments for the years 1955-56 to 1957-58 were made in the status of an "" individual

in spite of the objection taken by the deceased. After his death, the assessment for the year 1958-59 was again made as in the status of a Hindu

undivided family.

2. The deceased published a statement in two of the Tamil dailies on the 7th and 8th May, 1957, to the effect that he had abandoned all his

separate claims in the properties and had thrown his self-acquired properties in the common stock and had treated them as joint family properties.

The Assistant Controller of Estate Duty, Madurai, was of the view that the fact that in the Income Tax proceedings prior to 1955-56 the status of

the deceased was, accepted as a Hindu undivided family was immaterial on the ground that the question of status had been properly investigated

and the correct status determined as "individual" from the assessment year 1955-56, that since the deceased died in 1957 the Income Tax

assessment for 1958-59 should have been made on the individual till the date of death and thereafter as Hindu undivided family and that the

assessment made without splitting the period as a Hindu undivided family was not conclusive of the correct status. The Assistant Controller was

also of the view that the statement published in the dailies evidencing the unilateral declaration of the intention of the deceased to throw his self-

acquired properties into the common stock of the joint family properties would amount to a "disposition" made in favour of a relative within the

meaning of Section 27(1) of the Act and since that disposition was within two years prior to the death the properties had to be included in his

estate as properties deemed to have passed u/s 9 of the Act. The Central Board of Direct Taxes was also of the same view. The Board was also

of the view that the unilateral declaration by which the deceased had thrown his self-acquired properties into the common stock would amount to a

creation of a right by the deceased over his property in favour of his sons and constitute a disposition in their favour within the meaning of

Explanation 1 to Clause (15) of Section 2 of the Act. In that view the appeal filed by the accountable person was dismissed by the Central Board

of Direct Taxes.

3. On an application by the accountable person, the Central Board has referred the following question of law :

Whether, on the facts and in the circumstances of the case, the Board were correct in holding that the property held by the deceased should be

included in entirety in the estate duty assessment of the deceased, as property passing or deemed to pass on his death ?

4. It was contended by the learned counsel for the accountable person that the properties were held by the deceased only as properties belonging

to a Hindu undivided family ever since he became an assessee under the Income Tax Act in 1946-47, that the statement published in the dailies on

the 7th and 8th May, 1957, and the Income Tax assessment orders prior to the year 1955-56 evidenced the fact that he had already by a unilateral

declaration thrown his self-acquired properties into the common stock and that, therefore, the applicability of Section 9 of the Act did not arise.

Even assuming that prior to the publication of the statement in the dailies the properties were the self-acquisitions of the deceased and the deceased

made the declaration of his intention to throw his self-acquired properties into the common stock only by the said statement published in the dailies,

such unilateral act of throwing the self-acquired properties into the common stock would not come within the phrase "" any disposition made by the

deceased in favour of a relative "" in Section 27(1) of the Act or creation of "" other right enforceable against the deceased personally or against his

property"" within the meaning of Explanation 1 to Section 2(15) or the extinguishment at the expense of the deceased of pother right"" within the

meaning of Explanation 2 to Section 2(15) of the Act, so as to attract the provisions of Section 9.

5. It was contended by the learned counsel for the revenue that the question whether the deceased was holding the properties as properties

belonging to the Hindu undivided family prior to the publication of the statement in the dailies on the 7th and 8th May, 1957, has not been referred

to this court for opinion and that the act of throwing the self-acquired properties into the common stock would amount to a "" disposition "" within

the meaning of Section 27(1) read with Explanations 1 and 2 to Section 2(15) of the Act.

6. One of the grounds on which the accountable persons contended that the entire properties shall not be deemed to have passed u/s 9 of the Act

was that the self-acquired properties had lost its character after the properties were thrown into the hotchpot ever since the deceased became an

assessee for Income Tax purposes and the assessments were made as a Hindu undivided family before the passing of the Estate Duty Act. Both

the Assistant Controller and the Central Board dealt with this point and, on the basis of the assessment orders for the years 1955-56 to 1957-58,

held that the deceased was holding the properties as his self-acquired properties. In view of these facts and circumstances, we are clearly of the

view that the question of law referred to us would also include the question as to whether the properties were held by the deceased as the

properties belonging to a Hindu undivided family even two years prior to the death of the deceased.

7. The first question that arises for consideration, therefore, is whether the deceased had thrown his self-acquired properties into the common

stock of the joint family even prior to the assessment year 1955-56. The learned counsel for the accountable person relied on the statement

published by the deceased in the dailies, in addition to the fact that the Income Tax assessments for the years prior to 1955-56 were made in the

status of a Hindu undivided family, in support of his contention. The following is the statement published in the dailies on the 7th and 8th May, 1957

:

To whomsoever it may concern.

Be it known to all that A. N. Kandaswamy Pillai, son of A. Narayana Pillai, Hindu, Vellala, aged about 46, residing at Dindigul, do hereby declare

and state that he has been carrying on for several years past a partnership business as tobacco merchants and as scented tobacco, manufacturers

and that he has invested in such business most of his property self-acquired or otherwise and the capital and its accretions belong to the Hindu

undivided family and for the full benefit of the family only, that it is done only with the intention of throwing the property into the common hotchpot

of the undivided family, that as the karta he has made a volition to treat all the sums belonging to him as that of the Hindu undivided family of

himself and his sons, that he has blended the whole income for the common interest and welfare of the Hindu undivided family, that he has

bequeathed all his belongings to the common family without reserving any right to himself and that he has relinquished all his separate rights on his

property constituting self-acquisitions into joint family property. Any person or persons who may feel aggrieved by this effectuation and declaration

may file objections, if any, to the above address within fifteen days" time from this day of notice.

8. The Board and the Assistant Controller had taken this statement as a unilateral declaration made on that day throwing his self-acquired

properties into the common stock, while it is the contention of the learned

counsel for the accountable person that it evidences an earlier declaration consistent with the assessment orders made prior to the year 1955-56 by which he had thrown his self-acquired properties in the common stock and had always been holding them as the properties belonging to the Hindu undivided family. In our opinion, the learned counsel for the accountable person is well-founded in his contention. It is not disputed that the assessment orders prior to 1955-56 ever since 1946-47 were on the basis of a Hindu undivided family. It was not the case of the department that the deceased submitted the returns under the Income Tax Act in the status of an "individual" but was wrongly assessed as a "Hindu undivided family". The Board and the Assistant Controller stated that the assessment orders prior to 1955-56 could not be relied on. We fail to see how if the assessment orders prior to 1955-56 could not be relied on, they could rely on the assessment orders for the years 1955-56 to 1957-58 in which the deceased was assessed as an "individual". It may be that there was no determination by the Income Tax Officer as to the existence of a joint family prior to 1955-56, but since the assessment orders were made in the status of a Hindu undivided family, the inference is that the returns were submitted in the status of a Hindu undivided family and that would amount to a unilateral declaration of treating the properties as joint family properties. In this connection, it may be mentioned that no formalities were necessary to impress the self-acquired properties with the character of "joint family properties". In the declaration published in the dailies also the deceased has unequivocally stated that the capital and the accretions of the business belonged to the Hindu undivided family and his investments in the business were for the full benefit of the family only. The publication of this statement probably was necessitated by the view taken by the Income Tax department in assessing the deceased as an "individual" from the year 1955-56, in spite of his protest. We are of opinion that the assessment orders prior to 1955-56 and the statement published in the dailies clearly establish that even long prior to two years of the death of the deceased he had thrown his self-acquired properties in the common stock of the joint family.

9. Even on the basis that the properties were held by the deceased as self-acquired properties and only by the declaration published in the dailies

in May, 1957, the deceased had thrown his self-acquired properties into the common stock, we are of opinion that the reference will have to be answered in favour of the assessee.

10. The true scope of the doctrine of "throwing into the common stock or common hotchpot" has been considered in a number of decided cases

both of the High Courts and the Supreme Court. A Hindu joint family is not a creature of contract. The existence of a coparcenary is absolutely

necessary before a coparcener can throw into a common stock his self-acquired properties. The doctrine "throwing into the common stock

inevitably postulates that the owner of separate property is a coparcener who has an interest in the coparcenary property and desires to blend his

separate property with the coparcenary property. The separate property of a member of a joint Hindu family may be impressed with the character

of joint family property, if it is voluntarily thrown by him into the common stock with the intention of abandoning, waiving or surrendering his

separate right or exclusive right therein. The act by which the coparcener throws his separate property into the common stock is a unilateral act.

There is no question of either the family rejecting or objecting to it. By his individual volition he renounces his right in that property and treats it as

property of the family. When a coparcener throws his separate property into the common stock he makes no gift under Chapter VII of the

Transfer of Property Act. Thus the two essential requisites for the conversion are-- (1) the existence of coparcenary; and (2) the deliberate

intention formed by the coparcener owning separate property to treat the same as joint family property. The intention may manifest itself in any

form, such as by a statement in a deposition, an affidavit, execution of a document as a declaratory deed, or by course of conduct. What

transforms the separate property into joint family property is not the outward act or the conduct or the public declaration of the coparcener owning

the separate property, but his intention to so treat it. The property does not cease to be the separate property and become joint family property by

any physical act, but by the owner's volition and intention to surrender his exclusive right. No formalities are necessary in order to bring about the

change in character. It is voluntary and without consideration in money or money's worth. When separate property is converted into joint family

property, the property vests in the family as an entity by itself. It will be inaccurate to say that the father owns the property jointly with the family.

These principles are deducible from the decisions in Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, .. The Commissioner of Gift

Tax, Madras Vs. N.S. Getty Chettiar, ., Alladi Kuppuswami Vs. Controller of Estate Duty, . and The Commissioner of Gift Tax, Madras Vs. P.

Rangasami Naidu, ..

11. The learned counsel for the revenue placed strong reliance on the word "" disposition "" in Section 27(1) of the Act and contended that even an

act of throwing of the self-acquired property into the common stock of a joint Hindu family is included in that expression. In a case arising under

the Gift-tax Act, the word "" disposition "" came up for consideration in the decision in Goli Eswariah v. Commissioner Gift-tax. The Supreme Court

held that the word "" disposition "" refers to a bilateral or a multilateral act and it does not refer to a unilateral act. This decision of the Supreme

Court approves the decision of this court in Commissioner of Gift-tax v. P. Rangasami Naidu . It is true that these decisions are under the Gift-tax

Act. It is also true that the word "" disposition "" was considered in these decisions, with particular reference to the definition of "" transfer of property

under that Act. We are of the view that the word "" disposition "" in Section 27(1) of the Estate Duty Act also refers to a bilateral or multilateral

act. The section refers to a disposition by the deceased in favour of a relative and also speaks of partial failure of consideration. Section 9 also

refers to property ""taken under a disposition"". Therefore, in our opinion, the word ""disposition"" in Section 27(1), however wide its ambit may be,

would not include the unilateral act of a person by which he throws his self-acquired property into the common stock of the joint family.

12. It was next contended by the learned counsel for the revenue that by throwing the self-acquired properties into the common stock of the joint

family, the deceased has created a right enforceable against him personally or against the properties within the meaning of Explanation I to Section

2(15) of the Act and that, therefore, under that Explanation it shall be deemed to be a disposition made by the deceased. The learned counsel

would also contend that the right created against him or against the properties was a right in favour of the sons or the other coparceners to demand

partition of the properties which were the self-acquired properties of the deceased. Under the Hindu law the right of the coparcener to demand

partition is a birth-right and not conferred on him by the father or other coparceners. In the Fall Bench decision of this court in Commissioner of

Gift-tax v. P. Rangasami Naidu after referring to the various texts of Hindu law, it was held that:

With the father having absolute power of disposition inter vivos or testamentary in respect of his self-acquisition and with no power in the son to

interdict any alienation or disposition or call for partition, the son's interest is next to nothing. But the right is real. It lies dormant. It is this dormant

right which the undivided sons have in their father's property that entitles them to take the self-acquired property of the father as coparceners to

the exclusion of a divided son. Juridically, it must be this dormant birth-right, that enables the father at his pleasure without formalities to deny to

himself, his independent power or predominant interest and look upon the property as the property of the family.

13. Again, the learned judges observed :

In our view, it is this birth-right imperfect and subordinate to the special power and predominant interest of the father that comes into play and

makes the interest of the son real and an interest in praesenti, when the father chooses to waive his rights. At his pleasure and without reference to

his son if the father abandons or determines once for all not to exercise his independent power over the property, the son's interest therein

becomes real and full-fledged coparcenary right. There is no vesting of rights here by the father on the son, but what is dormant springs to life but

irrevocably at the pleasure of the father." .

14. We are, therefore, clearly of the opinion that it will not be a creation of "" other right "" which will be deemed to be a "" disposition "" within the

meaning of Explanation 1 to Section 2(15) of the Act. We are also of the opinion that throwing the self-acquired property into the common stock

of the joint family will not amount to "" extinguishment at the expense of the deceased of a debt or other right "" within the meaning of Explanation 2

to Section 2(15). As seen from the judgments cited above, after the act of throwing into the common stock, it is the joint family or the coparcenary

that owns the property. The person who converted his individual property into

joint family property is a member of the Hindu joint family or the coparcenary and continues to be a member of the joint family. His interest in the erstwhile separate property would extend to the whole of the property even as of the other coparceners, for the interest of every coparcener extends over the whole of the joint family property. There is community of interest and unity of possession between all the coparceners. On the death of any one of the coparceners the others take the property by survivorship. It may be, the ultimate survivor is the person who threw the self-acquired property into the common stock. It, therefore, follows that there was no extinguishment of the right of the deceased and creation of a right in favour of another, in the case of throwing the self-acquired properties into the common stock. The decision in *S.P. Valliammai Achi Vs. Controller of Estate Duty*, ., relied on by the learned counsel for the revenue, and the decision in *Kantilal Trikamlal Vs. Controller of Estate Duty, Gujarat*, ., relied on by the learned counsel for the accountable person, related to what we may term as "" unequal partitions "". They do not deal with cases of throwing the self-acquired properties into the common stock. We are not concerned with the case as to whether an unequal partition would amount to an extinguishment of a right and creation of a benefit within the meaning of Explanation 2 to Section 2(15), which was the point that was considered in those cases.

15. The learned counsel for the accountable person also contended that the word "" other property"" in Explanations 1 and 2 have to be read ejusdem generis with the word "" debt "" and referred to in Section 45(1) and (2) of the English Finance Act, 1940, which is in pari materia with Explanations 1 and 2 of Section 2(15) of the Estate Duty Act, 1953, and the commentaries relating to the meaning of the expression "" debt or other right"" in Section 45 in *Dymond's Death Duties*. He also relied on the decision of the Gujarat High Court in *Kantilal Trikamlal v. Controller of Estate Duty* in which it was held that the words "" other right"" in Explanation 2 to Section 2(15) did not include in its scope and ambit ""interest in property"". Apart from the fact that this decision of the Gujarat High Court is against the decision of our court in *S. P. Valliammai Achi v. Controller of Estate Duty* which is binding on us, that point does not arise for consideration in this case.

16. For the foregoing reasons, we answer the reference in favour of the assessee with costs. Counsel's fee, Rs. 250.