(1999) 02 SC CK 0152

In the Supreme Court Of India

Case No : Civil Appeals Nos. 811-15 Of 1994

Appropriate Authority (IT Deptt.) and Others — APPELLANT

Vs

M. Arifulla and Others — RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:
Income Tax Act, 1967 — Section 269

Citation : (2002) 10 SCC 342

Hon'ble Judges : U. C. Banerjee, J;M. Srinivasan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

M. Srinivasan and; U.C. Banerjee, JJ.-These appeals are against an order of a Division Bench of the Karnataka High Court confirming in turn the order of a Single Judge of that Court allowing a writ petition filed by the respondents herein against an order passed by the appropriate authority under Section 269-UC(1) of the Income Tax Act (for short "the Act") in exercise of the right to purchase a property under the provisions of the Act. The contention of the respondents before the High Court was that the vendors were co-owners and not joint owners and when for the purpose of Section 269-UC the property is valued, the value of the share of each co-owner should be considered in order to decide whether the transaction falls within the ambit of Section 269-UC. According to them, the total consideration is Rs 14 lakhs and the value of the share of each of them is much less than Rs 5 lakhs and the section is not attracted.

2. That contention was accepted by a Single Judge of the High Court who followed the judgment of the same Court in Appropriate Authority v. J.S.A. Raghava Reddy1 and allowed the writ petition. The Division Bench took the same view and followed the judgment in Raghava Reddy case1.

3. It is contended by learned counsel for the appellant that the facts in Raghava Reddy case1 are entirely different and in the present case there is nothing to

show that there was a division between the respondents before the sale agreement was entered and, therefore, the ruling in Raghava Reddy case1 will not apply. We are unable to accept this contention. Excepting the judgment of the Single Judge and the judgment of the Division Bench, no other material has been placed before us to show that the judgment of the High Court is erroneous. The admitted fact is that the father of the parties by the name of T.M. Doraiswami died in 1977, long after the Hindu Succession Act came into force. One of the respondents is a daughter of the deceased Doraiswami and the provisions of the proviso to Section 6 would apply. As per Explanation 1 to the section, there was a deemed partition immediately before the death of Doraiswami. This Court has held in CWT v. Chander Sen2 that a property devolving under Section 8 of the Hindu Succession Act, is the individual property of the person who inherits the same and not that of the HUF. In fact, in the special leave petition, it is admitted that Respondents 2 to 5 inherited the property in question from the said T.M. Doraiswami. Hence, they held it as tenants-in-common and not as joint tenants.

4. In the circumstances, the finding of the High Court that the respondents are only co-owners and not joint owners and the value of the share of each of the respondents should have been taken into account before applying the provisions of Section 269-UC, is correct. We find no merit in the appeals. The appeals are dismissed. There will be no order as to costs.