
(1983) 07 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Income Tax Reference No. 8 of 1971

Bhawani Singh

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 13-07-1983

Acts Referred:

Estate Duty Act, 1953 — Section 6, 7

Citation : (1983) 36 CTR 320 : (1984) 147 ITR 29

Hon'ble Judges : K.S. Lodha, J;G.M. Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; J.P. Joshi, for the Respondent

Judgement

G.M. Lodha, J.—This is a reference-under Section 64(1) of the E.D. Act, 1953 (hereinafter referred to as "the Act").

2. It would be convenient to first mention the facts leading to this reference. One Thakur Idan Singh of Pal breathed his last on March 27, 1959. He left surviving his two widows and three sons including Bhawani Singh, the accountable person in this case.

3. The deceased was the jagirdar of Thikana Pal, Degai and Kuchi in the erstwhile State of Marwar (Jodhpur), which now forms part of the State of Rajasthan. The family of the deceased was governed by the Mitakshara School of Hindu Law.

4. The deceased became the sole owner of the said villages, having succeeded to the same according to the law of primogeniture applicable to the case. After the formation of Rajasthan, the jagirs were resumed on September 12, 1956. This led to the grant of compensation. The accountable person declared the value of compensation consequent on resumption of jagirs as Rs. 1,13,502 at 80%, being the sum determined by the Jagir Commissioner finally as compensation value of the jagir villages. Before the Asst. Controller, it was contended that the jagir compensation should be taken to be in the nature of coparcenary property. This contention was rejected by the Asst. Controller who considered it to be the

individual property of the deceased relying upon the judgment of the Madras High Court in *Ranga Rao v. State of Madras*, AIR 1953 Mad 185, wherein it was held that when an impartible estate is acquired by the Government and compensation is paid, the compensation received retains the incident of impartibility.

5. In appeal against this assessment order, the same contentions were reiterated and it was argued that the rule of primogeniture would not apply in Marwar after the resumption of the jagir and the Madras case has got no application inasmuch as, in Marwar, primogeniture was by legislation and succession was governed by Section 182 of the Marwar Land Revenue Act. It was argued that all income arising out of compensation received after the abolition of jagirs was joint family property. This contention was accepted in appeal by the Zonal Appellate Controller on July 12, 1966.

6. The Revenue filed an appeal before the Appellate Tribunal and this appeal was accepted by the Tribunal on September 11, 1968. It was held that the interest of the deceased would not cease on his death within the meaning of Section 7 of the E.D. Act, as Section 6 of the Act provided that property which the deceased was having at the time of his death and was competent to dispose of shall be deemed to pass on the death of the deceased. The Tribunal allowed the appeal filed by the Revenue. This has led to the above reference. The following question has been referred :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally right in holding that the compensation received by the deceased in lieu of his jagir and all other properties were liable to be included in the principal value of the property liable to estate duty or whether one-fifth share in any or all the properties is liable to be included in the principal value of the estate passing on the death of the deceased ?"

7. Mr. Bhandari, learned counsel for the assessee, the accountable person, Bhawani Singh, has submitted that the jagir was undisputedly impartible in the matter of succession, but, once it was resumed, the property became joint Hindu family and only one-fifth share in the entire property belonged to the deceased, Idan Singh.

8. Mr. Bhandari has placed reliance upon the decisions of this court in *Commissioner of Wealth-tax Vs. Thakur Bhairon Singh*, and *Commissioner of Income Tax and Commissioner of Wealth-tax Vs. Thakur Ummed Singh*,

9. In *Commissioner of Income Tax and Commissioner of Wealth-tax Vs. Thakur Ummed Singh*, five reference applications were decided by this court together and the same question was under the consideration whether the status of the assessee was joint HUF. The assessee was a jagirdar in the erstwhile State of Jaipur in that case. He filed the return for the assessment years 1962-63 to 1966-67 in the status of an HUF. The question was whether the holder of an impartible estate is liable to be assessed as an individual owner of all the

properties comprised in the estate.

10. After detailed discussion of the relevant law including the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act and the Jaipur Matmi Rules, the court was convinced that the State grant would be governed by the rule of primogeniture and is consequently impartible. This court held as under (p. 521):

"Thus, according to the several provisions of the Jaipur Matmi Rules, to which we have, already referred, what the law really makes impartible is the grant, of an interest in the land, made by the Ruler and not properties de hors the grant."

11. In CWT v, Thakur Bhairon Singh (see p. 32 *infra*) it was held that after the resumption of the jagir, the property was held by the jagirdar in the capacity of a karta of an HUF.

12. It was noticed that the jagir of Barkana was certainly an impartible estate and the rule of primogeniture applied earlier. The court then posed the following question (p. 35 *infra*).

"Whether a compensation of a scheduled jagir received by the assessee is the property of the joint undivided Hindu family or the property of the assessee as an individual ?"

13. This court discussed the provisions of the Marwar Jagir Act in para. 5. The same view was taken that the property in such circumstances would be the property of an HUF and not that of an individual.

14. The other decisions referred to above by Mr. Bhandari, also support the view that the property is not of individual but of an HUF.

15. Confronted with the above undisputed legal position, Mr. Joshi had no option but to submit that in view of the above authoritative decisions of this court, there is no escape but to hold that the property would be of an HUF and not of an individual.

16. Consequently, the question referred to is answered accordingly and it is held that, on the facts and in the circumstances of the case, the Tribunal was not right in holding that the compensation received by the deceased in lieu of his jagir and all other properties were liable to be included in the principal value of the property liable to estate duty.

17. In our view, only one-fifth share in all these properties is liable to be included in the principal value of the estate passing on the death of the deceased. The reference is answered accordingly.