

(1984) 12 AP CK 0017

In the Andhra Pradesh High Court

Case No : Referred Case No. 25 of 1980

Chalapathi Venkayamma

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 14-12-1984

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1987) 163 ITR 81

Hon'ble Judges : Y.V. Anjaneyulu, J;A. Raghuvir, J

Bench : Division Bench

Advocate : M.J. Swamy, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

Raghuvir, J.—Alluri Krishna Rao died on November 25, 1971. He was survived by three daughters. Seshayamma and Ammaji are his second and third daughters, respectively. To the former, the deceased had gifted Ac. 60.58 cents of arable land and to the latter, Ac. 58.48 cents on October 25, 1957. Sugarcane was grown in the two parcels of land. The lands were managed by Krishna Rao till he died. Sugarcane was grown over the land and cane was supplied to Jaipur Sugar Company. The donees were paid the proceeds of sales.

2. The accountable person represented, in the above circumstances, that the two parcels of land were not the estate of the deceased. The Assistant Controller, the Appellate Controller and the Appellate Tribunal, all the three authorities rejected the contention and included the lands as part of the estate of the deceased Thereupon, at the instance of the accountable person, the following question is referred to this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that section 10 of the Act is applicable in so far as the lands gifted to the daughters of the deceased were concerned ?"

3. In the course of inquiry, the first daughter of the deceased, Seshayamma and

Ammaji, all the three surviving daughters, were examined. They deposed that the donees had received profits from the two parcels of land. The donor (deceased) had paid them to the donees (daughters). They have no complaint to make in this regard. It was found in the accounts of M/s. Jaipur Sugar Factory Limited, there was an amount of Rs. 1,10,000 credited to the deceased's account. A letter of the deceased dated April 3, 1970, addressed to the two daughters (the donees) showed that the amount belonged to the donees. There was another letter dated June 25, 1966, addressed to the Income Tax authorities, relating to the assessment year 1965-66, and in that the deceased represented that the lands were managed by him on behalf of the donees. The evidence adduced by the daughters, the two letters and other cognate circumstances were juxtaposed along with the fact that no accounts were maintained by the deceased.

4. The issue raised in the inquiry was whether the gifts were true, whether the donees were paid the usufruct of the land. The Appellate Tribunal, on the two questions, held that the gifts were true and valid. There were no account books maintained by the deceased, and, therefore, purely from that circumstance, inferred that the donees did not receive the "entire amount". The deceased may have misappropriated some unascertained amount and for that reason held that section 10 of the Act is applicable and included the value of the lands as part of the estate of the deceased.

5. The Appellate Tribunal to infer misappropriation from the fact of no accounts in law cannot be countenanced. The inference is drawn firstly from an assumption that a trustee is obliged to maintain accounts. We are unable to hold in law that there is any obligation on the part of the trustee to maintain accounts of trust property. There was no account books maintained (more so when in law there is no such obligation). Therefore, to hold that there was misappropriation, to say the least, is a surmise and hypothetical.

6. As respects the gifts on October 25, 1957, the Revenue does not dispute and as a fact the Tribunal held that the gifts were true and valid and observed : "As far as the first limb is concerned, there is no dispute that the deceased in this case had made a valid gift of the properties and the donees were put in possession of the properties gifted". If, as a fact gifts are accepted as true, the Tribunal, we consider on the facts of the case, misapplied section 10 for what is drawn as an inference is a mere surmise and we cannot hold that the following is a conclusion on facts :

"the only inference that can be drawn is that the deceased was deriving some benefit out of the income from the gifted properties. He might have, as the learned departmental representative submitted, misappropriated a part of the income. Even if that be so, we are of the view that second limb of section 10 would be attracted inasmuch as the donees did not retain the possession and enjoyment of the properties gifted to the entire exclusion of the donor. "

7. The conclusion as to the "second limb" again in law cannot be supported. We may in brief refer to the case of George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore, where section 10 was analysed to be in two parts. The first part refers to the possession of the property by the donee to the exclusion of the donor. The second part shows the donee continued (retained) and the donor was excluded from benefit under a "contract or otherwise". "As a matter of construction" the Supreme Court held (at page 502) "we hold that the words `by contract or otherwise' in the second limb of the section will not control the words `to the entire exclusion of the donor' in the first limb. The court could have interpreted in another way (which it is not necessary to dilate). In Controller of Estate Duty Vs. R. Kanakasabai and Others, , section 10 was considered from the perspective of sub-division of the section in three parts as discussion at page 257 shows : - "It was contended on behalf of the assessee that the expression `of any benefit to him by contract or otherwise' in section 10 must be in the property settled and not a benefit arising from the transaction resulting in the gift. To put it differently, the assessee's contention was that the benefit by contract or otherwise must be referable to the property gifted because all the earlier conditions stipulated in the section refer to the property gifted. If it was otherwise, the counsel for the assessee urged, section 10 cannot be considered to have two parts as held in George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore, but it must be held to have three parts, viz., (1) that the donee must bona fide have assumed possession and enjoyment of the property which is the subject matter of the gift to the exclusion of the donor immediately upon the gift; (2) the donee must have retained such possession and enjoyment of the property to the entire exclusion of the donor; and (3) the donor should not have retained any benefit to him by contract or otherwise under the gift. "Finally, the court was not prepared to reinterpret the section and were satisfied by affirming the earlier interpretation.

8. George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore, is followed in numerous cases rendered thereafter by the Supreme Court and by other High Courts. In many of the cases, the question was more of application of the principle rather than adopting a fresh approach in interpretation. The meaning of section 10 thus has to be applied to the facts of the case. We have heard the learned counsel for the Revenue to repeat the contentions that were raised before the Tribunal and he cited cases including the case in Controller of Estate Duty Vs. Estate of Late V. Ramaiah Sreshti, . It is not necessary to consider cases as in the instant case, the ratio in the case of George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore, has to be applied to the facts of the case.

9. The facts show that Krishna Rao, the deceased, was the donor. He gifted two parcels of land on October 25, 1957, to two of his daughters. The deceased managed the lands till he died. There is evidence to indicate that the donees were paid the profits from the land. No books of account were maintained by him. There is no evidence to sustain the conclusion of any misappropriation by

the deceased. From the absence of accounts, the conjectural inference in law cannot be drawn to hold that there was any misappropriation. Thus, the gifts are held to be true and valid. There is no justification to apply the clause "contract or otherwise" in section 10 of the Act to the facts of the case.

10. In that view, we remit the answer to the above question holding that the Tribunal was not justified in applying section 10 to include the two parcels of land. The answer is recorded against the Revenue, that is to say, in favour of the accountable person. No costs. Advocate's fee Rs. 300.

Anjaneyulu, J.

11. I agree with my learned brother that this reference should be answered in favour of the assessee. I would, however, like to make a few observations.

12. Revenue contends that section 10 of the Estate Duty Act is applicable in this case, because the conditions set out in the second part of the said section were not satisfied. There is no dispute that the gifts made by the deceased were true and valid and possession was also handed over to the donees when the gifts were made on October 25, 1957. The first part of section 10 is, therefore, not attracted. It is said that the second part of section 10 is attracted as, according to the Revenue, the facts disclosed that the donees did not retain possession and enjoyment of the property gifted to the entire exclusion of the deceased donor or of any benefit to him by contract or otherwise. The Revenue found that the two daughters of the deceased to whom gifts were made in the year 1957 were living outside the State and, therefore, the deceased was managing the properties gifted to his two daughters. The daughters, who were examined on oath, admitted that they had been receiving the entire income relating to the gifted properties from their father. In the first place, there is absolutely no evidence before the authorities below to show that the deceased donor was not excluded from possession of the gifted properties. The fact that he was managing the properties did not necessarily indicate that he was in possession of the gifted properties. Surely, properties can be managed by a person without being in possession. Our attention has not been invited to any evidence on record to indicate that the deceased was actually in possession of the gifted properties after the making of the gifts in the year 1957 and the possession was delivered to the two daughters. There is also no evidence to support the contention that the deceased was not entirely excluded from the enjoyment of the gifted properties. There is no allegation to the effect that the deceased was enjoying the properties gifted for any period after the making of the gifts. The allegation of enjoyment is made with reference to an alleged benefit that the deceased might be deriving by not paying the entire income from the gifted properties to the two daughters. Here again, the Revenue has not been able to invite attention to any evidence on record indicating that the deceased was, in fact, enjoying any part of the income from the gifted properties. The Revenue's contention before the Tribunal was that, inasmuch as accounts were not maintained by the deceased, there was a possibility that some part of the income from the gifted

properties might have been "misappropriated" by the father and such alleged misappropriation amounts to either enjoyment of the gifted properties or would indicate that the deceased was deriving a benefit. Apart from the fact that there was no evidence whatsoever to support the allegation, there is evidence supporting the fact that the two daughters of the deceased were receiving the entire income from the properties and enjoying the same. The inference of misappropriation is based on no evidence whatsoever and is clearly unsustainable. Thus, the first limb of the second part of section 10 relating to the deceased being entirely excluded from the possession and enjoyment of the gifted properties is satisfied. On the facts of the case, even the second limb of the second part of section 10 has no application. In the first place, as already pointed out above, there is no evidence to indicate that the deceased derived any benefit from the gifted properties. The inference of misappropriation by the deceased of a part of the income payable to the two daughters is based on no evidence and is unsustainable. That itself is sufficient to oust the application of the second limb of the second part of section 10. It is not merely enough to show that the deceased was deriving some kind of benefit from the gifted properties. It must be shown that such benefit was derived pursuant to any "contract or otherwise" occurring in the second limb of the second part of section 10. In *Controller of Estate Duty Vs. R. Kanakasabai and Others*, , to which my learned brother has already made a reference, the Supreme Court held that, in order to attract section 10, the benefit to the donor by contract or otherwise must be referable to the property gifted and it was not sufficient that the donor derived a benefit arising from the transaction resulting in the gift. In the present case, there is nothing to show that the benefit allegedly derived by the deceased is referable to the property gifted. The mere allegation that some benefit was derived by the deceased is not sufficient to attract the application of the second limb of the second part of section 10. The Tribunal was clearly in error in thinking that, because the deceased had not maintained accounts, an inference could legitimately be drawn that, from out of the income of the gifted properties, he had misappropriated some part. There is no basis for such an inference.

13. I may also point out that the observations of the Tribunal were to the effect that an inference "can be drawn that the deceased was deriving some benefit out of the income from the gifted properties". The Tribunal further observed that the deceased "might have, as the learned departmental representative submitted, misappropriated a part of the income". Proceeding further, the Tribunal observed that "in the absence of proper accounts, the only inference that can be drawn is that the deceased would have misappropriated part of the income arising from these lands and to that extent, he could have derived some benefit from the gifted properties". Having made the above observations that the facts indicated that a part of the income was misappropriated by the deceased, the Tribunal upheld the inclusion of the entire value of the gifted properties without noticing that section 10 of the Estate Duty Act empowers the inclusion only "to the extent that bona fide possession and enjoyment of it was not immediately assumed by

the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise". The finding that only a part of the income was misappropriated, whether or not such finding was supported by evidence, fails in the application of section 10, because the Tribunal failed to determine the extent that bona fide possession and enjoyment of the properties gifted was not immediately assumed by the donees and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise. The Tribunal was, therefore, clearly in error in upholding the inclusion of the entire value of the gifted properties based on the observation that an unspecified extent of the income might have been misappropriated by the deceased. There was not the slightest justification to invoke the provisions of section 10 in the present case.