(1968) 01 PAT CK 0002

In the Patna High Court

Case No : Tax Case No. 18 of 1966

Commissioner of Estate Duty — APPELLANT

Vs

S.M. Shareef — RESPONDENT

Date of Decision : 05-01-1968

Acts Referred:
Estate Duty Act, 1953 — Section 36, 40, 64, 7

Citation : (1968) 16 BLJR 994

Hon'ble Judges : R.L. Narasimham, C.J;B.N. Jha, J

Bench : Division Bench

Judgement

R.L. Narasimham, C.J. and B.N. Jha, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953, by the Income Tax Appellate Tribunal, Patna, stating the following case for the opinion of this Court:

Whether on the facts and in the circumstances of the case the full value, of the four properties, i.e. Holding Nos. 26, part of Nos. 27, 27A, and 42 in Circle No. 36 of the Patna Municipal Corporation could be included in the principal value of the estate ?

2. The estate on which estate duty was payable belonged to one Bibi Mahmuda Begum, wife of Sri S.M. Shareef, who died on 28th December, 1960. By a document dated the 27th January, 1942, registered on 30th January, 1942, Sri S.M. Shareef transferred life interest in the said holdings in favour of his wife, In the document, original Holding Nos. 13, 14 and 16 in Circle No. 36 were mentioned, but it is conceded that the new numbers allotted to those holdings are Nos. 26, 27, 27A, 28 and 42. So far as Holding No. 28 is concerned, there is no controversy and it need not be referred to in this order. On 10th February, 1956, during the lifetime of Bibi Mahmuda Begum Shri S.M. Shareef gifted his reversionary interest in the property to his children subject however to the life interest already granted in favour of his wife.

3. On these facts, the question for consideration before the taxing authorities

was as to how the value of the aforesaid estate of Mahmuda Begum should be computed. The material Section s are Section 7(1), 40(a) and 36(1) of the Act. Section 7(1) says (omitting immaterial particulars) that the property in which the deceased had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased''s death to the extent to which a benefit accrues or arises by the cesser of such interest. Clause (a) of Section 40, however, says that where the interest of the deceased extended to the whole income of the property, the principal value of that property will be taken to be the vlaue of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased. Thus, on a construction of Section 7(1) with Section 40(a) of the Act it is clear that where the deceased had life interest in the property and that interest extended to the whole income of the property, the principal value of the property will be deemed to pass on his death. The expression "principal value of the property" has been explained in Section 36(1) of the Act which says that the principal value shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased''s death. Thus, though as popularly understood where a person has life interest in a property, on his death that interest is completely extinguished yet by a fiction introduced in the said taxing statute, the market value of the entire property is deemed to have passed on the death of the person though having life interest, provided that his interest extended to the whole income of the property. This legal position has not been challenged in any of the lower courts. But the learned Tribunal, on a construction of the deed dated 27th January 1942 held it to be not a deed of gift of life interest to Mahmuda Begum but darmokarrari or a lease deed by Sri S.M. Shareef in favour of his wife. Having construed the said document in that manner, the learned Tribunal observed that it is the value of the leasehold interest based on certain actuarial principles recommended by the Central Board of Revenue which should be ascertained and not the market value of the property.

4. It was contended by Mr. Prasad for the Department that this construction of the deed was wholly erroneous and the document was nothing else but a deed of gift of the entire interest of the donor in the property to his wife subject, of course, to the limitation that her interest was life interest only.

5. We have carefully gone through the relevant provisions of the document and we are satisfied that the contention of Mr. Prasad must prevail. The interest which Sri S.M. Shareef had in the property was itself a permanent mokarrari interest which he obtained by a document dated 3rd February 1909. It is that interest which he transferred to his wife. In paragraph 2 of the terms of the deed he expressly says that she was entitled to get his name removed both from the office of the Municipality and the Sarishta of the landlord and get her name mutated and pay tax and rent for the property. In paragraph 3 he further added as follows:

All the income, profit or produce or salami for settlement of the Mokarrari property aforesaid shall belong to the said Mokarraridar. I, the executant or my heirs and representative neither have nor shall have any concern therewith.

In paragraph 4, he gives complete freedom of action for the purpose of making any alteration in the houses and the land. If, as held by the Tribunal, the document was in the nature of a lease created by Sri S.M. Shareef in favour of his wife there should be some stipulation about rent and moreover no lessor would say that he has no concern whatsoever with the property during the lifetime of his wife. Moreover, a lease under the Transfer of property Act requires to be signed both by lessor and lessee. We, however, find that Mahmuda Begum has not signed the document. It is true that in paragraph 5 of the document the donor has described the document as darmokarrari. But this description must be held to be inaccurate in view of the other terms mentioned above. On a fair construction of the document, therefore, it follows that whatever right Sri S.M. Shareef had in the property was transferred as life interest in favour of his wife, reserving to himself no right what-so-ever except the right of reversion on her death. That right also was subsequently transferred by him in favour of his children.

6. In view of the aforesaid interpretation of the document, it is obvious that the Tribunal has committed an error of law in valuing it as leasehold property. The market value of the property should be held to be the principal value of the property for the purpose of Section 40(a).

7. For these reasons, we answer the question in the affirmative and hold that the full value of the four properties mentioned above could be included in the principal value of the estate. The reference is answered accordingly. The opposite party must pay Rs. 250/- as costs to the petitioner.

