

(1987) 02 AP CK 0027
In the Andhra Pradesh High Court
Case No : R.C. No. 68 of 1980

Commissioner of Gift-tax

APPELLANT

Vs

Bandi Subba Rao

RESPONDENT

Date of Decision : 24-02-1987

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 3

Citation : (1987) 63 CTR 305 : (1987) 167 ITR 66

Hon'ble Judges : M.N. Rao, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy, for the Appellant; Y. Ratnakar, for the Respondent

Judgement

K. Ramaswamy, J.—This reference u/s 26 of the Gift-tax Act, 1958, (Act 18 of 1958) (for short "the Act"), has arisen at the instance of the Revenue for our opinion on the question posed thus :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the deed executed on March 21, 1970, partakes the nature of a family settlement and that the transaction was not a transfer or alienation liable to gift-tax ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that there was no taxable gift to the married daughter in spite of the transfer of agricultural lands being effected after a lapse of years after the marriage ?"

The material facts in support of the reference are that the assessee, an individual, during the assessment year 1970-71 executed a partition deed on March 21, 1970, by which he gave away acres 9.94 of wet of wet land to his married daughter, Smt. Sreedevi and acres 10.40 of wet land to his unmarried daughter, Nagamani. Notice u/s 16(1) of the Act was issued calling upon the assessee to file his return. Accordingly, he filed nil return with a covering letter

that there is no gift in the eye of law and that, therefore, he need not pay any Gift-tax. The Gift-tax Officer held that Sreedevi is a married daughter whose marriage has taken place long back and Nagamani is an unmarried daughter. Nagamani has only a claim for maintenance and, therefore, it cannot be treated as a partition as the assessee the sole surviving co-parcener. On that premise, he rejected the contention of the assessee and valued the property at Rs. 1,05,460 and excluded Rs. 10,000 under sections 5(1)(vii) of the Gift-tax Act and assessed to gift-tax Rs. 95,460 and on appeal, the assessee was unsuccessful. In second appeal, the Appellate Tribunal found that a Hindu is under a legal obligation to make provision for maintenance of an unmarried daughter and also to make provision for a married daughter for fulfilling an earlier promise made at the time of the marriage. It is not necessary that every party taking a benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or even a semblance of a claim on some other ground as, say, affection. Therefore, it is in the nature of a family settlement. Accordingly, it was held that the transaction was not a transfer or alienation. Therefore, the question of paying gift-tax does not arise. At the instance of the Revenue, the above questions have been referred. It is also necessary to mention that assessee has no sons and is possessed of acres 40 of wet land at Attili, Tanuku Taluk, West Godavari District. Besides, he is also having a money-lending business.

Sri. M. S. N. Murthy, learned standing counsel for the Revenue, contended that the document dated March 21, 1970, is styled as a partition deed and that the daughters must have a pre-existing right in the coparcenary. The unmarried daughter has only a right to maintenance. Therefore, it cannot be constructed to be a partition deed. Once it is constructed that is not a partition deed, it is necessarily to be constructed either as a settlement or as a gift. If it is a settlement or gift and when it is made to a daughter, it goes without saying that it is without consideration. It is, therefore, a gift within the meaning of section 2(xii) of the Act and entitled only to the exclusion permissible u/s 5(1)(vii) of the Gift-tax Act. The assessee has got an obligation to maintain an unmarried daughter or an obligation to incur expenses incidentally at the time of marriage of the daughters. Moreover, the assessee has to establish custom among his caste to give property to daughters. The Gift-tax Officer has rightly considered this aspect. The appellate authority upheld the view at the Gift-tax Officer. But, the Tribunal has committed an error of law intreating it to be a family arrangement and, therefore, the view of the Tribunal is clearly illegal. We are unable to agree.

clause (xii) of section 2 of the Act defines "gift" as follows :

""gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money"s worth, and includes the transfer or conversion of any property referred

to in section 4, deemed to be a gift under that section."

Any transaction to be a gift must come within the meaning of section (xii) of the Act. Then alone the liability to pay gift-tax u/s 3 of the Act which is a charging section does arise. The question is, therefore, whether the document dated March 21, 1970, should be construed to be a gift. To answer this question, it is necessary to hark into the rights the married and unmarried daughters have under the Hindu law or the Hindu Adoptions and Maintenance Act, 1956, for short "the Maintenance Act".

Section 3(b) of the Hindu Adoptions and Maintenance Act defines :
""maintenance" includes -

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage."

The unmarried daughter has thereby a legal right and the father has corresponding legal obligation to provide reasonable expenses as an incident to her marriage. Mr. N. R. Raghavachariar, a commentator on Hindu Law, 5th edition, states at page 1103 :

"The words "incident to marriage" are used to indicate the necessity for inclusion in the expenses payable for the marriage of an unmarried daughter not only the actual expenses of her marriage but also the expenses incidental to the marriage, namely, presents at the marriage and other necessary expenses that have to be customarily incurred both before and after the actual marriage such as the expenses of the betrothal function and the nuptials that may take place after the marriage."

A Division Bench of this court in Commissioner of Gift-tax Vs. Ch. Chandrasekhara Reddy, , considered a similar question. Therein, the Division Bench considering the meaning of the word "incident" as used in Black's Law Dictionary, 4th edition, at page 904, held thus (at page 852) :

"Therefore, if the giving of land is usually connected with the marriage, it can be said to be incident to the marriage....."

In Sri N. R. Raghavachariar's Hindu law-Principles and Presidents, seventh edition, (vol. 1) edited by Prof. S. Venkataraman, it is stated in section 213, at page 235, that a father is under a personal obligation to maintain his unmarried daughters. After his death, the unmarried sisters are entitled to be maintained out of his estate. Even after marriage, a daughter who is not able to get maintenance from the family into which she has been married on account of its poverty can claim to be maintained by the heirs of her opulent father. In Smt. R. Seetharamama v. Land Acquisition Officer [1979] 2 ALT 6 sc, it was held that maintenance and marriage expenses of the daughter is a legal obligation of the father and property given to her cannot amount to a gift. In Bhubaneswar Naik Santoshrai and Vs. The Special Tahsildar Land Reforms Tekkali and Others, , the expression "intention to give away the property for the provision of marriage of a

daughter or sister" is not a gift within the meaning of section 122 of the Transfer of property Act, 1882. Therefore, it was held that non-registration thereof does not invalidate the gift made in favour of the daughter. In Mayne's Hindu Law and Usage, 12th edition, edited by Justice Alladi Kuppaswami, it is stated at page 1048 that an obligation to maintain an unmarried daughter includes an obligation to provide her marriage expenses, in view of the definition of "maintenance" under section 3(b) of this Act. As maintenance and marriage expenses of the daughter is a legal obligation of the father, property given to her cannot amount to a gift. In enacting 3(b) which defines "maintenance" as including reasonable expenses of and incident to the marriage of a daughter, the Legislature did nothing more than codify the well settled principles of Hindu law. It is further stated that so far as the unmarried daughter is concerned, the liability of her parents has no relation to her age, and it continues so long as the daughter is unable to maintain herself. In Chedalavada Subbayya Vs. Chedalavada Ananda Ramayya, , per majority, the Full Bench has that in a coparcenary consisting of father and sons, the obligation of maintaining and marrying the daughters is not only on the coparcenary itself, because such an obligation, being only a historical remnant of the daughter's original right to a share in the coparcenary property, is created by birth. It was held in that case that the son's share in the joint family, on his instituting the suit for partition against his father and brothers, is also liable for the expenses of the marriage of a sister who was married after the institution of the suit and of those who are still to be married. It is thus the settled legal position that under the Maintenance Act as well as the general Hindu law, the obligation of the father to maintain his unmarried daughter as well as the married daughter so long as the daughter is unable to maintain herself from the family, viz., to which she was given, is transformed into a legal obligation.

In Kudutamma v. Narasimhachryulu [1907] 17 M LJ 528, it was held by a Division Bench that a Hindu father was entitled to make gifts by way of marriage portions to his daughters out of the family property to a reasonable extent. In Anivillah Sundararamaya Vs. Cherla Seethamma and Others, , the Division Bench upheld the validity of a gift of three acres of ancestral land by a Hindu father to his daughter after 40 years of marriage. In Ramasami Ayyar v. Vengidusami Ayyar ILR [1899] Mad 113, another Division Bench held that a gift of land made by a widow, on the occasion of her daughter's marriage, to the bridegroom was valid, In Judicial Committee held that a gift by a father of a sum of Rs. 20,000 to his daughter was valid. In Devabhaktuni Sithamahalakshamma Vs. Pamulapati Kotayya and Others, , it was held that a gift of a reasonable portion of the immovable property by the father to his daughter without reference to his son was upheld. In Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa, , the father had given a life estate in a small extent to his widowed daughter in addition to what was given to her at the time of marriage as maintenance and this was upheld. While upholding the maintenance, it was laid down by Subba Rao J. (as he then was) thus : (paragraph 18 page : 519)

"Then Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But it became crystalized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a normal (moral) obligation and it continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a hard and fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances. If the father is within his rights to make a gift of a reasonable extent of the family property for the maintenance of a daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or the reasonableness of a gift does not depend upon the plurality of documents but on the power of the father to make a gift and the reasonableness of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed instead of one, cannot make the gift any the less a valid one."

In *Kamala Devi Vs. Bachu Lal Gupta*, , S. K. Das J., speaking for their Lordships of the Supreme Court, held in paragraph 20 thus (at page 443) :

"On an examination of the decisions referred to above, the following principles clearly emerge : (1) It is the imperative religious duty and a moral obligation of a father, mother or other guardian to give a girl in marriage to a suitable husband; it is a duty which must be fulfilled to prevent degradation, and direct spiritual benefit is conferred upon the father by such a marriage.....(4) Gifts by a widow of landed property to her daughter or son-in-law on the occasion of the marriage or any ceremonies connected with the marriage, are well recognised in Hindu law. (5) If a promise is made of such a gift for or at the time of the marriage that promise may be fulfilled afterwards and it is not essential to make a gift at the promise. (6) Some decisions go to the length of holding that there is a moral or religious obligation of giving a portion of the joint family property for the benefit of the daughter and the son-in-law, and a gift made long after the marriage may be supported upon the ground that the gift when made fulfils that moral or religious obligation."

These cases are authorities for the proposition that gift of a property can be made even long after the marriage. A Division Bench of this court in *Commissioner of Gift-tax Vs. Ch. Chandrasekhara Reddy*, , accepting the

statutory obligation u/s 3(b) if the Maintenance Act, held that when Legislature enacted in section 3(b) that reasonable expenses of and incident to her marriage amount to maintenance, it was merely re-enacting the position which prevailed under the general Hindu law. Therefore, both under the Hindu Adoptions and Maintenance Act as well as under the general Hindu Law, the father is under an obligation to give some property to the daughter on the occasion of her marriage. We respectfully agree. In case also relates to a gift to a married daughter, long after marriage. In Commissioner of Gift Tax Vs. Bandlamudi Subbaiah, , a similar question with regard to married and unmarried daughters arose in this court. Sambasiva Rao C.J., speaking for the Division Bench, held (at pages 511 and 512) :

"It is not unoften that a Hindu undivided family announces gift of certain properties, generally lands in an agricultural State like Andhra Pradesh, on the occasion of the marriage of the daughter. The gift deed or settlement deed might not have been executed simultaneously with the marriage or the announcement.

Later when the family itself up on account of partition, what had been agreed upon or announced would be reduced to writing in the partition deed." On the second question with regard to the properties allotted to unmarried daughters, it was held (at page 512) :

"Undoubtedly, a Hindu joint family has an obligation to maintain and get an unmarried daughter married. That right of the unmarried daughter to be maintained and to get married and the obligation of the family to do this may be inchoate, in the sense, that these rights and obligations do not this may be inchoate, in the sense, that these rights and obligations do not attach to any specific property. But there is an undoubted right under the Hindu law of an unmarried daughter to be maintained and to get married and the corresponding obligation of the Hindu family to discharge these obligations cannot, therefore, be under any doubt. Once under a partition deed or a family settlement or a gift or other instrument certain properties are set apart for the maintenance and marriage of the unmarried daughters, then the rights of the unmarried daughters and the corresponding obligations of the family gain a coherent and concrete form. They immediately attach to the property thus allotted under the instrument. Since the property is given to the unmarried daughter in recognition of her right, in discharge of the obligation of the family, by no stretch of imagination it could be treated as a gift."

When the members of the joint Hindu family allotted certain properties to the unmarried daughters at the time of the partition to discharge the binding obligation on them to maintain and to get them married, it cannot be said that the properties were given to the unmarried daughters voluntarily and without consideration in money or money's worth. If they do not make such a provision for the unmarried daughters, the Hindu family would be obliged to make some other provision. By making such provision, it has ceased to have any monetary obligation towards the unmarried daughters. What the family would have been

obliged to spend in money would be given in the form of movable or immovable property. That they do, as we have already observed, not quite voluntarily but only to discharge their legal obligation. Therefore, it is not a gift within the meaning of section (xii) of the Act. We respectfully agree with the view taken by the Division Bench. Though this case pertains to allotment of immovable properties to married and unmarried daughters at the time of partition between coparceners, there is little distinction between father simpliciter and father as member of the coparcenary. The same ratio would apply to the facts in this case.

Giving property to an unmarried daughter as incident to maintenance is a legal obligation cast on the father or any person receiving the property of the father except a purchaser for valuable consideration without notice of the said right of the daughter. Equally, giving a reasonable property at the time of the marriage or subsequently in the discharge of that legal obligation, is not, thereby, a voluntary gift made by the father but is in compliance with his legal obligation. Any instrument executed by the father in discharge of that legal obligation or any settlement of a reasonable portion of the property in fulfilment of the existing legal claims of a married or unmarried daughter is not without consideration of money or money's worth as contemplated under the Act nor can it be said to be a voluntary one. Equally, the promise made at the time of the marriage of a daughter to give a reasonable portion of the property or a settlement or a gift made long after the marriage is in fulfilment of the pre-existing legal obligation of the father under the general Hindu law. Therefore, it ceases to be voluntary act nor is it to be labelled as without consideration but is one in the discharge of a pre-existing legal obligation. Therefore, it is neither an alienation nor a transfer, attracting section (xii) of the Gift-tax Act, but is a family settlement. There is no taxable gift made to a married daughter. Thereby the assessee is not obliged to pay gift-tax.

In Commissioner of Gift-tax Vs. Ch. Chandrasekhara Reddy, , Divan C.J., speaking for the Division Bench, held that the Income Tax Appellate Tribunal has to further into the question whether there is a custom in the community to discharge that obligation to execute a gift or a settlement deed subsequent to the marriage. With due deference, we express our inability to accord our approval to that view for diverse reasons. It has already been held that an opulent Hindu father is obligated to set apart a reasonable portion of the property towards maintenance of an unmarried daughter or towards marriage expenses including giving of property at the time of the marriage as incident thereto. Equally, a reasonable portion would also be given to a married daughter even after the marriage. The moral or legal obligation under general Hindu law of the father to provide a reasonable portion of the property as an incident to maintenance to an unmarried daughter u/s 21 of the Maintenance Act or in discharge of a promise made at the time of the marriage to a daughter, has been transformed into a legal obligation and thereby the need to prove the existence of the custom in a particular caste or community to is obviated.

The question of prevalence of the custom in any particular community also becomes redundant because a gift or settlement is not made in recognition of the customary right in a particular caste or community but in discharge of statutory right a daughter has and a legal obligation fastened on the father, coparcenary or anybody receiving the estate of the father except bona fide purchaser for value without notice of the right. The essential criterion is, therefore, that the parties must be Hindus and are governed by the Hindu law. The obligation to give a reasonable portion of the property to a married or unmarried daughter is no prevent degradation or destitution or to settle a decent match for a daughter consistent with the dignity and status of the father or family. So, the custom in the community ceases to have any relevancy.

The problem can be broached from yet another angle that when the father has a legal obligation to provide maintenance or as incident to marriage of the unmarried daughter to provide decent allowance to a daughter and makes a promise for giving property to the son-in-law or the daughter at the time of the marriage or subsequent thereto, it may be taken that there was a family arrangement among the members of the family whereat it was agreed by the members of the family that a reasonable portion could be given to a daughter so married or towards the maintenance or marriage expenses or incidental thereto reasonable property to the unmarried daughter. Legal obligation cast on the father under the Hindu law and Maintenance Act, is prime motive for settlement which is discharged by the father by executing subsequently the instrument and, therefore, it is not a voluntary one. So, it is a family settlement and not a gift within the meaning of section (xii) of the Act and the assessee is not liable to gift-tax.

Incidentally, it may also be mentioned that the Hindu Succession Act (Andhra Pradesh Amendment Act, 1983) introduced section 29A in Chapter IIA in the Hindu Succession Act, 1956. It provides thus :

"Equal rights to daughter in coparcenary property. - Notwithstanding anything contained in section 6 of this Act -

(i) in a joint Hindu family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) at a partition in such a joint Hindu family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son."

and she holds the property as full owner.

It is undoubtedly true that the reasonableness of the property settled upon a daughter, married or unmarried, or number of daughters, as the case may be, is

to be adjusted in the high of the facts and circumstances of a given case, the totality of the property held by the father or the coparcenary and the number of daughters to whom a similar provision is to be made and also number of coparceners, etc., have to be considered. It is found as a fact that the assessee is possessed of acres 40 of wet land; besides, he is doing money-lending business; he has no sons; he was only two daughters, one married and another unmarried; and he has given to the married daughter, Sreedevi, acres 9-94 cents of land and to the unmarried daughter areas 10-40 cents of land. Therefore, settling half the property on only two daughters cannot be said to be unreasonable. Under those circumstances, the finding given by the Tribunal that it is in discharge of the pre-existing legal obligation is perfectly legal. We accordingly affirm the same.

The questions are accordingly answered in favour of the assessee and against the Revenue. There shall be no order as to costs.