(1979) 08 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : G.T. Ref. No. 1 of 1976

COMMISSIONER OF GIFT TAX — APPELLANT

Vs

MAN SINGH. — RESPONDENT

Date of Decision : 31-08-1979

Acts Referred:
Hindu Succession Act, 1956 — Section 30, 4, 6

Citation : (1980) 15 CTR 284

Hon'ble Judges : B. S. Dhillon, J

Bench : Division Bench

Judgement

: B. S. Dhillon, J. - Agricultural land measuring 145 kanals and 3 Marlas was gifted by the assessee in favour of his sons, Shri Sadhu Ram and Bharat Singh on 14th November 1960. The Gift Tax Officer completed the assessment on 13th January, 1971. During the assessment proceedings, the assessee contended that the gift in question had been executed by mistake and that the donor had no power to gift the property in question as he was governed by Hindu Law according to which he, as the karta of the HUF could make gift of family property. The GTO repelled this contention. The appeal filed by the assessee before the AAC was accepted. The department filed an appeal before the Tribunal and the case was remanded for fresh decision. The AAC made an order annulling the assessment. The department again went before the Tribunal in appeal.

2. The Tribunal dismissed the appeal. At the instance of the Revenue, the following question of law has been referred to us for our opinion :

"Whether on the facts and in the circumstances of the case of ITAT was right in law in holing that the agricultural land in question, which was ancestral property in the hands of the assessee, constituted joint Hindu family property of himself and his two sons and that the gift in question, being covered by the ratio in the case of COMMISSIONER OF GIFT-TAX, PATIALA Vs. TAJ NATH., , was void ?"

It is conceded by Shri Awasthy that in view of the Full Bench decision of this

Court in Pritam Singh v. The Asstt. CED the question referred to us for our opinion has to be answered against the Revenue and in favour of the assessee. It has been held in Pritam Singhs case (supra), that prior to the passing of the Hindu Succession Act, 1956, where the parties were Hindus, the Hindu Law would apply in the first instance in matters regarding succession and whosoever asserted a custom at variance with Hindu Law must prove it and if he failed to do so, then the rule of decision must be personal law of the parties. S. 4 of the Hindu Succession Act, which came into force from June 17, 1956, abrogated any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Succession Act, with respect to any matters for which provision is made in the Hindu Succession Act. The Hindu Succession Act having not abolished joint Hindu family and the joint Hindu family property, it does not interfere with the special rights of those who are members of a Mitakshara coparcenary, except in the manner and to the extent mentioned in ss. 6 and 30 of the Hindu Succession Act. It was held that after coming into force of the Hindu Succession Act, all Hindus, who were previously governed by rules of customary law in matters of succession, like the other Hindus, form joint and undivided Hindu families including Mitakshara coparcenary, and the sons, grandsons and great grandsons, of the holder of the joint or coparcenary property for the time being, acquire interest therein by birth.

3. In view of the decision in Pritam Singhs case (supra) it is held that the IT Tribunal was right in law in holding that the agricultural land in question, which was ancestral property in the hands of the assessee, continued to be joint Hindu family property of himself and his two sons and the gift in question was void. The ratio in CGT v. Tej Nath also applies to the facts of the present case. We answer the question referred to us against the Revenue and in favour of the assessee and we hold that the Tribunal was right in law in arriving at the conclusion. However, there will be no order as costs.

