(1976) 06 MAD CK 0010

In the Madras High Court

Case No : Tax Case Petition No. 363 of 1975

Commissioner of Gift Tax APPELLANT

Vs

R. Alagiriswamy RESPONDENT

Date of Decision : 21-06-1976

Acts Referred:
Gift Tax Act, 1958 — Section 26(3)

Citation : (1977) 108 ITR 672

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; S.V. Subramaniam, for Subbaraya Iyer and Padmanabhan, for the Respondent

Judgement

Ismail, J.—This is a petition u/s 26(3) of the Gift-tax Act, 1958, by the Commissioner of Gift-tax, Tamil Nadu-II, Madras-34, requesting

this court to direct the Income Tax Appellate Tribunal to refer the following questions of law for the opinion of this court:

1. Whether, on the facts and in the circumstances of the case, it has been rightly held by the Tribunal that the gifts made by the karta in the

assessee''s case were void ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not liable to

gift-tax for assessment year 1970-71?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee could be said to have

avoided the gift by executing the cancellation deed revoking the gifts made ?

2. The facts that gave rise to these questions are as follows : There was a joint family consisting of a father and two sons, namely, Rathinaswamy

Moopanar, the father, and his two sons, Alagiriswamy and Palaniswamy. On January 12, 1959, there was a partition of the properties among

these three persons and Alagiriswamy was allotted 28.3 acres of agricultural land. The said Alagiriswamy had two minor sons and two unmarried

daughters and he along with his wife and the sons and daughters constituted a Hindu undivided family. On January 13, 1970, acting as the karta of

a Hindu undivided family, Alagiriswamy executed three settlement deeds in favour of his three married sisters, Jayalakshmi, Dhanalakshmi and

Nagalakshmi, settling in all 17.91 acres of land out of 28.3 acres obtained by him in the partition between himself, his father and the brother.

Subsequently, on April 21, 1970, the said Alagiriswamy executed three deeds revoking the settlements made on January 13, 1970. Under those

circumstances, the question that came up for consideration was whether there was a valid gift by Alagiriswamy on January 13, 1970, so as to

render the same liable to gift-tax. The contention of the assessee was that the gifts were void ab initio and that contention was accepted by the

Tribunal. It is the correctness of that conclusion that is challenged in the form of questions referred to above.

3. We are of the opinion that the conclusion of the Tribunal is correct in law. Alagiriswamy obtained the properties under the partition and.

therefore, they constituted ancestral properties in his hands with regard to his own minor sons. The three married sisters were in the position of

strangers to the family. If the father had died undivided and Alagiriswamy became the karta of the family, there may be a moral obligation on the

part of Alagiriswamy to provide for his sisters, whether at the time of the marriage or afterwards. In this case the partition took place between the

father and the two sons and if any provision were to be made for the sisters of Alagiriswamy, it should have been at that partition itself, and,

therefore, the subsequent settlements purported to be made by Alagiriswamy in favour of his three married sisters who were practically in the

position of strangers to the Hindu undivided family of which he was the karta, were totally void, and, hence, even the subsequent revocations were

only superfluous. There is no dispute that a gift which is void ab initio by the law applicable to the same will not be liable to gift-tax under the Gift-

tax Act.

4. In view of the above, the conclusion of the Tribunal is correct and this petition is dismissed. The assessee will be entitled to his costs from the

Commissioner. Counsel''s fee is fixed at Rs. 250.

