

**(1978) 12 MAD CK 0041**

**In the Madras High Court**

**Case No :** Tax Case No. 379 of 1974 (Reference No. 192 of 1974)

Commissioner of Income Tax, Central

APPELLANT

Vs

M.R. Pratap

RESPONDENT

**Date of Decision :** 06-12-1978

**Acts Referred:**

Income Tax Act, 1961 — Section 256(1)

**Citation :** (1981) 128 ITR 421 : (1979) 92 LW 448

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

**Bench :** Division Bench

**Advocate :** J. Jayaraman and Nalini Chidambaram, for the Appellant; K.R. Ramamani, for Subbaraya Ayyar, Padmanabhan and Ramamani, for the Respondent

## Judgement

Ismail, J.—There were two brothers by name, Rajagopal Naidu and Rangiah Naidu. Rajagopal Naidu was employed in M/s. Simpson and Company Ltd., and later he was a foreman in M/s. Addison and Company Ltd. for some time. Still later he started his own automobile concern called "Rajagopal Motor Works". His brother, Rangiah Naidu, assisted him in his business. Rangiah Naidu died in 1934 and Rajagopal Naidu died on March 25, 1956. Both during the lifetime of Rajagopal Naidu and afterwards, the heirs of Rangiah Naidu lived along with Rajagopal Naidu and the members of his family as if they constituted one family. They had not inherited any ancestral property. However, during the lifetime of both Rajagopal Naidu and Rangiah Naidu, they had their independent earnings and kept their earnings separately and also acquired properties in their individual names and enjoyed them as their separate properties, though by reason of their continued love and affection between them as brothers, they continued to live together. The assessee in the present case is one of the sons of the deceased, Rajagopal Naidu and we are concerned with the assessment years 1963-64 and 1964-65. With reference to these assessment years, the assessee originally filed his return in his status as individual, as he had been doing from the assessment year 1948-49 onwards. However, subsequently on March 17, 1966, he filed

revised returns showing his status as an HUF. The question which had to be considered by the ITO was whether the status of the assessee was "individual" or "HUF". The assessee claimed that he should be assessed in the status of "HUF" because the properties with reference to which the income was returned were the properties allotted to the assessee at a partition that took place on July 29, 1958, between all the heirs of Rangiah Naidu and Rajagopal Naidu, numbering 13. The ITO did not accept this claim and assessed the assessee only in his status as individual. The appeal preferred by the assessee to the AAC proved unsuccessful. When the assessee took up the matter further in appeal to the Tribunal, the Tribunal reversed the conclusion of the AAC as well as the ITO with regard to the status of the assessee and upheld his claim that he should be assessed in the status of an HUF. It is after this order was passed by the Tribunal, the Commissioner of Income Tax, Central, Madras, applied for and obtained u/s 256(1) of the I.T. Act, 1961, a reference of the following three questions for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in the view that the properties falling to the share of M. R. Pratap as a result of the settlement dated July 29, 1958, should be taken as belonging to the Hindu undivided family consisting of Shri Pratap, his wife and children and not to him as individual ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal had valid material to hold and was right in holding that all items of dividends, sitting fees, etc., received by the assessee should all be assessed in the hands of the Hindu undivided family but not in his hands as an individual ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the making of a return in the name of the family constituted a decisive act of abandonment in favour of the family and, therefore, the assessee should be assessed, in the status of Hindu undivided family for the assessment years 1963-64 and 1964-65?"

2. As we have pointed out already, the assessee, ever since the assessment year 1948-49, had been claiming the status of an individual and was being assessed only as an individual. Even for the, assessment years in question, he had originally filed returns in the status of an individual and only on March 17, 1966, filed revised returns when he claimed his status as an HUF. The only two facts that were available before the Tribunal for deciding the status of the assessee were:

(1) The document dated July 29, 1958, loosely referred to as a settlement, even in the question referred to this court, entered into between the heirs of Rangiah Naidu and those of Rajagopal Naidu, numbering 13, as referred to already; and

(2) the act of the assessee in filing revised returns on March 17, 1966, claiming the status as an HUF.

3. It is easier to dispose of the second fact and we shall deal with it later.

4. As far as the document dated July 29, 1958, is concerned, though it mentioned as a settlement, it is not really a settlement in the sense in which it is generally understood and, if at all, it can be described only as a family arrangement. The document itself is styled as a "family settlement" and has been executed on July 29, 1958, more than two years after the death of Rajagopal Naidu. As we have mentioned already, all the heirs of Rajagopal Naidu and Rangiah Naidu have executed the said document. The heirs of Rangiah Naidu were his widow Pushpammal, his son, Jayaraman, his another son, Raja Krishnan, his third son, Parasuram, and his daughter, Mrs. Sarmista, wife of A. Balasubramaniam Naidu, and his another daughter, Smt. Narmada, wife of Krishnamurthy Naidu. The heirs of Rajagopal Naidu were the widow, Thayarammal, his son, M. R. Pratap (the assessee herein), his another son, M. R. Jayaraj, and his daughters, Smt. Vitto Bai, wife of B. N. Surendra, Kumari Shyamala, Kumari Vimala and Kumari Saraswathi alias Sarasu. The document recited the facts to which we have already drawn attention, namely, that the two brothers did not inherit any ancestral property; that Rajagopal Naidu after working in M/s. Simpson and Co. Ltd., and as foreman of the motor repairs department of M/s. Addison and Co, Ltd., started his own concern under the name and style of "Rajagopal Motor Works" at General Patters Road, Madras, in 1921; that M. R. Rangiah Naidu assisted M. R. Rajagopal Naidu in the business; that Rajagopal Naidu and Rangiah Naidu had their independent earnings and kept their earnings separately and also acquired properties in their individual names and enjoyed them as their separate properties; that by reason of their continued love and affection between them as brothers, they continued to live together; that Rangiah Naidu died in 1934 and thereafter his wife, sons and daughters also continued to live as if they were members of one family along with the family of Rajagopal Naidu and under his guidance; that when Rajagopal Naidu died on March 25, 1956, his three daughters, namely, Shyamala, Vimala and Saraswathi, and the daughter of Rangiah Naidu, namely, Narmada, remained to be married; that owing to the close association and the living together of all the parties to the document, as if they were members of one family, Rajagopal Naidu had, in order to maintain mutual goodwill and affection between all the members, often expressed his decision to effectuate all (sic) allotment and settlement of all the properties and assets among the members of the families of himself and his brother, Rangiah Naidu, but he passed away before his decision was effectuated by the execution and registration of necessary document or documents; and that all the parties having the highest regard for the expressed intention and desire of late Rajagopal Naidu and actuated by the object of giving effect to his wishes with regard to the marriages to be performed and the provision to be made for each of the daughters and allotments of properties for the other members had among themselves mutually agreed as follows:

"(a) All the properties and assets of M. R. Rajagopal Naidu and M. R. Rangiah Naidu arid standing in the names of one or other of the members of their family

are set out in schedule " A " hereto.

(b) The properties and assets set out in schedule "B" hereto have already been given away or allotted to and taken over by the parties as stated in the said schedule.

(c) The properties and assets which are now allotted and given over to the several parties by this deed of settlement are set out in schedule " C " hereto."

5. It is unnecessary to refer to the other provisions in the document except to mention the fact that three items of properties with which we are concerned in this reference find a place in Schedule ".A" as well as in Schedule "B" in the name of the assessee. Schedule " A " contains the heading :

"Statement showing properties and assets of late M. R. Rajagopal Naidu and M. R. Rangiah Naidu and standing in the names of one or the other of the members of their family."

6. Item 32 of this schedule reads as follows :

" M. R. Pratap 32. 600 equity shares of Rs. 100 each in the Rayala Corpn. (M) Pvt. Ltd.--Rs. 60,000."

7. Item 48 of this schedule reads as follows :

"Pratap 48. 4 as share in partnership concern, Sri Venkateswara Bus Union (M. R. Pratap)."

8. Item 55 reads as follows :

" 55. Share in Commercial Financing Corporation (M. R. Pratap) --Rs. 20,000."

9. These three items are found in sch. "B" against the name of M. R. Pratap and the heading of Schedule "B" is:

" Properties and assets already given away or allotted to and taken away by the parties."

10. It is the income from these items of properties which are the subject-matter of dispute in the present case as regards the status of the assessee. The Tribunal points out in para. 4 of the statement of the case that the following were the contentions put forward by the assessee in support of his claim that the assessment should be in the status of HUF :

"(1) The settlement deed was only a part of a scheme for arrangement of partition.

(2) The settlement deed clearly affirms that the parties lived as one family and the properties were distributed among the members of the family by mutual consent.

(3) Under the settlement deed the properties have been divided more or less

equally among the various members having due regard to the requirements and maintenance of the widows and provision for the marriage of the daughters and even if some members received more properties under the settlement deed than others that would not militate against the plea of partition.

(4) The assessee and his son, Ranjit, constituted a joint family and since the assessee received assets belonging to his father, they are holding ancestral properties and the income from such properties should be assessed in the status of HUF and not that of individual."

11. The ITO took the view, namely, (1) that the settlement deed showed that there was no joint family nucleus and all the properties were acquired by the two brothers, Rajagopal Naidu and Rangiah Naidu, out of their own independent earnings ; and (2) that the fact that the two brothers were living together would not indicate that they had formed an HUF and that the settlement deed could not be construed as a partition deed, since all the properties belonging to the two brothers had not been put into the common hotchpot.

12. The AAC, while confirming the order of the ITO, held as follows :

(1) that the settlement deed cannot be construed as a partition deed since the preamble itself shows that there was no joint family nucleus and the two brothers had their independent earnings and were acquiring properties in their individual names from out of their own separate earnings ;

(2) that the division of properties as evidenced by the settlement deed is not in accordance with what one would expect in a partition deed and the shares given to the widows and unmarried daughters appear to be excessive as compared with what has been given to the male members;

(3) that the properties held in the names of the various members of the family have not been put together in partition; and

(4) that since the assets were not derived by the assessee in a joint family partition and since his son has not acquired a right by birth the assessee can be assessed in the status of an individual and not as an HUF.

13. The Tribunal disagreed with the views of the ITO and the AAC and upheld the opinion of the assessee for three reasons mentioned by it. The first reason was that the very fact that the properties acquired by the two brothers in the names of the members of the family were brought into the common stock as evidenced by the "A" schedule and the division effected of all the "A" schedule properties among the sons, daughters and the wives of the two brothers was an unmistakable indication of the intention to throw the properties acquired in the names of the two brothers into the common stock and to waive all separate rights in respect thereof, as a result of which they had become joint family properties with all their usual incidents, and that since the property which came into the hands of the assessee under the settlement deed was thus impressed with the character of joint family property, his minor son, Ranjit, acquired a right

by birth in respect of that property and since there was a subsisting HUF consisting" of the assessee, his wife and the minor son, the property belonged to that HUF and the income from such property was assessable as income of the HUF. The second reason was that even supposing that under the settlement deed, the properties received by the assessee were not impressed with the character of joint family properties yet the property received by the assessee under the settlement deed was an ancestral property with reference to his son and the income from such property should be assessed in the status of HUF ; that looking at the scheme and tenor of the settlement deed which allotted a share to all the members of the family in the properties purchased by the two brothers, it was obvious that it was nothing but an integral part of a scheme for partition and what was given to the assessee was really the share of the property which would normally be allotted to him and his branch of the family on partition; and that since a coparcener, receiving joint family property with his son, can constitute a HUF, it follows that the income received by the assessee under the settlement deed has to be assessed in the status of HUF. The third reason was that the assessee had filed a revised return showing the status of HUF for the assessment year 1964-65 and thereby giving up his interest in the alleged self-acquired property received under the settlement deed and thus impressing it with the character of joint family property and since the statement in the return constituted an unequivocal declaration of the assessee's intention to impress the property with the character of joint family property, it followed that the income from such property should be assessed in the status of HUF. For coming to the conclusion with regard to the third reason, the Tribunal purported to rely on and follow a decision of the Andhra Pradesh High Court in Gundlapalli Mohan Rao and Others Vs. Gundlapalli Satyanarayana and Others, .

14. We are of the opinion that the Tribunal was in error in respect of all the three reasons. As far as the third reason is concerned, the same can be easily disposed of, as we have pointed out already. Admittedly, the revised return was filed only on March 17, 1966, and, therefore, if the assessee can be said to have impressed the property with the character of joint family property by means of unequivocal declaration of his intention to impress the property with the character of joint family property, it can be said to have been done only on March 17, 1966, and hence it can have no effect whatever on the assessment for the two years with which we are concerned, namely, 1963-64 and 1964-65. On this simple ground, the third reason has to fail, and we are not expressing any opinion as to the correctness or otherwise of the decision of the Andhra Pradesh High Court relied on by the Tribunal.

15. As far as the other two reasons given by the Tribunal are concerned, they are directly opposed to the recitals in the document, namely, the family settlement entered into between the parties on July 29, 1958. The recitals in the document to which we have already drawn attention make it indisputably clear that Rajagopal Naidu and Rangiah Naidu did not have any joint family property to be divided as between them. In fact, the recitals are to the contrary showing that

they did not inherit any ancestral property, that they had their own independent earnings and kept their earnings separately and that they acquired properties in their individual names and enjoyed them as their separate properties. Therefore, during the lifetime of the two brothers the question of their having joint family property to be partitioned as between them did not arise. When Rajagopal Naidu died, he left his own self-acquired properties and not any ancestral property obtained by him as the last surviving coparcener of a HUF or as a result of a partition among the members of a HUF. In such a context, the character of the properties in the hands of Rajagopal Naidu could not be said to be ancestral properties at all. If so, the question of those properties being divided at a partition as between the heirs of Rangiah Naidu and Rajagopal Naidu could not possibly arise. If the heirs of Rangiah Naidu and Rajagopal Naidu joined together and entered into an arrangement, as they have done in the present case on July 29, 1958, that can only be a transaction in the nature of family arrangement and that cannot be a transaction in the form of a partition of joint family properties allotting shares to different persons who had acquired an interest in the properties by birth. Therefore, the Tribunal committed a basic error in treating the document dated July 29, 1958, as partaking the character of a partition either in respect of any admitted ancestral property or in respect of properties alleged to have been thrown into the common hotchpot by the different members of the family who acquired them separately.

16. Mr. Ramamani, learned counsel for the assessee, sought to contend that the three items of properties involved in this reference are the properties inherited by the assessee from his father, Rajagopal Naidu, and that the properties so inherited will become joint family properties in his hands with reference to his son and that, therefore, the Tribunal was right in coming to the conclusion it did. We are of the opinion that there is no material on record to show that the properties were inherited by the assessee from his father. In fact, the Tribunal itself did not proceed on the basis of any such inheritance and it proceeded only on the basis of a partition of the joint family properties. We are stating that there are no materials to show that the three items of properties were inherited by the assessee from Rajagopal Naidu from the terms of the document dated July 29, 1958, as well as from the conduct of the assessee himself. As we have pointed out already, ever since the assessment year 1948-49, the assessee had been declaring his status only as an individual and was being assessed only in that status. As far as the document itself is concerned we have extracted the three clauses on which the parties agreed, namely, Clauses (a), (b) and (c). Clause (a) merely refers to the properties included in Schedule "A" which in effect merely tabulates the properties as to which properties stood in whose name at the time when the document was entered into. The operative clauses, if any, are only Clauses (b) and (c). Even Clause (b) does not make any allotment of property and it refers to the allotment that had already been made. In fact, the difference in language between Clause (b) and Clause (c) in this, behalf is clear, because Clause (b) uses the word "already", while Clause (c) uses the word "now". The

three items of properties with which we are concerned are admittedly covered by Clause (b). The result is, those three items of properties have not been allotted to the assessee under the terms of the document dated July 29, 1958, but they were already given away or allotted to and taken over by him and as such they belonged to him already. Mr. Ramamani sought to contend that the effect of Clause (b) was merely to indicate as to who was in possession of which of the items and it did not have the effect of recording an earlier allotment or vesting of earlier title in the persons concerned. We are unable to accept this argument for more than one reason. In the first place, Clause (b) is categorical and refers to the properties as having been already given away or allotted to and taken over by the parties as stated in the said schedule. The emphatic language used in Clause (b) is incapable of indicating merely the physical possession of the properties by the different parties on the date when the document came into existence. Secondly, if the argument of the learned counsel is to be accepted, it will mean that there was no allotment of any property whatever under the document because the language of Clause (b) and that of Clause (c) are more or less the same in this behalf. Clause (c) also says: "the properties and assets which are not allotted and given over to the several parties by this deed of settlement are set out in schedule " C" hereto ". The expression " given away " finds a place in Clause (b) as against, the expression " given over " in Clause (c). The expression "allotted" finds a place both in Clauses (b) and (c). The additional expression that finds a place in Clause (b) is " taken over " and no such expression finds a place in Clause (c). If the meaning which the learned counsel for the assessee wants us to attribute to Clause (b) is to be accepted, we have necessarily to hold that the same meaning has to be attributed to Clause (c) also, with the result there would be no allotment or distribution of properties whatever under the document, in question and that is not the case of even the assessee.

17. Thus, one thing is clear, namely, that the assessee became the owner of the three items of properties in question not under the document dated July 29, 1958, but independent of it and earlier to it. We have no material to show as to when he became the owner of those properties. There is absolutely nothing to indicate that the properties were inherited by the assessee from, his father as the self-acquired properties of the father and further that was not the case of the assessee even. On the other hand, there is a clear finding by the Tribunal that these properties were already allotted to and taken over by the assessee even during the lifetime of his father and that the settlement deed merely confirmed the continued enjoyment and possession of those properties by the assessee. If that be the case, the question of inheritance did not come anywhere near the facts of the present case.

18. Under these circumstances, we are clearly of the opinion that the conclusion of the Tribunal is erroneous. Consequently, we answer all the three questions referred to (his court which flow from a single position, in the negative and against the assessee. The department will be entitled to its costs of this

reference ; counsel's fee Rs. 500.