

(1965) 03 KAR CK 0012
In the Karnataka High Court
Case No : T.R.C. No. 2 of 1964

Commissioner of Wealth-tax, Mysore

APPELLANT

Vs

N.G. Reddy

RESPONDENT

Date of Decision : 12-03-1965

Acts Referred:

Wealth Tax Act, 1957 — Section 27 (1), 4

Citation : (1965) ILR (Kar) 537 : (1965) 58 ITR 232 : (1965) 2 MysLJ 505

Hon'ble Judges : M. Santosh, J;K.S. Hegde, J

Bench : Division Bench

Advocate : S.R. Rajashekhara Murthy, for the Appellant; C. Krishna Reddy, for the Respondent

Judgement

1. By this application, the Commissioner of Wealth-tax, Mysore at Bangalore, requires the Appellate Tribunal to refer to the High Court certain questions of law, which are said to arise out of the Tribunal's order dated 5th April, 1963, in W.T.A. No. 533 of 1962-63. Inasmuch as, in our opinion, questions of law do arise out of the aforesaid order, we hereby draw up an agreed statement of the case and refer it to the High Court of Mysore at Bangalore u/s 27(1) of the Wealth-tax Act.

2. N. G. Reddy is the karta of a Hindu undivided family. In the assessment to wealth-tax of the family for the assessment year 1957-58, the Wealth-tax Officer included a sum of Rs. 1,34,025 being the investments standing in the names of the assessee's relations as follow :

Rs. (1) Mrs. N. Sarojini Devi - wife ... 69,261 (2) N. Santhosh Reddy - son ... 34,707 (3) Miss N. Saraswathi Reddy - unmarried daughter ... 16,534 (4) Miss. N. Leenatha Devi - minor daughter ... 13,533

3. The Wealth-tax Officer rejected the assessee's contention that section 4 of the Wealth-tax Act of 1957 was attracted only to cases of transfer after April 1, 1956, by an individual and not by a Hindu undivided family. The Wealth-tax

Officer observe :

"MOVABLE PROPERTIES :- The assessee has made some investments in the names of his wife, Smt. Sarojini Devi, his major unmarried daughter, Kumari Saraswathi Reddy, his minor daughter, Kumari Leenatha Devi, and unmarried major son, Shri Santhosh Reddy, amounting in all to Rs. 1,34,025. It is strenuously argued by the assessee's auditors that since the investments were made for the absolute benefit of the assessee's wife and children the value thereof should not be included in the assessee's total wealth. Admittedly the above investments were made out of joint family funds. And inasmuch as the nucleus of joint family funds were utilised by the karta for making the above investments or acquiring shares, section 4 of the Wealth-tax Act is clearly attracted. The value of the above investments, viz., Rs. 1,34,025, will, therefore, be included and assessed in the hands of the assessee."

4. Copy of assessment order is annexure "A" and forms part of the case. The assessee appealed to the Appellate Assistant Commissioner and contended as before the Wealth-tax Officer and also that in a Mitakshara family, the father had the power of making within reasonable limits gifts of ancestral movable property without the consent of the sons as gifts for natural love and affection, and that the reasonableness or otherwise of the gifts would have to be judged by comparing the value of the gifts with the total of the movables owned by the family and that in this case, the assets standing in the names of the four persons concerned represented gifts made by the karta of the Hindu undivided family to his very near relations out of natural love and affection. Lastly, it was contended, that the reasonableness or otherwise of gifts is not a matter for the decision by the departments, as it was solely one between the karta and his relations.

5. The Appellate Assistant Commissioner held that the transfers effected by the kartas of the Hindu undivided families, as in the instant case, were not covered by section 4 of the Wealth-tax Act. He postulated the question whether the value of the assets standing in the names of the four persons could be included in the net wealth of the assessee's family and answered it by saying that in a Mitakshara family, the father had the power of making within reasonable limits gifts of ancestral movable property without the consent of his sons as gifts for natural love and affection. He, however, rejected the argument that the power of making uneven distribution of assets to the members of the Hindu undivided family, even though some of them were not entitled to any share on partition, was a matter purely between the members of the family and the karta. He also held that the unilateral declaration made by the karta by which he had allotted properties to the son from time to time with a view to effecting partial partition will not be binding on the son. The order of the Appellate Assistant Commissioner is annexure "B" and the grounds of appeal before him, annexure "B-1", and form part of the case.

6. The assessee appealed to the Tribunal and contended as before the Income Tax Officer and the Appellate Assistant Commissioner that section 4 of the

Wealth-tax Act applying as it did to individuals only, could have no application to a Hindu undivided family. The Tribunal agreed with this contention but then the question remained whether the sum of Rs. 1,34,025 given away to the wife, son and daughters had been so done in the recognised and acceptable manner according to law so as to take that out of the family property. Keeping in mind the ratio of the decision of the Punjab High Court in *Raghubir Singh Sandhawalia v. Commissioner of Income Tax*, for reasons stated in paragraph 8, 9, 10 and 11 of their order, they held as follow :

(a) the gift over a lakh of rupees to N. Sarojini Devi and reference to the total value of the estate, which was about Rs. 7,81,000 and with reference to the background of what had been given to the son and two daughters was excessive and immoderate.

(b) Rs. 79,707 out of Rs. 7,81,000 to Shri N. Santhosh Reddy was reasonable.

(c) Rs. 56,534 out of Rs. 7,81,000 to Smt. Saraswathi Reddy was reasonable.

(d) Rs. 53,523 out of Rs. 7,81,000 to Leenatha Devi was reasonable.

7. Copy of Tribunal's order is annexure "C" and grounds of appeal before them, annexure "C-1", and form part of the case.

8. On these facts, the Commissioner of income tax/Wealth-tax has required the following questions to be referred :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the gifts made to (a) Santhosh Reddy, (b) Saraswathi Reddy and (c) Leenatha Devi were reasonable and vali ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in computing the net wealth of the assesses-family "the inclusion of Rs. 69,261 is justified and the balance is not ?

(3) On the facts and in the circumstances of the case, should not the Tribunal have held that all the gifts were unreasonable and were includible in the net wealth of the assessee-family ?"

9. The respondent's counsel points out that the decision of the Tribunal that gifts made to Santhosh Reddy, Saraswathi Reddy and Leenatha Devi are within reasonable limits, is a decision on facts and no questions of law arise. He, however, contends that if the case is stated for being referred to the High Court, the following questions may also be referred :

"(i) If the answer to question No. (1) of the Commissioner of Income Tax is in the negative with respect to the properties given to Santhosh Reddy, whether the said properties are not assets allotted to him by way of partial partition ?

(ii) Whether the Tribunal was right in holding that Rs. 69,261 was property included in the computation of the net wealth of the assessee famil ?"

10. In our opinion, two questions of law arise from out of those mentioned by the Commissioner of Wealth-tax and having regard to the decision of the Supreme Court in Commissioner of Income Tax v. Scindia Steam Navigation Co. Ltd., we are of the opinion that the questions raised on behalf of the assessee must also be referred. Therefore, the questions referred ar :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the gifts made on Santhosh Reddy, Saraswathi Reddy and Leenatha Devi were reasonable and vali ?

(ii) Whether the Tribunal was right in holding that the inclusion of only Rs. 69,261 in the net wealth of the assessee-familyy was justified ?

(iii) If the answer to question No. (i) is in the negative, as regards the properties gifted to Santhosh Reddy, whether those assets could be said to have been allotted to him as on partial partition ?"

[After setting out the statement of case as above, K. S. HEGDE J. continued.]

11. The admitted facts of the case are that the investments with which we are concerned in this case were made out of the assets of the Hindu Mitakshara family of which the assessee is the karta. He is said to have invested a sum of Rs. 1,04,261 in the name of his wife, Mrs. N. Sarojini Devi, Rs. 34,707 in the name of his son, N. Santhosh Reddy, Rs. 16,534 in the name of his major unmarried daughter, Miss. N. Saraswathi Reddy, and Rs. 13,533 in the name of his minor unmarried daughter, Miss. N. Leenatha Devi. The primary question for consideration is whether these investments should be excluded in computing the net wealth of the assessee for the assessment year 1957-58.

12. of the Wealth-tax Act, 1957, to be hereinafter referred to as the "Act", provides that subject to the other provisions contained in the "Act", there shall be charged for every financial year commencing on and from the first day of April 1957, wealth-tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the schedule. Therefore, the question for decision is whether the investments in dispute can be considered as the wealth of the Hindu undivided family of which the assessee is the karta. In paragraph 8 of the Tribunal's order, the question arising for decision on this facet of the case was formulated by the Tribunal in the following manne :

"The point at issue now is whether the sum of Rs. 1,34,025 belongs to the family or have they been given away to the wife, son and daughter in the recognised and acceptable manner according to law. Any subtraction in the totality of the assets belonging to the Hindu undivided family can be by way of gifts by the father or by partial partition and so far as gifts are concerned they should be within the reasonable limit."

13. Even after formulating the question of law arising for decision in the manner set out above, the Tribunal without addressing itself to the question whether the

sums in question belong to the family or not, straightway proceeded to consider whether the gifts in question are reasonable in character. This, in our opinion, is a wrong approach to the subject. The first question the Tribunal had to decide was whether the Hindu undivided Mitakshara family in question continues to be the owner of the amount in dispute.

14. Law relating to gifts is embodied in Chapter VII of the Transfer of Property Act, which chapter includes sections 122 to 129. Section 122 lays down :

"'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."

Section 123 lays down the mode of transfer. That section reads :

"For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered."

15. The remaining sections in that chapter are not relevant for our present purpose. From these sections it is seen that for a valid gift there must be a relinquishment by the donor without consideration of his right in the property transferred to the donee and the donee's acceptance of the same.

16. In the instant case, all that is shown is that the karta had made some investments in the name of his wife, son and daughters. It is not shown that he had delivered the amounts in question to the alleged donees or that he had even delivered to them the relevant documents of title. There is also no evidence to show that the donees have accepted the alleged gifts. In these circumstances, it is difficult to hold that there were any gifts in favour to hold that the investments in dispute cannot be considered as gifts.

17. We shall first take up the case of the alleged gift in favour of N. Santhosh Reddy. Admittedly, he is undivided from his father, and his father and himself are the coparceners in a Hindu undivided family. He is as much the owner of the property in question as the karta is. No one can make a gift to himself. Every gift presupposes a donor and a donee. As observed by the Madras High Court in *A. Basaviah Gowder v. Commissioner of Gift Tax* :

"It is inherent in the section that the person so transferred was the owner of the property and the person to whom it is transferred was not previously the owner of the property. It is no doubt possible for a person having joint ownership of the property along with another to transfer his interest in such property to the other or to any other person. That would apply to cases of either joint tenancy or tenancy-in-common. The question in the present case is however different in

that Basaviah Gowder occupied a special position under the law as the karta of a joint Hindu family, the ownership of properties of which is governed by the rules of Hindu law. In so far as Basaviah Gowder and his two sons, who constituted the members of the Hindu undivided family with Basaviah Gowder as the karta thereof are concerned, it is obvious that the sons had an interest in the property by reason of birth, with the rights of survivorship as among the members of the family. It does not therefore appear to be open to the karta or any other coparcener to make a gift of any portion of the joint family property to another member of the family. In each and every item of property all the coparceners in the family were equally entitled and so long as the family continued to be joint, no one can predicate the extent of any such interest. It would not doubt be otherwise if there was a division in status of the members of the family at any particular time. But as a member of a joint Hindu family the law is undoubtedly that that member could not validly convey by means of a gift any portion of the family property which on that date was joint family property. It is really unnecessary to refer to decisions. We may however refer to *Palwanna Nadar v. Annamalai Ammal*, where the learned judges, on a review of the case law, observed thus :

"The special powers of a father do not extend beyond purposes warranted by special texts. It is settled law that a father has special powers over the movable properties for indispensable acts of duty and over immovable properties for pious purposes. Since indispensable acts of duty mean and include pious purposes, a father has no larger power over movable properties than over immovable properties except in the matter of gifts through affection, in spite of the difference in the terminology used by the texts".

18. We are in entire agreement with these observations. The karta of the family was wholly incompetent to gift a portion of the undivided property in favour of his son.

19. The assessee appears to have urged before the Tribunal in the alternative that the investments made in the name of his son, N. Santhosh Reddy, must be considered to have been made in pursuance of a partial partition. Though this contention appears to have been urged before the Tribunal, it does not appear from the decision of the Tribunal that it felt that there was even a case for consideration. It is not the case of the assessee that there was any division of status between him and his son. No admissible, much less relevant, evidence had been placed before the Tribunal in support of the plea that the investments made in the name of Santhosh Reddy were in pursuance of a partial partition. The plea of partial partition is founded on no evidence. In fact, that plea is wholly inconsistent with the plea that the investments in question were gifts by the karta in favour of his son. That evidently was the reason why the Tribunal brushed aside that contention.

20. For the reasons mentioned above, the investments standing in the name of N. Santhosh Reddy should be considered as the family investments and

consequently, the same forms part of the wealth of the family on the relevant valuation date.

21. Now coming to the investments standing in the name of Mrs. N. Sarojini Devi, the wife of the assessee, the Tribunal has come to the conclusion that some of them are family assets; but as regards others it has not said anything. Its finding that some of the investments in question amount to unreasonable gifts is challenged on the ground that the Tribunal having come to the conclusion that there was a gift in favour of the person concerned, it could not have gone into the question its reasonableness, as such gifts are not per se void but are only voidable at the instance of the members of the family and not by the revenue. We have not thought it necessary to go into that question as, in our opinion, no gift in favour of the wife of the] assessee has been established. All that is proved is that the assessee had invested certain sums in the name of his wife. It is not even shown that the relevant title deeds have been handed over to the wife. The doctrine of advancement familiar in English law has no application in this country. See the decision of the Privy Council in *Sura Lakshmiah Chetty v. Kothandarama Pillai*. Our conclusion that the investments in question cannot be considered as gifts finds support from the decision of the Allahabad High Court in *Mrs. T.C. Paul Vs. Nathaniel Gopal Nath* , with which we are in full agreement. The decision of the Punjab High Court in *S. Raghbir Singh Sandhawalia v. Commissioner of Income Tax*, on which much reliance was placed by the learned counsel for the assessee and which was also relied on by the Tribunal must be held to have been decided on the peculiar facts and circumstances of that case. In Punjab, it appears the custom prevailing permits the karta to make within reasonable limits, gift of family properties, in favour of his wife. That apart, in that case, the son of the karta, who was the only coparcener in the family, by his conduct appears to have assented to the transfer in dispute. On the facts of that case, the court came to the conclusion that there was an intention on the part of the karta to gift the shares in question to his wife and the gift being made to his own wife, must be presumed to have been made out of love and affection.

22. It is not known on what basis the Tribunal made a distinction between the investment of Rs. 69,291 and the investment of Rs. 25,000 in Ten Year Treasury Savings Deposit Certificates and the further investment of Rs. 10,000 in 12 year National Plan Certificates. What applies to the investments of Rs. 69,291 must necessarily apply to the other investments as well.

23. This leaves us with the alleged gifts in favour of the two daughters of the assessee. Both the daughters are yet unmarried. One of them is a minor. It was not said that the gifts in question were made with a view to make any marriage provision. In fact, as mentioned earlier, they are not proved to be gifts at all. They are mere investments by the father in the names of his daughters.

24. It was laid down by a Division Bench of the Madras High Court in *Palwanna Nadar v. Annamalai Ammal*, that a father can make a gift of a small portion of the joint family immovable property to his daughter at or after marriage, such

gifts being customary in Madras; but it is not permissible to make a future provision.

25. The Supreme Court in *Guramma v. Mallappa* had laid down that the Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have share in the family property at the time of partition; that right was lost by efflux of time; but it became crystallized 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 the 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 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. In the instant case, the gifts in question were not said to have been made either as marriage provision or for the maintenance of the daughters. The daughters are still living with the father. The question of their maintenance will arise only if and when they leave the father's home. It was not even said that their marriages are under contemplation. A question may arise in appropriate cases that whether in view of the changes effected in the Hindu law, viz., providing a share for the daughter in her father's share, the customary obligation of providing for her maintenance or marriage portion is at all subsisting. Suffice it for the purpose of the case to say that the alleged gifts with which we are concerned in this case were not said to have been made either as marriage portions or as maintenance arrangements. At best, they represent generous gestures on the part of the father.

26. The principle of law that the karta of a Hindu Mitakshara family has large powers over the disposal of the family movables is hardly applicable to cases like the one before us.

27. In view of our above conclusion, it is not necessary to go into the controversy whether an unreasonable gift made by a karta of a Hindu undivided family is only voidable or void. Therefore, we have not referred to the decisions read to us on that question.

28. As a result of our above findings, our answer to the question referred to us are in favour of the revenue and against the assessee. Our answer to the first question is that, on the facts and in the circumstances of the case, the Tribunal was not right in holding that the gifts made to Santhosh Reddy, Saraswathi Reddy and Leenatha Devi are valid. Our answer to the second question is that the Tribunal should have included in the net wealth of the family Rs. 35,000 invested in the name of Mrs. N. Sarojini Devi detailed in paragraph II of the Tribunal's order. Our answer to the third question is that, on the facts and in the circumstances of the case, it is not possible to hold that the monies invested in the name of Santhosh Reddy represent a partial partition in the family.

29. The assessee shall pay the costs of the revenue. Advocate's fee Rs. 250.