(1981) 06 CAL CK 0026

In the Calcutta High Court

Case No : ED Matter No. 113 of 1970

Controller of Estate Duty APPELLANT

Vs

Arati Ghosh RESPONDENT

Date of Decision : 17-06-1981

Acts Referred:

Constitution of India, 1950 — Article 252
Estate Duty Act, 1953 — Section 2(xxiv), 22, 24, 24(1), 35

Citation : (1982) 10 TAXMAN 319

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : Ballai Pal and B.K. Naha, for the Appellant;R.C. Deb and M. Banerjee, for the Respondent

Judgement

Sudhindra Mohan Guha, J.—This is a reference by the Controller of Estate Duty, West Bengal, Calcutta, which arises out of the estate duty proceedings consequent on the demise of Smt. Charushila Dassi, widow of Aukshoy Kumar Ghosh, on November 13, 1959. Aukshoy Kumar Ghosh died on November 23, 1909 and before his death he disposed of his properties by a testament dated May 11, 1907. Letters of administration with a copy of the will annexed were granted to Smt. Charushila Dassi as the Administratix by the High Court on April 4, 1910. The estate was worth about Rs. 17.64 lakhs at that time. Under the said will the testator gave Smt. Charushila Dassi, for her life, a right of residence in the family dwelling house. She had to be maintained out of the estate in the same way as she was being maintained during his lifetime. While being so maintained, she was to receive Rs. 25 per month out of the estate for personal expenses and religious ceremonies. If she desired to have her maintenance separately, she was to be paid Rs. 80 per month. If she desired to live in a separate house, then she was to be paid Rs. 100 per month. Aukshoy Kumar Ghosh died without any issue. So his wife was given the power to adopt. She wanted to adopt Sambhu Nath Ghosh, son of Rajendra Krishna Ghosh, the first cousin of her deceased husband. An agreement was entered into between

Rajendra Krishna Ghosh who had also been appointed guardian of Sambhu Nath Ghosh by the Calcutta High Court and Smt. Charushila Dassi. This agreement was dated July 3, 1913, and the terms were sanctioned by the High Court by an order dated June 30, 1913. The substance of the agreement was as follows:

(1) to take the affidavit of assets in her inventory filed by Charushila Dassi in the testamentary procedings as correct and without question;

(2) to deem the accumulations of income of the estate (up to that time) as her personal property;

(3) to declare that Charushila Dassi was to be entitled to the whole of the income of the estate subject to her maintaining the adopted son and defraying his marriage expenses;

(4) to give her separate and suitable accommodation for residence in the family dwelling house;

(5) after Sambhu Nath attained majority, in case she desired to live separately, to pay her Rs. 30,000 for her residence, she having thereafter no further claim on the family for residence;

(6) Charushila Dassi to hand over the entire estate excluding her personal and stridhan property and the accumulation of the income during minority to Sambhu Nath on his attaining majority; and

(7) Charushila being entitled thereafter to a sum monthly of Rs. 2,000 for recovery of which she could get a receiver appointed in case it fell in arrears for three months.

2. On November 25, 1935, Charushila Dassi and the adopted son who was then known as Debi Prasanna Ghosh entered into an agreement so as to transfer the entire properties to Debi Prasanna. It will be necessary to mention some of the clauses of agreement. They are as follows:

19. And Whereas the said Debi Prasanna has requested the said Smt. Charushila Dassi as such administratrix as aforesaid to transfer unto him all the properties of the said estate now in her hands which are set out in Schedule ''A'' hereunder after retaining in her hands such properties as could be sufficient to yield her a net income of the said monthly sum of Rs. 2,000 to be appropriated by her to her own absolute use and benefit in terms of the said agreement.

20. And Whereas it has been agreed by and between the parties that the said Smt. Charushila Dassi should retain in her hands during her lifetime the parcels of property set out in Part II of Schedule ''A'' hereunder and should pay the municipal taxes and all other outgoings and also bear all costs of repairs of the said properties and should realise and receive the income thereof in full satisfaction of her monthly allowance of rupees two thousand without being accountable to the said Debi Prasanna Ghosh in respect of the income and expenditure in respect of these presents in any manner whatsoever and should

transfer to the said Debi Prasanna Ghosh all other properties of the estate of Aukshoy Kumar Ghosh (deceased) which are set out in Part I of the said Schedule hereunder.

22. And it is hereby agreed and declared by and between the parties to these presents that the said Smt. Charushila Dassi shall during the term of her natural life retain in her hands and seize and possess all the parcels of property set out in Part III of Schedule ''A'' hereunder and hold the said and will only be responsible for keeping the same in the same condition and the same state of repairs as the same now are subject to reasonable wear and tear and realise the rents, issues and profits thereof paying thereout the outgoings and expenses of management to be incurred by her and of necessary repairs and retain the surplus rents, issues and profits and appropriate the same to her own personal use and benefit absolutely and in full discharge of her right and claim to the said monthly sum of Rs. 2,000 without being accountable in any manner whatsoever to the said Debi Prasanna Ghosh in respect of the income and expenditure in respect of these properties.

23. And it is further declared by and between the parties hereto that the said Smt. Charushila Dassi shall have such right of residence as is provided for in clauses 4, 5 and 6 of the said agreement and that the other clauses of the said agreement as and in so far as the same may still be applicable between the parties herein shall remain in full force and effect.

3. The properties retained by Smt. Charushila Dassi were as follows:

(1) 33, Shyampukur Street,

(2) 132/2, Cornwallis Street,

(3) 138/1, Cornwallis Street,

(4) 3, Guru Charan Lane,

(5) 60/1, Raja Raj Ballav Street,

(6) 73, Colootola Street.

4. Charushila died on November 13, 1959. In the estate duty assessment following her death, Debi Prasanna as accountable person claimed exemption, with reference to the aforesaid six properties retained in her hands for the payment of Rs. 2,000 per month for her maintenance, u/s 24 of the E.D. Act. The Deputy Controller held that the accountable person was not entitled to the exemption provided for in section 24 of the Act.

5. The accountable person appealed to the Appellate Controller and contended that the properties were exempt u/s 24 of the E.D. Act. The Appellate Controller held that section 24 of the E.D. Act had no application to the facts of the case, and the value of the property in question was liable to duty as property passing on death u/s 5 of the E.D. Act. The claim of the accountable person for the

exemption of the properties from estate duty u/s 24 of the E.D. Act was rejected.

6. There was a further appeal to the Tribunal by the accountable person. It was contended that Charushila Dassi had no life interest in the property, that she had only a right to collect the rents therefrom and she retained the properties as the administratrix and that the properties did not pass and could not be deemed to pass on her death. The departmental representative, on the other hand, submitted that sections 22 and 24 had no application, that the properties passed on her death, that, in any event, they must be deemed to pass as interest ceasing on her death and that in order to adjudicate on the point, all the documents should be taken together.

7. The Tribunal, after analysing the requirements of section 24, held that the interest of Charushila Dassi in the present case was determinable on her death and was thus for her life, that she was not competent to dispose of the properties and that section 24 applied. In the view of the Tribunal even though the interest created in favour of Charushila Dassi was by an agreement, it could come within the scope of the term "disposition" as contemplated by section 24. It was held that section 22 had no application and the fact that there was a charge u/s 7(d) was not by itself enough in the present case to bring it into the assessment as the exemption u/s 24 applied here. The Tribunal further held that her rights were derived under the agreement of 1935. In this view the six items of the properties allowed to be retained by Charushila Dassi under the agreement dated November 25, 1935, were held to be exempt in view of section 24 of the Act.

8. On the aforesaid facts, the Controller applied for a reference and the Tribunal referred the following question for our consideration:

Whether, on the facts and in the circumstances of the case, the six properties retained by Charushila Dassi under the document dated November 25, 1935, till her death were governed by the exemption u/s 24 of the Estate Duty Act ?

9. In order to deal with the question, sections 5 and 7 of the E.D. Act should be considered at the outset. Section 5 of the Act reads as follows:

5. (1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the territories which immediately before the 1st November, 1956, were comprised in the States specified in the First Schedule to this Act... which passes on the death of such person, a duty called '' estate duty '' at the rates fixed in accordance with section 35.

(2) The Central Government may, by notification in the Official Gazette, add the names of any other State to the First Schedule in respect whereof resolutions have been passed by the Legislatures of those States adopting this Act under clause (1) of article 252 of the Constitution in respect of estate duty on

agricultural lands situate in those States, and on the issue of any such notification the States so added shall be deemed to be States specified in the First Schedule within the meaning of sub-section (1).

10. u/s 7 of the Act, property passing on the death of the deceased is deemed to include "property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which benefit accrues or arises by the cesser of such interest". Section 7(1), which is relevant for our purpose, reads as follows:

(1) Subject to the provisions of this section, property in which the deceased, or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceased''s death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayatn or Aliya-santana law.

11. Mr. B.L. Pal, learned advocate for the Revenue, contends that section 24 of the E.D. Act had no application to the present case. According to him, Charushila Dassi had only a life estate in the estate left by her husband, the rightful owner, and her interest had ceased on her death. In such circumstances, the estate duty is leviable u/s 7 of the Act as on a "cesser of interest" and also because the property passes on the death u/s 5 of the Act. u/s 7, property passing on the death of Charushila is deemed to include property in which the deceased had an interest ceasing on the death of the deceased to the extent to which benefit accrues or passes by the cesser of interest. According to Mr. Pal, there was some security on six items of property or, in other words, six items of property were charged and this charge was not, nor was it in any way equivalent to, an interest in a proportion of the capital of the property charged, sufficient to produce the yearly amount. According to him, it is nothing more nor less than a right to receive the stipulated monthly sum out of the income from the income from the whole of the property charged. It confers no interest in any particular part of the property charged but simply a security extending over the whole. Next he refers to certain decisions for conveying the manner of disposition within section 24 of the Act. First reference is made to the decision of the Supreme Court in the case of The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, . He refers to a passage at pp. 605-606 of the report. It is stated therein that a reading of this section clearly goes to show that the words "disposition", "conveyance", "assignment", "settlement", "delivery" and "payment" are used as some of the modes of transfer of property. The dictionary gives various meanings for those words but those meanings do not help us. We have to understand the meaning of those words in the context in which they are used. Words in the section of a statute are not to be interpreted by having those words in one hand and the dictionary in the other. In spelling out the meaning of the words in a section, one must take into consideration the setting in which those terms are used and the purpose that they are intended to serve. If so understood, it is clear that the

word "disposition", in the context, means giving away or giving up by a person of something which was his own, "conveyance" means transfer of ownership, "assignment" means the transfer of the claim, the right or property to another, "settlement" means settling the property, right or claim, conveyance or disposition of property for the benefit of another, "delivery" contemplated therein is the delivery of one''s property to another for no consideration and "payment" implies gift of money by someone to another. In this context of the matter, Mr. Pal draws our attention to para 3 of the will at p. 7 of the paper book. Hereunder maintenance for Charushila was provided for, so also the right of residence in the family dwelling house. There was also a provision that if the wife desired to live separately or in a separate house, in that case the amount of maintenance would be at an enhanced rate. After the death of the testator there was an agreement on 3rd of July, 1913 between Rajendra Krishna Ghosh, the father of Sambhu Nath Ghosh, who was being adopted, and Charushila Dassi, widow of Aukshoy Kumar Ghosh. Under para 3 of the agreement it was provided that the said Smt. Charushila Dassi shall be entitled to the whole of the income of the estate of the said testator during the minority of the said Sambhu Nath Ghosh but the said Smt. Charushila Dassi shall make suitable provision for the maintenance and education of the said infant, Sambu Nath Ghosh, and shall defray the expenses of his marriage if he should be married during minority and in the event of such a marriage provide suitable maintenance to his wife. Paragraph 7 provides that on the said Sambhu Nath Ghosh attaining majority the said Smt. Charushila Dassi shall make over to him the entire estate of the testator, movable and immovable, and deeds and documents but not her personal or stridhan property. The accumulation of the income of the estate in her hands during the minority of the said Sambhu Nath Ghosh will belong to her absolutely. Paragraph 8 of the agreement states that on the said Sambhu Nath Ghosh attaining majority the said Smt. Charushila Dassi shall cease to be entitled to the whole of the income of the said estate but she shall be entitled only to a monthly sum of Rs. 2,000 to be paid to her every month in lieu of her maintenance or any other claim on the said estate and she shall be at liberty when she makes over the said estate to Sambhu Nath Ghosh on his attaining majority to retain in her hands, property either in the shape of houses or zamindaries or investment in Government securities or mortgages sufficient to yield her a monthly income of Rs. 2,000.

12. Thereafter, on attaining majority on 7th March, 1932, Sambhu Nath Ghosh, who was then known as Debi Prasanna Ghosh, entered into an agreement with Charushila Dassi on 20th November, 1935. In para 19 of the agreement it is stated that Debi Prasanna Ghosh requested Smt. Charushila Dassi to transfer unto him all the properties of the estate now in her hands after retaining in her hands such properties as would be sufficient to yield her a net monthly income of Rs. 2,000 to be appropriated by her to her own absolute use and benefit in terms of the said agreement. In pursuance of that it appears that Charushila Dassi retained six items of properties for her lifetime and she was to pay the municipal taxes and all other outgoings and also bear all costs of repair of the said

properties and should realise and receive the income thereof in full satisfaction of her monthly allowance of Rs. 2,000 without being accountable to the said Debi Prasanna Ghosh in respect of the income and expenditure in respect of these properties in any manner whatsoever and should transfer to the said Debi Prasanna Ghosh all other properties of the estate of Aukshoy Kumar Ghosh (deceased).

13. With reference to this agreement it is contended by Mr. Pal that what Charushila had in these six items of properties was only the life estate and on her death all interest ceased to exist and that again passed to the accountable person. According to him, the term "disposition" in the context of section 24 means giving away or giving up by a person of something which was his own. According to him, Debi Prasanna Ghosh after attaining majority became the absolute owner of the properties subject to the right of maintenance of the widow of the testator, Aukshoy Kumar Ghosh. Again, according to him, by the agreement dated 20th November, 1935, he could not have conferred on her any right more or less than that of a life estate. In this connection, he refers to the decision of the Supreme Court in the case of The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao, . Herein it has been held by the Supreme Court that the term "disposition", in the context of section 24, means giving away or giving up by a person of something which was his own. It is a mode of transfer of property. In the aforesaid case there was a partition between the members of an HUF. The deceased, a widow, who had a right to her husband''s share in the non-agricultural properties as well as a right to be maintained from the family income gave up both the rights and in lieu thereof, the other members of the family allotted to her 25 acres of wet land which she was to enjoy during her lifetime. She had no right to alienate the property allotted to her share. The question arose whether the arrangement under the partition deed was a disposition within the meaning of section 24 and there was merely a reverter to the disponer and whether section 24 could be invoked. The court held that under the partition deed there was merely an adjustment of rights of the various members of the family and that this partition in the HUF did not amount to a "disposition" within the meaning of section 24 and hence the section did not apply. On the facts of the case the Supreme Court held that section 7 applied, as, on the death of the deceased, her interest in the wet land ceased and passed to the other members of the joint family.

14. Reference is also made to the decision of the Supreme Court in the case of Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, . Mr. Pal refers to a passage in p. 107 of the report, where the observation of Williams J. in Grinwade v. Federal Commissioner of Taxation [1949] 78 CLR 199 (Australia), dealing with the expression "disposition of property" was quoted. The relevant passage goes like this:

The whole emphasis of paragraph (f) is upon a transaction entered into by one person, which seems to me to mean that where there is an act done by one person with the requisite intent, and as a result there is a transfer of value from any property of that person to the property of another person, the conditions of liability are satisfied.

15. Reference is also made to the decision of a single Bench of this High Court in the case of Baidyanath Banerjee v. Asst. CED [1965] 55 ITR (ED) 31. It was held therein that "property passes" within the meaning of section 5 of the E.D. Act, 1953, when property changes hands. It is not necessary that there should be passing of title in such property and estate duty was properly leviable on the death of the wife, S. It is contended by Mr. Pal that in order to attract section 5 of the E.D. Act, the passing of the ownership is not essential, what it requires is the passing of the possession in the property. Under the agreement the possession of six items of the property was passed to Charushila Dassi under an agreement with the adopted son. On her death such possession went to the son.

16. Last of all, reference is made to the decision of the Madras High Court in the case of Assistant Controller of Estate Duty Vs. R. Sarangapani Chettiar, . In this case, applying the decision of the Calcutta High Court in Baidyanath Banerjee v. Asst. CED [1965] 55 ITR (ED) 31, their Lordships held that on the basis of the findings of the High Court in a civil suit the resultant position was that under the Will of G, after the death of S, the life interest was still to be vested on R and on her death the property would devolve on the respondent, who was the adopted son of SC, as the descendant of SC. Accordingly, during the lifetime of R she was entitled to be in possession of the property and enjoy the whole of the income as the life estateholder, though the title to the property had not been vested in her absolutely and, on her death, SC if he had been alive would have been entitled to take possession of the estate and enjoy the income therefrom. Though SC died during the lifetime of R, by reason of the adoption, which took effect under the Hindu law from the date of death of SC, the adopted son became entitled to take possession of the estate on the death of R and hence there was clearly a passing of the property on the death of R which would attract estate duty under the provisions of section 5 of the E.D. Act. It was further held that, the life interest created in favour of R, which was a right to possession of the estate and enjoyment of the entire income arising therefrom, ceased on her death and SC and his descendants became entitled to possession of the estate and enjoyment of the income, so that, what was merely a vested remainder enlarged into an absolute estate and that can be only by the life interest created in favour of the deceased ceasing and the corresponding benefit accruing to the adopted son. Section 7 of the E.D. Act was found to be applicable to the case. On the basis of the decision, it is contended by Mr. Pal that by an agreement with the adopted son, only the life interest was created in favour of Charushila Dassi which was nothing but a right to possession of the six items of property and enjoyment of the entire income arising therefrom ceased on the death of Charushila and the adopted son, Debi Prasanna Ghosh, was entitled to possession of the estate and enjoyment of the income which was being possessed and enjoyed by Charushila.

17. Mr. Deb, learned counsel for the accountable person, also refers to the relevant portions of the agreement between Rajendra Krishna Ghosh and Charushila Dassi dated 3rd July, 1913, and the agreement between Charushila Dassi and Debi Prasanna Ghosh, the adopted son, dated 20th November, 1935, and points out that after attaining majority on 7th March, 1932, Debi Prasanna Ghosh became the absolute owner of the estate of the testator Aukshoy Kumar Ghosh and after becoming such absolute owner he settled certain properties, viz., the six items, with Charushila Dassi for the enjoyment of her life estate only. It is also pointed out that it is he who fixed the sum of Rs. 2,000 as the monthly amount of maintenance and for the purpose of realising and receiving the income in full satisfaction of such monthly allowance she was given only possession in such properties. He adopts the arguments in the case of The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao, , and contends that partition is not a disposition. He draws our attention to p. 266 of the report, wherein it is observed by their Lordships that a partition in the HUF cannot be considered either as "disposition" or "conveyance" or "assignment" or "settlement" or "delivery" or "payment" or "alienation" within the meaning of those words in section 2(xxiv).

18. After attaining majority Debi Prasanna Ghosh, no doubt, became the absolute owner of the estate left by the testator, Aukshoy Kumar Ghosh, but that was subject to the right of residence and maintenance of the wife of the testator. The right of maintenance did not flow from the agreement dated 20th November, 1935, between Charushila Dassi and Debi Prasanna Ghosh, but from the Will itself which was executed by Aukshoy Kumar Ghosh making provision for the right of residence and the right of maintenance of his wife. Under the agreement only such amount of maintenance was enhanced and for the right of such maintenance certain properties were charged or given possession to Charushila Dassi who during her lifetime was to enjoy the entire income therefrom. In this view of the matter, we cannot be in agreement with Mr. Deb that the right to enjoy the property in lieu of maintenance had its origins in the agreement itself or was a "disposition" within the meaning of section 24 of the E.D. Act by Debi Prasanna Ghosh.

19. He also cites the decision of the Bombay High Court in the case of Controller of Estate Duty, Pune Vs. R.G. Deshmukh, . In this case, certain watan lands were granted to the family of G in 1899. The grant was to continue so long as there was a male heir to the watan, whether lineal, collateral or adopted within the limits of the watandar family. An adoption could be made from outside the watandar family with the permission of the Government and on payment of an annual nuzzerana. G died in 1926 leaving a widow, A, but without any male heir, lineal, collateral or adopted. The widow, A, adopted a boy from outside the watandar family with the permission of the Government on the payment of an annual nuzzerana. Prior to the adoption, on April 18, 1931, an agreement was entered into between A and D, the natural father of the boy, proposed to be adopted, the agreement being signed only by D. Under the terms of the

agreement, A could possess and enjoy certain watan lands during her lifetime. Thereafter, there were some disputes between A and her adopted son, R, which were amicably settled and on December 22, 1934, an agreement was entered into between A and R to the effect that A could enjoy the watan lands for her lifetime. A died in 1965 and the question was whether the value of the watan lands was liable to be included in A''s estate. R, the accountable person, claimed that in view of section 24 of the E.D. Act, 1953, the value of the watan lands could not be so included. It was held that on the death of G the watan was liable to lapse and it was only by reason of the adoption made by A that the watan continued. Prior to R''s adoption, A had no interest in the lands. Once the adoption was made, that adoption related back to the death of G. The right conferred on A to possess and enjoy the watan lands was conferred by the agreement dated April 18, 1931. The agreement had been signed only by R''s father and was not an adjustment of the rights of members of an HUF and that agreement made a disposition of the watan lands in favour of A. Even assuming that the agreement of April 18, 1931, did not amount to a disposition, such a disposition was made by the agreement of December 22, 1934, which had been signed by R. The watan lands were not liable to be included in the estate of A by reason of section 24(1). In this case, after adoption, the adopted son became the absolute owner and thereafter by an agreement a right was conferred on the wife of the deceased, the rightful owner, to possess and enjoy certain lands. So, it is apparent that the widow in this case had no pre-existing right. In the case before us such a right of maintenance and dwelling was reserved by the will itself. As stated earlier, what Debi Prasanna Ghosh did under the agreement was only to enhance the amount of maintenance and, for this purpose, exclusive possession of certain items of property was delivered to her. The decision in this case has got no application to the facts and circumstances of the present case.

20. In reply it is pointed out by Mr. Naha, and rightly, that the test is whether Debi Prasanna Ghosh could transfer and dispose of the six items of properties during the lifetime of Charushila or at the time when he purported to do so as the same was under the administration of Charushila under the Will.

21. In the above facts and circumstances of the case, we are of the opinion, that the Tribunal was not right in holding that the accountable person in this case came under the exemption of section 24 of the Act. In that view of the matter we answer the question in the negative and in favour of the Revenue.

22. Each party to pay and bear its own costs. Let the cause title of the matter be amended pursuant to the order dated January 16, 1980.

Sabyasachi Mukharji, J.

I agree.

