

(1966) 03 KL CK 0013

In the High Court Of Kerala

Case No : Income-tax Reference Case No. 40 of 1965

Controller of Estate Duty

APPELLANT

Vs

Arunachalam Chettiar

RESPONDENT

Date of Decision : 07-03-1966

Acts Referred:

Estate Duty Act, 1953 — Section 10, 64

Citation : (1968) 67 ITR 607

Hon'ble Judges : Govindan Nair, J

Bench : Single Bench

Judgement

Govindan Nair, J.—At the instance of the Controller of Estate Duty, Kerala, the Income Tax Appellate Tribunal, Madras Bench, acting u/s 64(1) of the Estate Duty Act, 1953, has referred the following question to this court:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the value of the entire properties mentioned in the partition deed dated 6th December, 1954, is not dutiable u/s 10 of the Estate Duty Act.

2. The partition deed, dated 6th December, 1954, is annexure "A" to the statement of the case and this partition deed was executed among the deceased, Shri Pachayappa Chettiar, and his two sons, Arunachalam Chettiar and Kandaswamy Chettiar. It is stated at the beginning of this document that the parties to the document were an undivided Hindu family and that they did not possess any coparcenary properties at the time of the execution of the partition deed. The properties dealt with under the partition deed, it is asserted in the document were acquired with the joint labour and efforts of the father and his two sons. The only property with which we are concerned in this reference related to the "mill property" though the question as worded may indicate that all the properties in the partition deed are included in the reference. This, in the mill property, consisted of land, factory and building. As a result of the partition deed, though the intention appears to have been to divide all the properties including

the immovable properties equally among the three members of the family, the bulk of the properties were actually allotted to Pachayappa Chettiar. To his share was also allotted the mill property. In order to equalise the shares, it was provided that Pachayappa Chettiar should pay to his sons, Arunachalam and Kandaswamy, the sum of Rs. 24,293 and Rs. 24,243, respectively, the share of each being value at Rs. 29,442-10-2. This partition deed was followed by a partnership deed. The essential feature of this partnership deed was that the said Arunachalam Chettiar and Kandaswamy Chettiar were given one-third interest in the mill property and by conferring such right which was to be their contribution towards the partnership assets, the liability of Pachayappa Chettiar under the partition deed to pay the amounts to the sons which we have mentioned was wiped out. Under this partnership deed, the business continued till the death of Pachayappa Chettiar on 21st January, 1960. The question then arose as to the property that can be said to have passed at the time of his death. According to the assessee it was only one-third interest in the mill property and according to the department it was the entire interests on such property. The assessee case has been accepted by the Tribunal and the question to be decided is whether this is the correct view to be taken.

3. We may notice here that the main contention that was raised by the assessee before the Tribunal was that all the properties were joint family properties at the time of the partition deed. Those properties have been acquired by the joint efforts of the members of the family. Counsel for the assessee also stressed before us that this case of the assessee has been accepted by the Tribunal. We have scanned the order of the Tribunal and we are unable to find anything specific other than the remark contained in paragraph 7 of the order of the Tribunal reading as follows:

While there is everything to indicate from the trends of the document that Pachayappa had built up the business with the active assistance of his sons, and at a certain stage, completely scrapped his identity as an individual, and given over all to the Hindu undivided family for being partitioned between its members, there is no doubt there is payment of salary to the sons, but the payment of salary to the junior members.....

4. Though they said, so, they came to the conclusion at the end of the paragraph:

It is enough if a state of affairs exists by which an individual has, even though there is nucleus, given over to the Hindu undivided family all assets solely belonging to him when a partition is claimed of those properties. Therefore, we are of the opinion that no gift took place on 6th December, 1954, that what all took place on that date was only a partition of Hindu undivided family assets which had been given to the family by Pachayappa prior to that date.

5. In the light of the above conclusion reached by the Tribunal we will proceed on the basis that Pachayappa Chettiar had impressed his property - which we will assumed for the purpose of this case to be his separate property - with the

character of joint family property at some time antecedent to the execution of the partnership deed. The question then is whether in such a process any transfer is involved and whether such a process is possible where there is no nucleus of coparcenary property. An identical question arose before the Bombay High Court in the decision of *Damodar Krishnaji Nirgude v. Commissioner of Income Tax Bombay South*. One of the contentions raised there in what that, if there was no coparcenary property to start with, separate property of a member cannot be converted into coparcenary property. Their Lordships observed:

Now in our view, possess in of ancestral or joint family property under the Hindu law is not a condition precedent for enabling a coparcener to impress his self-acquired property with the character of a coparcenary property. What constitutes impressing self-acquired property with the character of a coparcenary self-acquired property with the character of a coparcenary property is the unequal act on the part of the coparcener to abandon his individual exclusive right in the property in favour of the coparcenary. It is a well-known principle of Hindu law that a coparcenary can exist even though it may own no coparcenary property. When a coparcenary can exist without possessing or owning coparcenary property, there is not reason why a coparcener could not be in a position to abandon his right in his self-acquired property in favour of the coparcenary. It is right under the Hindu law on the exercise of which the property.

6. We must then consider the vital questions to whether in the process of so impressing separate property with the character of coparcenary in the process of so impressing separate property with the character of a coparcenary property any transfer is involved. The earliest case, to which our attention has been drawn on this aspect, is the case decided by Justice Courts Trotter as Justice Srinivasa Aiyangar in *Thyalambal v. Krishna Pattar*. Justices Courts Trotter did not express any opinion on this question. But Mr. Justice Srinivasa Aiyangar observed:

Whether a member of a joint Hindu family who owns immovable property as his self-acquisition can convert it into joint family property without an instrument in writing registered in the provinces where the Transfer of Property Act in force, I think, admits of doubt... I find some difficulty in understanding the conversion of individual property into joint family property except by way of an exchange; and it is also possible that it may be by way of sale. It is no doubt true that the Transfer of Property Act does not provide for all kinds of transfer; but on analysis it will be found that such a conversion would partake of a character of one or the other of these transactions.

7. This doubt expressed by Srinivasa Aiyangar, Judge, had been the subject-matter of comment by Justice Orders of the same High Court in *Ramaswamy Naicker v. Raju Padayachi*. The relevant passage in which the learned judge referred to the observations of Justice Srinivasa Aiyangar runs thus:

The learned judge found difficulty in under standing the conversion of individual property into joint property except by way of a transfer and though that such a

conversion would on analysis be found to partake of the character of one or other of gift, exchange or sale. It is certainly difficult, speaking for myself and with all deference to the learned judge to see how the conversion would ordinarily be by exchange or sale. If the transaction were one by way of gift it being impossible for a man to make a gift to himself, I gather we should have to conceive the donor as in the position of a stranger to the coparcenary of which he is in fact himself a member. However, this is a question that need not be gone into by me at the present moment. The question is an interesting one raised by the learned judge as a matter of doubt in his own mind and it still awaits as far as I am aware an authoritative decision.

8. This we think, came in the decision of the Madras High Court in *M. K. Stremann v. Commission of Income Tax*. Mr. Justice Rajagopalan has dealt with this aspect after referring to the decision of Justice Srinivasa Aiyangar and Ramaswamy Naicker v. Raju Padayachi and the court came to the conclusion that the change of the separate property into coparcenary is effected by the unilateral action of the coparcener, and that right of his to make his property the property of the joint family is one of the incidents of a coparcenary. Justice Rajagopalan observed:

..... when the separate property of a coparcener ceases to be his separate property and becomes impressed with the character of coparcenary property there is no transfer of that property from the coparcener to the coparcenary. It becomes joint family property because the coparcener, who owned it up to then as his separate property, has by the exercise of his volition impressed it with the character of joint family or coparcenary property, to be held by him, thereafter, along with the others members of the joint family. It is by his unilateral action that the property has become joint family property.

9. This decision of the Madras High Court was confirmed by the Supreme Court in appeal and the decision of the Supreme Court is in *Commissioner of Income Tax v. M. K. Stremann*. Though this aspect of the case has not been dealt with specifically by the Supreme Court, the decision of the Supreme Court should have been otherwise if the conversion of the separate property into that of coparcenary property by the unilateral action of the coparcener who hold it as separate property, amounted to a transfer. We therefore, think that the decision of the Madras High Court has been approved by the Supreme Court.

10. The Madras High Court decision has been followed by the Bombay High Court in *Commissioner of Income Tax v. M. M. Khanna* and the Andhra Pradesh High Court in *Duggirala Sadasiva Vittal v. Bolla Rattain* has also taken the same view. We are in respectful agreement with these pronouncements and hold that Pachayapa Chettiar when he impressed his separate property with the character of joint family property, did not transfer those properties in favour of any person. This being so, there cannot be any question of there being a gift for we cannot conceive of a gift without there being a transfer. If there is no gift, it is not contended before us that section 10 of the Estate Duty Act is attracted or can

have any application.

11. Before answering the question in the light of what is stated above, we wish to clarify that the discussions of this case concern only the mill property and it has been agreed by counsel that that is the only property.

12. We answer the question referred to us in the affirmative that is in favour of the assessee and against the department. The question involved was not free from doubt and we think that the proper order to make regarding costs is to direct the parties to bear their costs. We do so.

13. Question answered in the affirmative.