

(1991) 12 MAD CK 0029

In the Madras High Court

Case No : T.C. No's. 110 to 112 of 1980 (References No's. 77 to 79 of 1980)

Controller of Estate Duty

APPELLANT

Vs

P.S. Narasimhan and another
P.S. Narasimhan and
another Vs Controller of Estate Duty

RESPONDENT

Date of Decision : 31-12-1991

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1993) 200 ITR 422

Hon'ble Judges : V. Ratnam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : N.V. Balasubramanian, for the Appellant; R. Janakrisaman, for the Respondent

Judgement

Ratnam, J.—In these tax case references, at the instance of the Controller of Estate Duty, Madras, and the accountable person and another

u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as ""the Act""), the following questions of law have been referred to this court for its

opinion :

1. Whether, on the facts and in the circumstances of the case, the value of the agricultural lands settled by the deceased in favour of his wife,

including those lands which the lady settled in favour of her relatives, from out of the lands received by her, could be included in the principal value

of the estate passing on the death of the deceased ?

2. Whether, on the facts and in the circumstances of the case, the value of the properties settled by him on his five settlees by documents dated

December 28, 1956, was includible in the principal value of the estate on his death ?

3. Whether, on the facts and in the circumstances of the case, the value of the agricultural lands received by the late P. S. Srinivasa Iyer by way of

settlement from the late Shri Ganapathi Subramaniam could be included in the principal value of the estate of the deceased ?

2. The circumstances giving rise to the aforesaid questions in these reference are as follows :

One Sri Krishna Iyer of Kaniyur owned extensive agricultural properties and he died in 1898, leaving behind him, three sons, of whom, the eldest

was Sri Venkatakrishna Iyer. Under a will of his father, Sri Krishna Iyer, Venkatakrishna Iyer obtained certain properties. After the death of Sri

Krishna Iyer, under partitions effected between Venkatakrishna Iyer and his two brothers on December 8, 1923, and December 10, 1923, in

respect of the properties not covered by the will of Sri Krishna Iyer, Venkatakrishna Iyer obtained certain other properties. Venkatakrishna Iyer

had a son, Rajagopala Iyer and a daughter, Thangammal, and Rajagopala Iyer, in turn, had a son and a daughter. Rajagopala Iyer and his son pre-

deceased Venkatakrishna Iyer and he adopted in 1929, Ganapathy Subramaniam, one of the sons of his daughter, Thangammal. After the

adoption, Venkatakrishna Iyer effected a partition between himself and his adopted son on July 17, 1929. On the death of Venkatakrishna Iyer in

1932, his adopted son, Ganapathy Subramaniam, became the full owner of the undivided properties owned by the family as well as the properties

that fell to his share and that of his adoptive father as well. On June 17, 1956, Ganapathy Subramaniam gifted to his wife, Smt. Kamala Ganapathy

Subramaniam (hereinafter referred to as ""Kamala"" for short), an undivided half share of his interest in all the agricultural lands owned by him in

respect of the lands held by him on full ownership as well as the lands in which he had only a share, as tenants-in-common with others. On

December 28, 1956, Ganapathy Subramaniam gifted his undivided half share in the agricultural lands under five deeds in favour of his father-in-

law, three brothers-in-law and a sister-in-law, each securing an undivided one-tenth share. On the same day, viz., December 28, 1956, Kamala

gifted the undivided half share in the lands obtained by her from her husband, in favour of five persons, viz., her mother, two sisters and two

sisters-in-law. Thus, the five settlees of Ganapathy Subramaniam and the five settlees of Kamala, came to hold the entire properties, which belong

to Ganapathy Subramaniam. On January 1, 1957, two firms, called K. V. Ganapathy Subramaniam and Co. (hereinafter referred to as the ""K. V.

G. S. and Co."" for short) and Kamala and Co. came into being. The partners of the first were Ganapathy Subramaniam and his settlees, while the

partners of the second were Kamala and her settlees. On April 13, 1962, the firm K. V. G. S. and Co. was dissolved and the assets and liabilities

of the firm were taken over exclusively by Ganapathy Subramaniam. By release deeds dated September 20, 1962, the father-in-law, three

brothers-in-law and sister-in-law of Ganapathy Subramaniam released their interest in the properties dealt with under the settlement deeds in their

favour, in favour of Ganapathy Subramaniam. On the same day, i.e., September 20, 1962, Ganapathy Subramaniam and his wife, Kamala,

entered into a deed of partition, by metes and bounds of the properties owned by Ganapathy Subramaniam, Kamala and her settlees. Ganapathy

Subramaniam died on July 22, 1963. About nine months thereafter, the settlees from Ganapathy Subramaniam instituted a suit in O.S. No. 97 of

1964, Sub-court, Coimbatore, for cancellation of the deeds of release executed by them on September 20, 1962, on the ground that they were

brought about as a result of undue influence and coercion and the accountable person, viz., Kamala, who was the sole defendant in that suit,

supported their case and ultimately on November 26, 1964, the suit was decreed. In the course of the proceedings under the Act on the return

filed by the accountable person showing the principal value of the estate of the deceased Ganapathy Subramaniam at Rs. 24,03,560, the Assistant

Controller of Estate Duty included all the lands, which originally belonged to the deceased, as passing on the death of the deceased and completed

the assessment, fixing the value of the estate, which passed, at Rs. 76,30,831. In so doing, the Assistant Controller divided the lands, which

belonged to the deceased as under :

(1) Some lands (a half share in which was released by the deceased's settlees as stated already) were owned by the deceased and the five settlees

of Kamala, as tenants-in-common, the deceased having a half share and Kamala's settlees having the other half share.

(2) Some lands owned by the deceased and Kamala only as tenants-in-common, each having a half share.

(3) Some lands (viz., the common lands at West Komaralingam comprising irrigation channels, thrashing floors, roads, etc.) were owned by the deceased, Kamala, and the settlees and other landlords of West Komaralingam, as tenants-in-common.

(4) Yet other lands owned by the deceased, Kamala, and other landlords (not being the settlees of the deceased or Kamala), as tenants-in-common.

3. According to the Assistant Controller, the gifts by the deceased in favour of his wife, the settlement deeds executed by the deceased and his

wife, the formation of the firms and the dissolution of one of them and the release by the settlees from the deceased as well as the subsequent

partition between the deceased and his wife, were all collusive transactions, intended to avoid estate duty, but the entire extent, however, remained

with the deceased and he took the view that the deceased was not in any manner excluded from possession and enjoyment of

the lands either settled by him or settled by his wife and, therefore, section 10 of the Act would stand attracted. Before the Assistant Controller,

there was also some dispute as regards the valuation, which, however, does not now survive.

4. On appeal by the accountable person before the Appellate Controller, he proceeded to identify the lands under four lots as follows :

(1) lands exclusively owned by the deceased;

(2) lands settled by the deceased on his wife on June 17, 1956, reduced by the settlements effected by the lady in December, 1956;

(3) lands held by the settlees of the propositus in terms of the deed dated December 28, 1956; and

(4) lands held by the settlees of the accountable person.

5. The Appellate Controller found that item No. 1 above passed on the death of the deceased and section 10 of the Act applied to the third

category of the lands aforesaid, but not in respect of items Nos. 2 and 4. On further appeal by the Assistant Controller as well as the accountable

person before the Tribunal in so far as items Nos. 2 to 4 referred to above were concerned, it found that items Nos. 2 and 4 were correctly

excluded by the Appellate Controller from the principal value of the estate, but that item No. 3 was clearly includible in the estate passing u/s 5 or

6 of the Act, even without reference to section 10. In regard to the appeal by one of the settlees from the deceased, the Tribunal took the view that

the value of those lands should be deleted from the estate duty assessment of the deceased Narasimhan, brother-in-law and one of the settlees

from the deceased Ganapathy Subramaniam, as those lands in favour of P. S. Srinivasa Iyer, father-in-law of the deceased Ganapathy

Subramaniam or Sri Narasimhan, brother-in-law of the deceased Ganapathy Subramaniam. It is on the basis of the aforesaid conclusions arrived

at by the Tribunal that three questions set out earlier have come up for consideration before this court.

6. In so far as the first question relating to the includibility of the value of the agricultural lands settled by the deceased Ganapathy Subramaniam in

favour of his wife, Kamala (inclusive of the lands settled by Kamala in favour of her other relatives), is concerned, it has to be borne in mind that

under the settlement deed dated June 17, 1956, the deceased Ganapathy Subramaniam settled his undivided half share in favour of his wife,

Kamala. The only basis for the inclusion of the lands so settled would be section 10 of the Act. Before applying section 10, it will be useful to bear

in mind the scope of the applicability of that section, as interpreted by the Supreme Court in *George Da Costa Vs. Controller of Estate Duty* in

Mysore, Bangalore, . Analysing the ingredients of section 10 of the Act, the Supreme Court laid down that though the intention of the Legislature in

enacting section 10 of the Act was to exclude from liability to estate duty certain categories of gifts, such a gift, u/s 10, will however be dutiable,

unless the donee assumed immediately exclusive and bona fide possession and enjoyment of the subject-matter of the gift, and there was no

beneficial interest reserved to the donor by contract or otherwise. The Supreme Court also pointed out that the crux of the section lies in two parts

: (1) the donee must bona fide have assumed possession and enjoyment of the property, which is the subject-matter of the gift, to the exclusion of

the donor, immediately upon the gift, and (2) the donee must have retained such possession and enjoyment of the property to the entire exclusion

of the donor or of any benefit to him, by contract or otherwise and that both the conditions are cumulative and unless each of the conditions is

satisfied, the property would be liable to duty u/s 10 of the Act. The Supreme Court further pointed out that in order to attract the section, it is

unnecessary that the possession of the donor and the gift must be referable to some contractual or other arrangement enforceable in law or in

equity, and even if filial affection was the dominant factor, it cannot be said that there was entire exclusion of possession and enjoyment within the

meaning of the first limb of the section and the property will, therefore, be deemed to have passed on the death of the donor and will be subject to

the levy of estate duty. It is in the background of the aforesaid requirements for the applicability of section 10 of the Act that the question has to be

considered. What was settled by Ganapathy Subramaniam on his wife, Kamala, on June 17, 1956, was only an undivided half share in the

agricultural lands. It was this undivided half that in turn had been settled by Kamala in favour of her mother, two sisters and two sisters-in-law and

this was also only in respect of an undivided half that in turn had been settled by him, again in undivided shares, in favour of his father-in-law, three

brothers-in-law and a sister-in-law, each having been given an undivided one-tenth share. When the agricultural lands in several survey numbers

had been dealt with under the settlement deeds in undivided shares, it is difficult without a partition to conceive of the donees' bona fide

assumption of possession and enjoyment of the properties, which formed the subject-matter of the gifts and also the retention of such possession

and enjoyment by the donees to the exclusion of the donor or of any benefit to him by contract or otherwise. Indeed, we find no material, as such,

to establish the assumption of possession of the lands settled in favour of Kamala or by her, in favour of the other five settlees, to the exclusion of

the deceased. No doubt, reliance was placed upon certain composition proceedings u/s 34 of the Tamil Nadu Agricultural Income Tax Act.

However, it is seen from those proceedings, which eventually culminated in Tax Cases Nos. 236 and 237 of 1964, before this court, that there had

been no division, as such, of the properties, but that, however, was not held to be conclusive and ultimately the matter was remitted for fresh

disposal in accordance with law and directions given therein. In the course of those proceedings, the question of the donees having assumed bona

fide possession from the donor and to his exclusion, in respect of the properties, was not gone into and indeed, could not have been gone into. The

composition applications, presumably, came to be filed on the strength of the settlement deeds and no more. Merely, therefore, on the strength of

the composition proceedings, based on the settlement deeds, without ascertaining whether the other requirements of section 10 of the Act had been fulfilled or not, it cannot be concluded that the donees bona fide took possession of the undivided lands immediately and retained such possession to the exclusion of the owner or of any benefit to him which would be matters relevant for consideration u/s 10 of the Act. We are, therefore, of the view that reliance placed upon the proceedings under the Tamil Nadu Agricultural Income Tax Act would not advance the case of the accountable person. We have already pointed out that there is nothing to show that the undivided portions of the agricultural lands settled by the deceased Ganapathy Subramaniam on his wife and in turn settled by herein favour of her close relatives, had been taken possession of either by the wife of the deceased or even by the settlees immediately after the settlements bona fide and their having continued to retain possession of the undivided shares to the exclusion of the donor, viz., the deceased Ganapathy Subramaniam. We may also observe that even the Tribunal had, in para 11 of its order, found that none of the persons could say that any particular land represented by a survey number exclusively belonged to the deceased or his wife or any of the settlees. If that was the position, even according to the Tribunal, were fail to see how the settlees could have taken possession of the properties stated to have been settled on them especially as undivided shares, bona fide and immediately and also retained such possession to the exclusion of the donor. We also find that the deceased had not been excluded from any benefit by the settlements effected either in favour of his wife or by her, in turn, in favour of the other settlees. The formation of a firm in the Kamala & Co. on January 1, 1957, consisting of the wife of the deceased, and the settlees from her, as partners had already been referred to. It is seen from para 14 of the order of the Assistant Controller that the sale proceeds of some items stated to have been sold by Kamala were credited in the books of account of the deceased to her account and the proceeds had been retained by the deceased till his account and the proceeds had been retained by the deceased till his death. Apart from this, it is seen that the deceased Ganapathy Subramaniam exclusively, after the dissolution of K.V.G.S. and Co. We are of the view that this would point out that the deceased was these real beneficiary of the income from the operations of Kamala and Co. The

Tribunal had stated, in para 12 of its order, that there is nothing to show that the settlees had not taken possession of the lands and enjoyed them

for themselves. In order to take the lands settled on Kamala and her settlees out of the operation of section 10 of the Act, it would be necessary

for the accountable person to establish that the settlees had taken possession of the lands settled, bona fide and immediately and they had retained

such possession to the exclusion of the donor and, as we had earlier pointed out, that had not been made out in this case. The Tribunal had, in the

course of para 10 of its order, noticed that the deeds of partnership of K.V.G.S. and Co. and Kamala and Co. were not produced, but that the

entries in the books of account showed that the firms were formed to meet common expenditure relating to channel repair, employment of

wagemen, ground measurement, etc., and, therefore, the partnerships did not relate to the lands themselves. Earlier, had referred to the release

deeds dated September 20, 1962, executed by the different settlees in favour of the deceased and therein, there is a recital of some significance to

the effect that despite the formation of the partnership, know as K.V.G.S. and Co., the deceased Ganapathy Subramaniam had been in possession

and management of the properties, as managing partner of the firm. We are, therefore, of the view that the formation of the firms was not, as stated

by the Tribunal, to provide for and share the common expenses, but to manage the properties, which have been transferred by the deceased in

favour of his settlees and also by his wife in favour of her settlees. We are again contained to point out that with reference to the nature of the

activities of the two firms the Tribunal had merely jumped to the conclusion that the partnership did not relate to the lands themselves. It is thus

seen that the partnership formed by the deceased and his wife along with their respective settlees, had not been established to be in relation to

common matters, but there is evidence in the shape of recital, earlier referred to, to indicate that it related to the properties as well and it would,

therefore, follow that the income from the properties settled by the deceased in favour of his wife and which in turn were settled by her in favour of

five other settlees, had been made available to the deceased, though as a partner of the firm K.V.G.S. and Co., which was eventually wound up

and the entire liability was taken over by the deceased exclusively. Further, the entering into a deed of partition on September 20, 1962, by the

deceased and his wife, clearly indicated that bona fide immediate possession of the properties settled, in favour of the wife by the deceased and the settlees from her as well, could not have been taken and retained, to the exclusion of the donor. The document of partition dated September 20, 1962, had entered into between the deceased and his wife and it is stated that they are members of a joint Hindu family, despite the formation and the carrying on of business under the name and style of K.V.G.S. and Co. and Kamala and Co. From this, it would follow that even according to the deed of partition as late as September 20, 1962, the deceased and the settlees had asserted their ownership of the properties dealt with under that document, as members of a joint Hindu family and that, in our view, would negative any exclusion of the properties settled by the husband in favour of his wife on June 17, 1956, by the wife having immediately taken possession of the properties settled, to the exclusion of her husband. When once the deceased and his wife had admitted that they constituted a joint Hindu family and the document of partition also took in all the properties, which belonged to the deceased, it is difficult to infer any exclusion of the deceased, a member of the joint Hindu family, from possession of the properties settled by him in favour of his wife, by such properties having been immediately entered upon by the settlees, bona fide to the exclusion of the deceased donor. We may also point out that despite a recital in the partition deed dated September 20, 1962. to the effect that the deceased settler and his wife and the settlees from her were in enjoyment of specific items of properties, there is no other supporting material and the mere recital cannot be taken advantage of by the accountable person or the settlees from her, unless it is clearly established, for excluding the applicability of section 10 of the Act, that the possession of the settled properties, and not some others, were taken, bona fide by the settlees and to the exclusion of the deceased donor or of any benefit to him therefrom. We, therefore, answer the first question referred to us at the instance of the Controller of Estate Duty, in the affirmative and in his favour.

7. In so far as the second question at the instance of the accountable person is concerned, it is seen that the deceased, out of the undivided half share retained by him, after the settlement dated June 17, 1956, in favour of his wife on December 28, 1956, settled an undivided one-tenth each

in favour of his father-in-law, three brothers-in-law and a sister-in-law. The firm of K.V.G. S. and Co. formed on January 1, 1957, even as per the recital in the release deed, executed by the settlees from the deceased, was managing the properties and the deceased was in possession and management as managing partner. It is not in dispute that on April 13, 1962, K.V.G.S. and Co. was dissolved and the assets and liabilities of the firm were taken over by the deceased. The Tribunal had also found that the decree obtained in O. S. No. 87 of 1964 from the Sub-court, Coimbatore, after the death of Ganapathy Subramaniam, was collusive. Rents from the released lands had also been received by the deceased from October 22, 1962, to May 29, 1963, as per annexure B appended to the order of the Assistant Controller of Estate Duty. From this, it would follow that the properties which belonged to the deceased initially and which had been purported to be settled on the five settlees, were secured by the deceased and the half share earlier settled came to belong to him and rents had been collected by him and it was not disputed that those properties were held by the deceased on the date of his death and, therefore, that would pass u/s 6 of the Act and the Tribunal was right in concluding that it was unnecessary to invoke section 10 of the Act. Even on the footing that section 10 of the Act would apply, it is seen that the deceased donor was not in any manner excluded from the properties settled by him in favour of the five settlees, as, initially in his capacity as managing partner of K.V. G.S. and Co., he continued to possess and enjoy the properties, though purported to be settled and later on, on the dissolution of the firm, he had taken over all the assets and liabilities of the erstwhile firm of K.V.G.S. and Co. and had received the rents therefrom and there was thus no exclusion of the deceased, as a donor, by the settlees. We, therefore, agree with the conclusion of the Tribunal and answer the second question referred to us in the affirmative and against the accountable person.

8. Regarding the third question, in view of the answer to the second question, it would follow that the value of the agricultural lands settled in favour

of Sri P. S. Srinivasa Iyer, father-in-law of the deceased, who was one of the five settlees from the deceased and who died on June 2, 1967,

would be includible in the principal value of the estate of the deceased and not in that of late P. S. Srinivasa Iyer. We, therefore, answer the third

question in the affirmative and in favour of the Controller of Estate Duty. The parties are directed to bear their own costs in these references.