(1978) 04 KAR CK 0045

In the Karnataka High Court

Case No : Tax Referred Case No. 54 of 1974

Controller of Estate Duty APPELLANT

Vs

R.B. Mamle Desai RESPONDENT

Date of Decision : 06-04-1978

Acts Referred:

Citation : (1979) 118 ITR 928

Hon'ble Judges : M.K. Srinivasa Iyengar, J;E.S. Venkataramaiah, J

Bench : Division Bench

Advocate : S.R. Rajasekharamurthy, for the Appellant; G. Chandrakumar, for the Respondent

Judgement

E.S. Venkataramaiah, J.—The question referred under s. 64(1) of the E.D. Act by the income tax Appellate Tribunal, Bangalore Bench, to this court is as follows:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the occupancy rights granted to the deceased consequent upon the abolition of the watan did not form the separate property of the deceased but constituted joint family property in which he had 1/7th share?

The undisputed facts of the case are these s There was one Basavantha Rao Mamle Desai in the District of Dharwar. He held the property in question as watan property within the meaning of s. 4 of the Bombay Hereditary Officers Act, 1974 (hereinafter referred to as the "Watan Act"). Till the year 1887, he was under an obligation to render certain service to the Government in lieu of the watan property. By a sanad issued by the Collector in the year 1887, the obligation to perform the duties was removed. The property continued to be held by him and was heritable property in his hands. On his death, his son, Bullapa, succeeded to his properties including the watan property in question. The Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 (hereinafter referred to as "Watans Abolition Act"), came into force on May 1, 1951. Thereafter, Bullappa applied to the revenue authorities to regnant the watan property in his favour under s. 4 of the Watans Abolition Act and deposited the required occupancy price. Accordingly, the authorities concerned made a regrant in favour of Bullappa. Bullappa died on May- 26, 1957, leaving behind him his widow and five sons. The Asst. CED, Dharwar, who had to assess the estate duty payable in respect of the estate of the deceased, Bullappa, being of the opinion that the entire watan property was the individual property of the deceased, included its full value for purpose of computation of estate duty rejecting the contention of the accountable person that the said property was a joint family property and only l/7th share could be treated as property passing on the death of the deceased Aggrieved by the order of the Assistant Controller, the accountable person preferred an appeal before the Appellate CED. That appeal was dismissed. On further appeal to the income tax Appellate tribunal, the contention of the accountable person was upheld and it was ordered that only l/7th share of the watan property should be treated as the property passing on the death of the deceased. This reference has been made to us at the instance of the CED.

2. It is not in dispute that the property in question was the joint family property prior to its regrant on the abolition of the watan. It is however, contended that it was an impartible property. On the abolition of the watan and its regrant in favour of the holder on payment of the occupancy price, the property ceased to be an impartible estate, as, on the regrant, became ordinary ryotwari property in the hands of the holder. This is clear from s. 3(4) of the Watans Abolition Act, which provide that " all incidents appertaining to the said watans are hereby extinguished, Section 4(1) provides:

A watan land resumed under the provisions of this Act shall, subject to the provisions of section 4A, be regranted to the holder of the watan to which it appertained, on payment of the occupancy price equal to twelve times of the amount of the full assessment of such land within five years from the date of the coming into force of this Act and the holder shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land.

A combined reading of ss. 3(4) and 4(1) of the Watans Abolition Act establishes that the property in the hands of Bullappa and his wife and sons during his lifetime was joint family property without the restriction of impartibility. The Tribunal was, therefore, right in holding that, consequent on the abolition of the watan and regrant made in favour of Bullappa, the property did not form his separate property, but formed the joint family property in which he had 1/7th share. We, therefore, answer the question in the affirmative and against the department.

