**(1996) 06 MAD CK 0071**

**In the Madras High Court**

**Case No :** Tax Case No. 198 of 1984

Controller of Estate Duty APPELLANT

Vs

S. Kalaivanan RESPONDENT

**Date of Decision :** 26-06-1996

**Acts Referred:**
Income Tax Act, 1961 — Section 28

**Citation :** (1998) 230 ITR 572

**Hon'ble Judges :** N.V. Balasubramanian, J;K.A. Thanikkachalam, J

**Bench :** Division Bench

**Advocate :** Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

## Judgement

Thanikkachalam, J.—At the instance of the applicant, the Tribunal referred the following two questions for the opinion of this Court under s. 64(3) of the ED Act :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the throwing of the individual property into the hotchpot of the Joint family would not amount to a ''disposition'' within the meaning of s. 27(1) of the ED Act, r/w Expln. to s. 2(15) of the ED Act ? and

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of s. 13 of the ED Act, cannot be applied to a case of blending of personal; property with the character of HUF property and consequently the inclusion of the value of the property in its entirety is not correct ?"

2. Insofar as the first question is concerned, the point for consideration, is whether the throwing of the individual property into the hotchpot of the joint family would amount to a disposition within the meaning of s. 27(1) of the ED Act, r/w Expln. to s. 2(15) of the ED Act. A similar question come up for consideration before the Supreme Court in Controller of Estate Duty, Madras Vs. N. Shankaran, , wherein the Supreme Court has held that the act of a member of an HUF by which he impresses his individual property with the character of joint

family property or throws it into the hotchpot of the joint family property or blends it with the joint family property is not a ''disposition'' within the meaning of the ED Act, 1953, and will not attract estate duty under s. 9 r/w s. 27 of that Act.

3. Accordingly, we answer this question is the affirmative and against the Department.

4. Insofar as question No. 2 is concerned, the point for consideration is whether the provisions of s. 13 of the ED Act can be applied to a case of blending of personal property with the character of HUF property and consequently, the inclusion of the value of the property in its entirety is correct. Sec. 13 of the ED Act, requires the property which was previously owned by one to cause it to be vested in him and any other person jointly before it can be applied. When a separate property is converted into a joint family property, the property vests in the family as an entity by itself. It will be inaccurate to say that the father owns the property jointly with the family. The rule of survivership is also abrogated in situation as in ss. 6 and 30 of the Hindu Succession Act, 1956. This was the view taken in A.N.K. Rajamani Ammal Vs. Controller of Estate Duty, . Therefore, in the case of the property in the hands of a joint family, it cannot be said that the property was owned by the members of the family jointly, since the property belongs to the joint family, which as a separate unit.

5. Accordingly, there is no error in the order passed by the Tribunal by holding that s. 13 of the ED Act will not apply to the facts of this case. We answer question No. 2 referred to us also in the affirmative and against the Department. There will be no order as to costs.

 