

(1986) 10 AHC CK 0022
In the Allahabad High Court
Case No : E.D.R. No. 279 of 1979

Controller of Estate Duty

APPELLANT

Vs

Shiv Puran Lal Gulati

RESPONDENT

Date of Decision : 13-10-1986

Acts Referred:

Estate Duty Act, 1953 — Section 34(1)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171

Citation : (1987) 59 CTR 44 : (1987) 167 ITR 545 : (1986) 29 TAXMAN 508

Hon'ble Judges : R.K. Gulati, J;K.C. Agrawal, J

Bench : Division Bench

Judgement

K.C. Agrawal, J.—As directed by the High Court, vide its order dated February 15, 1979, the Income Tax Appellate Tribunal, Delhi, has drawn up a statement of the case and referred the questions, mentioned below, for decision :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the agricultural land belonged to the deceased's Hindu undivided family of which he was the karta ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the sum of Rs. 30,000 only was includible in the estate duty assessment of the deceased as his individual estate and a sum of Rs. 60,000 was includible for rate purposes as the share of the lineal descendants u/s 34(1)(c) of the Estate Duty Act, 1953 ?"

2. On the death of Brij Lal Gulati on August 4, 1971, his son, Shiv Puran Lal Gulati, submitted a return. Since the details of the return are not necessary for the purpose of deciding the questions referred, we refrain from doing so. The only fact relevant is that Shiv Puran Lal Gulati stated that the deceased Brij Lal Gulati had died leaving behind one-fourth share in the agricultural land measuring 22 bighas 16 biswas 17 biswansis in district Saharanpur. The accountable person wanted the value of one-fourth share only to be taken into account for imposition of estate duty.

3. The Assistant Controller held that as the agricultural land had been purchased by the deceased, Brij Lal Gulati, in his own name, the status of the agricultural land was that of an individual. Regarding valuation, he found its value to be Rs. 1,20,000. Against the judgment of the Assistant Controller of Estate Duty, an appeal was preferred before the Appellate Controller of Estate Duty by the Estate Duty Department. The appeal was partly allowed. The Appellate Controller found that the agricultural property was acquired by the Hindu undivided family from the joint family funds and, as such, it was joint family property in which the deceased Brij Lal Gulati had one-fourth share.

4. In second appeal preferred by the Controller of Estate Duty, the finding of the Appellate Controller, that the agricultural property had been acquired with joint family funds and the share of the deceased was one-fourth, was maintained. The Income Tax Appellate Tribunal confirmed the finding of the Appellate Controller that the amount liable to be added was Rs. 30,000, being one-fourth of Rs. 1,20,000, and there would be aggregation of Rs. 60,000 in respect of the share of the lineal descendants.

5. In the reference before us, learned counsel for the Union argued that on the finding of the Assistant Controller and also that of the Income Tax Appellate Tribunal, the share of the deceased, Brij Lal Gulati, was one-third, and the value of that share should have been taken into consideration for calculating the liability.

6. Before dealing with the aforesaid argument, we may note that the finding of the Income Tax Appellate Tribunal that the plots had been acquired with joint family funds is a finding of fact and this has to be accepted as correct. It has been found by the Assistant Controller that the plots were purchased by Brij Lal Gulati on September 7, 1964. This property being that of the joint family belonged to the deceased, Brij Lal Gulati, and his two sons in which the two widows of the deceased, Brij Lal Gulati, had no share inasmuch as they were not the members of the coparcenary. The property belonging to the joint family was that of all the male members constituting it. Mulla in his Hindu Law has stated the law in relation to this controversy in the following words (paragraph 221):

"Joint family property is purely a creature of Hindu law, and those who own it are called coparceners. The rights of coparceners are set forth in paragraph 235 below. The distinction between joint family property and joint property comes into prominence only in two kinds of cases, namely, the case dealt with in paragraph 223, sub-paragraph (2) [property inherited from maternal grandfather], and that dealt with in paragraph 228 [joint acquisitions]. After leaving paragraph 228, we shall use the expression " joint property " as equivalent to " joint family property ". "

7. On the finding that the property belonged to the joint family, each one of them had one-third share. The two widows of the deceased, Brij Lal Gulati, also would have no share in the agricultural plots inasmuch as it had to be determined in

accordance with Section 171 of the U.P. Zamindari Abolition and Land Reforms Act. The sons precede over the widows and, as such, the shares, on the death of Brij Lal Gulati, would be of the sons exclusively. Under Clause (a) of Section 171 of the U.P. Zamindari Abolition and Land Reforms Act, the interest of the deceased bhumidhar devolves upon the male lineal descendants.

8. In *Ram Chander Dubey and Another Vs. The Deputy Director of Consolidation, Deoria and Others*, , this court held that purchase of bhumidhari land from the nucleus of joint family was bhumidhari for all persons constituting the joint family. For the view taken, the court relied upon a decision of the Supreme Court in *Kailash Rai Vs. Jai Jai Ram and Others*, , where it was held that the bhumidhari rights could be acquired by all the members of a joint Hindu family, although the land was recorded in only one name. This would establish that the case of the Department that the property belonged exclusively to Brij Lal Gulati has no merit. The two authorities below, as already pointed out above, found as a fact that the plots had been purchased out of the joint family funds.

9. *Ram Chander Dubey and Another Vs. The Deputy Director of Consolidation, Deoria and Others*, , is relevant for another purpose, and that is that in the matter of succession, bequeaths and transfers, the provisions of the U.P. Zamindari Abolition and Land Reforms Act would apply. The relevant portion of the aforesaid ruling is quoted below (headnote):

" U.P. Act No. 1 of 1951 does not crystallise or declare the existing law upon the land tenure system but deliberately departs from the old law in respect of various matters. It supersedes prior law and lays down the whole of the law of succession, transfer, bequest, etc. Therefore, in cases governed by the Act, reference to the previous Rule of Hindu law or Mohammadan law cannot be made as it is not permissible, but the Hindu law can certainly be resorted to in respect of matters for which no provision is made in U.P. Act No. 1 of 1951. Matters saved from the operation of the Act, of course, continue to be governed by the personal law to the extent the same is applicable. The Act does not touch or affect the law of joint family, hence the Hindu law continues to operate in this matter. "

10. For what we have said above, we answer question No. 1 in the affirmative and in favour of the accountable person, whereas the finding given on question No. 2 is reversed and it is held that a sum of Rs. 40,000 was includible in the estate duty assessment of the deceased as his individual estate and a sum of Rs. 80,000 was includible for rate purposes as the share of the lineal descendants.