
(1977) 03 AP CK 0019

In the Andhra Pradesh High Court

Case No : Estate Duty Case No's. 6 of 1975 and 16 of 1976

Controller of Estate Duty

APPELLANT

Vs

Smt. P. Leelavathamma

RESPONDENT

Date of Decision : 23-03-1977

Acts Referred:

Estate Duty Act, 1953 — Section 36, 44, 56

Hindu Adoptions and Maintenance Act, 1956 — Section 18, 22(2), 23

Hindu Succession Act, 1956 — Section 8

Citation : (1978) 112 ITR 739

Hon'ble Judges : Sambasiva Rao, Acting C.J.;K. Amareswari, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; S. Dasaratharama Reddy, for the Respondent

Judgement

Sambasiva Rao, Actg. C.J.

1. These two estate duty oases relate to the estate belonging to Sri Ponnaluri Srinivasulu Reddy who died on 10th of August, 1969. Smt. Lilavathamma who, according to the statement of the case submitted by the Tribunal, is the widow of the deceased but who, according to Sri Dasaratharama Reddy, learned counsel for the accountable person, is the mother of the deceased, filed the account of the estate before the Assistant Controller of Estate Duty, Guntur. She claimed deductions in the following manner i Rs. 1,50,000 for the marriage expenses of the daughter of the deceased and Rs. 1,29,510 for the maintenance of the daughter of the deceased. Towards the maintenance of the wife of the deceased a sum of Rs. 1,18,880 was claimed. It may be mentioned here that the deceased, Srinivasulu Reddy, left behind him, his widow and his only child who is a daughter. That is what appears from the statement of the case sent up by the Tribunal. However, Sri Dasaratharama Reddy states that he left behind him his mother as well, who is the accountable person. Even if the mother was left behind, that does not make any difference as far as "the present questions are concerned because no deduction is claimed on her account. We, therefore,

proceed to consider these two cases on the basis of the claims made on behalf of the daughter and the wife alone.

2. The accountable person contended before the Assistant Controller that a Hindu was under a legal obligation to maintain his wife, and also to make provision for the maintenance and marriage of unmarried daughters. Therefore, the deductions claimed could be allowed as debts and encumbrances u/s 44 of the Estate Duty Act, 1953. It was pointed out that the deceased was under an obligation to maintain his wife and minor daughter under the Hindu Adoptions and Maintenance Act, 1956, and that right did not come to an end with his death. The obligation was fastened on the property of the deceased. The Assistant Controller held that these allowances could not be brought u/s 44 of the Estate Duty Act as debts and encumbrances. In so far as the wife was concerned, the Assistant Controller held that after the death of the deceased, she succeeded to the entire property (this is obviously a mistake because the wife was entitled only to a share as one of the heirs under the Hindu Succession Act) and there was, therefore, no justification for making separate allowance for her maintenance, at the same time holding that as the deceased was the karta of a Hindu undivided family, he was under an obligation to maintain his daughter and also to make provision for her marriage. In this view, the Assistant Controller felt that some allowance could be made for that purpose. Thus, accepting the daughter's right not only to maintenance but also to marriage expenses as a claim which could be deducted from the estate of the deceased, the Assistant Controller allowed a sum of Rs. 20,000 as a reasonable amount for the maintenance and marriage allowance. Only this amount he deducted from the total estimate of the value of the estate of the deceased.

3. The accountable person carried the matter in appeal to the Appellate Controller who agreed with the conclusions of the Assistant Controller. While agreeing with that officer the Appellate Controller opined that strictly speaking even the allowance of Rs. 20,000 made for the marriage and maintenance of the daughter was not necessary. However, since it was being allowed as a matter of policy by the department, he concurred with that view and not by virtue of the provisions of Section 44. The Appellate Controller further pointed out that the deceased was the sole surviving male member of the joint family and he was competent to dispose of the entire property and, therefore, the entire property passed on his death in accordance with Section 6 of the Estate Duty Act. Since the Assistant Controller had rightly or wrongly given a deduction of Rs. 20,000 from the total value of the estate that passed on the death of Srinivasulu Reddy, the Appellate Controller did not choose to interfere with that deduction. In regard to the claim on behalf of the wife he agreed with the Assistant Controller and did not allow any deductions on her behalf.

4. A further appeal was preferred by the accountable person to the Appellate Tribunal. The appeal was in two parts. The first one related to the rejection of the claim made on behalf of the wife, since that was totally disallowed by the

Assistant and Appellate Controllers. The other part of the appeal was in regard to the quantum of the amount that should be set apart and deducted as the provision for the daughter's maintenance and marriage. It was contended that the amounts sought to be deducted were calculated on the basis of Jellioo's formula and, therefore, Rs. 1,50,000 was a reasonable claim for the marriage expenses of the five year old daughter. Likewise, the maintenance claim for the daughter was also justified. In the appeal it was urged that limiting the above to Rs. 20,000 was unjustified.

5. The Appellate Tribunal rejected the claim of the accountable person that these deductions could be made u/s 44 of the Estate Duty Act. It, however, proceeded to consider the provisions of Sections 5 and 6 of that Act. Thinking that the deceased was the sole surviving male member of the Hindu joint family, amounts which were required for defraying the marriage expenses of his minor daughter and also amounts which were required to meet the maintenance expenses of that daughter and also the widow had to be deducted. In the opinion of the Tribunal, that was because, under the Hindu law, the joint family estate is liable for meeting the marriage and maintenance expenses of the unmarried daughter and the maintenance expenses of the widow. In that view, the Tribunal came to the conclusion that the property, which the deceased was competent to dispose of at the time of his death, would be the property after deduction of the amounts required to meet the aforesaid liabilities. Considering the status of the family and the net principal value of the estate of over Rs. 8 1/2 lakhs, the Tribunal was of the opinion that deduction of Rs. 1,00,000 towards marriage expenses of the minor daughter would be reasonable. As regards the allowance for the maintenance of the unmarried daughter and the widow, it fixed the rate at Rs. 10,000 each per year, and directed the Assistant Controller to verify the said claim, which appeared to it to be justified, on the basis of the accepted formula adopted in such cases. Consequently, it directed the Assistant Controller to allow such sums in accordance with law.

6. Then the revenue required the Appellate Tribunal to state a case and refer the following four questions to the High Court for its opinion u/s 64(1) of the Estate Duty Act :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in allowing deduction towards marriage and maintenance expenses of the unmarried daughter of the deceased from the estate passing on his death ?

(2) Whether there is material or basis for the Appellate Tribunal to fix an amount of Rs. one lakh for deduction towards marriage expenses of the unmarried daughter of the deceased from the estate passing on his death ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in allowing deduction towards maintenance expenses of the wife of the deceased from the estate passing on his death ?

(4) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that estate duty payable is itself a debt deductible while computing the net principal value of the estate ? "

7. Of these four questions, the Tribunal thought that only questions 3 and 4 are questions of law and, consequently, stated the case and referred them for the opinion of this court. At the same time it refused to refer questions 1 and 2 stating that even the Assistant Controller upheld the principle, rightly or wrongly, of deducting a sum representing reasonable provision for the maintenance and marriage expenses of the minor daughter. He thought that Rs. 20,000 would be a proper amount to meet the two requirements. Therefore, he directed deduction of this Rs. 20,000 from the total value of the estate of the deceased. The Appellate Controller upheld the allowance made by the Assistant Controller. " The Tribunal did not interfere with the principle laid down by the Assistant Controller and upheld by the Appellate Controller in regard to making a provision for maintenance and marriage of the daughter. In so far as the daughter was concerned, the only point of departure made by the Appellate Tribunal was in regard to the quantum of the marriage expenses and maintenance. Having regard to the circumstances, it thought that a sum of Rs. 1,00,000 would be proper provision for marriage expenses and a sum of Rs. 10,000 per year would be proper provision for the maintenance of the daughter. The Tribunal decided these questions in so far as the daughter was concerned on consideration of the facts. Therefore, it felt that no question of law arose out of its findings in this behalf. Consequently, it refused to refer the first two questions to this court.

8. Since questions 3 and 4 have been referred to this court, that matter is numbered as E.D.C. No. 6/75. The revenue, which has been unsuccessful in persuading the Tribunal to refer the first two questions, has filed E.D.C. No. 16/76 seeking a direction from this court to the Tribunal to state a case and refer the two questions. That is how these two estate duty cases have come up before us.

9. Taking up E.D.C. No. 16/76 the statement of the case discloses that the Tribunal did not determine any question of law in so far as the claim of the daughter was concerned. That legal position was rightly or wrongly decided by the Assistant Controller. He opined that due provision must be made for the maintenance and marriage expenses of the minor daughter and that amount should be deducted from the value of the estate of the deceased for the purpose of imposing estate duty. The Appellate Controller agreed with the Assistant Controller though it expressed a doubt as to the correctness of the legal principle. The fact remains that the Appellate Controller also agreed finally with the Assistant Controller in holding that the maintenance and marriage expenses of the daughter should also be deducted from the value of the estate., Having expressed that agreement, the Appellate Controller upheld the amount of Rs. 20,000 as due provision for the daughter. The Appellate Tribunal interfered only with the quantum of this provision. Having regard to the high value of the estate

left by the deceased, the status of the parties and the age of the girl, the Tribunal found, on the facts of the case, that a sum of rupees one lakh would be the proper provision for marriage expenses. It also concluded that a sum of Rs, 10,000 per year would be the proper provision for the maintenance of the minor daughter. It directed the Assistant Controller to work out the total amount of maintenance that should be deducted from the value of the estate before estate duty is levied. It is thus patent that what the Appellate Tribunal did was only interference with the factual conclusions of the Assistant and Appellate Controllers. Whether the legal principle enunciated and followed by the Assistant Controller and the Appellate Controller was right or wrong was not the concern of the Appellate Tribunal. True, while discussing the claim on behalf of the wife it made incidental references to the claim on behalf of the daughter also. But reading the order of the Tribunal and the statement of the case sent up to this court, it is patent that it was concerned only with the quantum of the provision that should be made for the daughter. That quantum was fixed by the Tribunal on the facts of the case as it has itself pointed out. Therefore, no question of law in so far as the daughter was concerned was decided by the Tribunal. It cannot, therefore, be said that any question of law would arise in respect of the claim on behalf of the daughter. No question of law as such arises from the order of the Tribunal. Therefore, agreeing with the Tribunal's view, we must hold that questions 1 and 2, which are sought to be referred in E.D.C. No. 16/76, are not questions of law and are only questions of fact. Therefore, this estate duty case is dismissed but, in the circumstances, without costs.

10. Then remains E.D.C. No. 6/75 which is concerned with questions 3 and 4. They were treated as questions of law by the Tribunal and it has itself referred these two questions for the opinion of this court. In so far as question No. 4 is concerned, the point that should be determined is whether the Appellate Tribunal is justified in holding that estate duty payable is itself a debt deductible, while computing the net principal value of the estate. We need not go into the legal intricacies of this problem because there is a binding Bench decision of this court in E.D.C. No. 8/75 dated 20-7-1976 [Controller of Estate Duty Vs. Estate of Late Omprakash Bajaj,] which has held that it is not a charge on the estate and is not, therefore, deductible. Following that decision we answer this question saying that it is not a debt deductible while computing the net principal value of the estate. The question is, therefore, answered in the negative and in favour of the revenue.

11. Question No. 3 alone now survives. This relates to the maintenance expenses of the wife of the deceased. We have already referred to the reasoning of the Appellate Tribunal while allowing this claim made on behalf of the widow. It patently erred in thinking that the deceased person along with his wife and daughter constituted a joint Hindu family and that he was its karta. In the opinion of the Tribunal, as karta and head of the joint Hindu family he was liable to maintain the wife as a member of the family. This is a wrong approach. The deceased was the sole owner of the property which he had. There was no Hindu

joint family at the time of his death of which he was the karta. Therefore, the very approach of the Tribunal in this behalf is basically wrong.

12. Proceeding further, the Tribunal thought that since the husband as manager of the Hindu joint family was liable to maintain the wife and that in the circumstances of the case a sum of Rs. 10,000 was due provision for such maintenance, it directed deduction of an amount from the value of the estate which represents this provision for maintenance. Once we hold that this approach is wrong, it must necessarily follow that deduction on this basis is also wrong. The Tribunal itself has held that Section 44 of the Estate Duty Act does not apply and this claim is neither a debt nor encumbrance within the meaning of that section. We are in full agreement with that view of the Tribunal. If this reasoning of the Tribunal is wrong (sic) and Section 44 of the Estate Duty Act does not apply then it must follow that the claim for maintenance made on behalf of the wife cannot be deducted from the value of the estate.

13. Sri Dasaratharama Reddy for the accountable person, however, urges before us a new line of argument to support the conclusion of the Tribunal that the amount representing the maintenance claim of the wife can be deducted. His argument is that a Hindu wife is entitled to be maintained by her husband so long as she is alive. Then when the husband was alive she had a right to claim maintenance and that maintenance should be in accordance with the resources of the family and its status. That amount which represents the value of the claim of the wife for maintenance is, therefore, deductible from the value of the estate. We are not persuaded to accede to this argument of the learned counsel.

14. We may here refer to the relevant provisions of the Estate Duty Act and the Hindu Adoptions and Maintenance Act. Though the Tribunal referred to Section 5 of the Estate Duty Act, it has no direct bearing on the present question because it is only a charging section. It is only Section 6 that is material for the present purpose. It says that property which a deceased was at the time of his death competent to dispose shall be deemed to pass on his death. Sri Dasaratharama Reddy's argument is that the amount of maintenance, which was payable to the wife, had she claimed maintenance when the husband was alive, did not form part of the property of the deceased which passed at the time of his death. In this submission of the learned counsel it represented the maintenance claim of the wife and, therefore, ceased to be a part of the property which passed on the death of the deceased. This is a palpably wrong argument. Section 18 of the Hindu Adoptions and Maintenance Act says that a Hindu wife, whether married before or after commencement of the Act, shall be entitled to be maintained by her husband during her lifetime. If we may say so, the provision contained in Sub-section (1) of Section 18 is only a reiteration of the right which a Hindu wife was having even prior to the commencement of this Act. Certainly a Hindu wife was entitled to be maintained by her husband during her lifetime. That right inheres in her whether the husband had property or not. A husband, who has no property, cannot say that he is not liable to maintain his wife. That right of the

wife to be maintained by the husband and the liability of the husband to maintain the wife exist irrespective of the husband owning or possessing any property or not. This is a very important feature which should be noted in the context of the present dispute.

15. Section 21 of the Hindu Adoptions and Maintenance Act makes the widow, so long as she does not remarry, a " dependant ". That is to say, so long as the husband is alive, a wife is not a " dependant" within the meaning of Section 21. During the existence of her husband the wife's right to be maintained is proclaimed and preserved u/s 18(1). Her claim as a dependant u/s 21 arises only after the demise of husband. Section 22 of the Act provides for maintenance of dependants. It lays down that the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. That is to say, there is no personal liability on the heirs to maintain the dependants. That liability is co-extensive with that of the estate inherited by them. Sub-section (2) of Section 22 is very important. We may as well quote it. It reads :

" Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate. "

16. That means, if a dependant has obtained any share in the estate of a deceased Hindu either by testamentary or intestate succession, he or she will not be entitled to maintenance from those who take the estate. The principle behind this sub-section is obvious. Once a dependant gets a share in the deceased Hindu's estate, his or her right to get maintenance comes to an end and she cannot have not only a share but also maintenance besides.

17. There is no doubt in this case that the wife, who on the death of her husband became a widow, is entitled to a share u/s 8 of the Hindu Succession Act. A Division Bench of this court in *S. Kameshwaramma Vs. S. Subramanyam and Others*, , after a combined reading of Sub-sections (1) and (2) of Section 22 of the Hindu Adoptions and Maintenance Act, observed at page 271 :

"A combined reading of the provisions of Sub-sections (1) and (2) indicates that while Sub-section (1) imposes a liability on a heir and confers a correlative right on the dependant to claim maintenance under the provisions of the Act, Sub-section (2) excludes the dependants acquiring a share in the property of a person, who died after the Act, from claiming maintenance."

17. This is a case of a widow. In *Nalla Lalithamba v. Yella Venkatalaxmi* [1970] 1 An WR 245 a Division Bench of this court was dealing with the case of an unmarried daughter who became a heir on the death of her father. The Division Bench held that an unmarried daughter, who takes a share in the father's property as a heir, cannot claim any further right as against the other heirs for her maintenance or for the marriage expenses.

18. Therefore, the position that emerges from Section 22 is clear. The wife in this case, who became a widow, is now entitled to a share. If what Sri Dasaratharama Reddy states is correct that there is also a mother, who is a heir to the estate of Srinivasulu Reddy, then the widow would be entitled to a 1/3rd share. If there is no mother, she would be entitled to as much as half share, the other half share belonging to the minor daughter. She cannot now claim not only the share but also maintenance besides. If she cannot claim maintenance, a deduction on the possibility of a claim for maintenance cannot be made from the value of the estate for the purpose of estate duty.

19. Sri Dasaratharama Reddy's argument, however, is slightly different. He refers to Section 39 of the Transfer of Property Act which is now analogous to Section 28 of the Hindu Adoptions and Maintenance Act. Section 39 says that where a third person has a right to receive maintenance or a provision for advancement or marriage, from the profits of immovable property and such property is transferred.....the property right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands. Section 28 of the Hindu Adoptions and Maintenance Act is practically on the same lines. But it deals with the right of a dependant. It says that where a dependant has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous, but not against the transferee for consideration and without notice of the right. Basing his contention on these provisions, Sri Dasaratharama Reddy contends that we will have to take into consideration the provision as it existed just before the demise of the husband. At that time, as declared by Section 18 of the Hindu Adoptions and Maintenance Act, the wife was certainly entitled to be maintained by the husband. If the principle of Section 39 of the Transfer of Property Act and the provisions of Section 28 of the Hindu Adoptions and Maintenance Act are applied to that situation, the wife was certainly entitled to claim maintenance from her husband. That amount which could have been a reasonable provision for her maintenance could not form part of the estate and the husband could not have transferred, even if he wished, the entire estate. His right to sell or alienate the property was limited to the extent which did not affect the right of his wife to receive maintenance from him. Therefore, the learned counsel urges that that amount which represents her maintenance claim should be deducted from the value of the estate for the purpose of the estate duty.

20. This argument is based on an erroneous assumption that the wife had a choate or clear right against any particular property of the husband when he was alive. It is true that she was entitled to be maintained by her husband. But that does not mean that she can extend that right and fasten it to any particular portion or part of the property of her husband. It is true that if she filed a suit and got a decree with a charge for her maintenance on a particular portion of the

property, that portion of the property is charged with her maintenance. But when her right does not take that concrete or choate shape or form, it cannot be said that the husband could not dispose of the property as he liked. It might be that the husband could maintain the wife through his own personal earnings.

21. It is well settled that the claim of a wife for maintenance or for that matter, even of a widow is not a charge upon the estate of her husband until it is fixed and charged upon the estate. We may usefully extract the following passage at page 610 of the 14th edition of Mulla's Hindu Law :

" Maintenance not a charge.--The claim, even of a widow, for maintenance is not a charge upon the estate of her deceased husband, whether joint or separate, until it is fixed and charged upon the estate. This may be done by a decree of a court, or by an agreement between the widow and the holder of the estate, or by the will by which the property was bequeathed. Therefore, the widow's right is liable to be defeated by a transfer of the husband's property to a bona fide purchaser for value without notice of the widow's claim for maintenance. It is also liable to be defeated by a transfer to a purchaser for value even with notice of the claim, unless the transfer was made with the intention of defeating the widow's right and the purchaser had notice of such intention. In fact, a widow's right to receive maintenance is one of an indefinite character which, unless made a charge upon the property, is enforceable only like any other liability in respect of which no charge exists."

22. In fact, Section 27 of the Hindu Adoptions and Maintenance Act lays down that a widow's claim for maintenance shall not be a charge on the estate of the deceased husband or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise. If such is the position of the widow's claim, the wife's right to be maintained during the lifetime of her husband cannot be different. Clearly it was in an inchoate form and it is not charged on and fastened to any property or a portion of the property belonging to her husband.

23. The decisions relied on by Sri Dasaratharama Reddy in Chandramma v. Venkatareddi, AIR 1958 AP 396 and Ramaswamy Goundar and Another Vs. Baghyammal and Others, , deal with different situations where there was a suit for maintenance and a consequential charge was prayed. It was in that context the courts considered the scope of Section 39 of the Transfer of Property Act. They do not help in answering the question which is placed before us.

24. We have no hesitation in holding, in the light of the aforesaid reasoning, that though the wife has a right to be maintained by the husband during her lifetime, that right has no choate connection with the property of the husband. Consequently, no deduction can be made on that claim of the wife to be maintained. After his death u/s 8 of the Hindu Succession Act she gets a share and, following the principle of Sub-section (2) of Section 22 of the Hindu

Adoptions and Maintenance Act, she cannot claim maintenance. Therefore, the answer to the third question is that the Appellate Tribunal is not right in law in allowing deduction towards maintenance expenses of the wife of the deceased from the estate passing on his death. That answer is in favour of the revenue.

25. Thus, the two questions which are the subject-matter of E.D.C. No. 6/ 75, are answered in the negative and in favour of the revenue. The reference is answered accordingly. Having regard to the circumstances of the case, we make no order as to costs of this case as well.