

(1972) 01 MAD CK 0041

In the Madras High Court

Case No : Tax Case No. 208 of 1966 (Reference No. 54 of 1966)

Controller of Estate Duty

APPELLANT

Vs

Smt. Y. Annapurnamba

RESPONDENT

Date of Decision : 18-01-1972

Acts Referred:

Estate Duty Act, 1953 — Section 14

Citation : (1972) 84 ITR 756 : (1972) 85 LW 390

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; V. Srinivasan, for the Respondent

Judgement

Ramaswami, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953, and the question referred for our decision is :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the value of the insurance policies of Rs. 92,520 taken on the life of the deceased and nominated in favour of the wife of the deceased could not be included in the estate of the deceased ?"

2. The deceased, Ramanatha Babu, had taken out insurance policies on his life of the total value of Rs. 37,270. In addition to these policies, he had also taken out an insurance policy of the value of 55,250 for the purpose of payment of estate duty. As seen from the facts found and it is also admitted that the premiums for these policies were paid out of the coparcenary funds and that entries have been made in the Hindu undivided family accounts in regard to the payments. The deceased was a member of a coparcenary, the other coparcener being his son. The widow, who is the accountable person, in computing the net value of the estate of the deceased, had treated the sum of Rs. 92,570, which is the total value of the policies, as belonging to the Hindu undivided family.

3. The Deputy Controller of Estate Duty held that these insurance policies having

been nominated in favour of the wife of the deceased, must be deemed to have been taken for the benefit of the wife and not for the benefit of the Hindu undivided family. In that view he held that the total value is liable to be included in the free estate of the deceased. On appeal by the accountable person, the Appellate Controller of Estate Duty, New Delhi, accepted the contention of the accountable person and held that the inclusion of the sum of Rs. 92,520 in the free estate of the deceased was not correct and that mere nomination of the policies in the name of a particular person was not sufficient for holding that the policies concerned were part of the free estate. The Deputy Controller preferred an appeal to the Tribunal. The Tribunal also accepted the contention of the accountable person and held that since the premia for the policies were paid from and out of the coparcenary funds and entries had been made in the Hindu undivided family accounts for such payments, the amount payable under those policies belong to the Hindu undivided family and could not be treated as the separate property of the deceased. At the instance of the Controller of Estate Duty, the above question of law has been referred for a decision by this court.

4. In the decision in *Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras*, the facts of which were almost identical, a Division Bench of this court held that the insurance policies in those circumstances were the property of the joint family consisting of the deceased and the other coparceners. It has been further held in that case that, in the context of a life insurance policy, "kept up" in Section 14 of the Estate Duty Act, 1953, means not merely the physical act of getting a policy of insurance, but all acts necessary for keeping the policy alive that will be comprehended in the phrase and since the substantial element that goes to maintain a policy alive is payment of premiums, the source of the premiums paid will be determinative of who kept up the policies and that, therefore, in a case where the premiums are paid from and out of the joint family funds, Section 14 of the Act is not applicable. We respectfully agree with this decision. In the present case, it has been found by the appellate authority and the Tribunal, and it is not also disputed, that the premiums were paid out of the joint family funds, though the physical act of paying the premiums was that of the deceased himself. It is, therefore, clear that Section 14 of the Estate Duty Act, 1953, is not applicable.

5. In the foregoing circumstances, we answer the reference in favour of the accountable person with costs. Counsel's fee, Rs. 250.