

**(1972) 08 GUJ CK 0009**  
**In the Gujarat High Court**  
**Case No : Estate Duty Reference No. 6 of 1970**

Controller of Estate Duty, Gujarat-II

APPELLANT

Vs

Nirmal Chandulal

RESPONDENT

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**Date of Decision :** 20-08-1972

**Acts Referred:**

Estate Duty Act, 1953 — Section 27(1)

**Citation :** (1977) 106 ITR 630

**Hon'ble Judges :** B.J. Diwan, C.J.; B.K. Mehta, J

**Bench :** Division Bench

**Advocate :** K.H. Kaji, for the Appellant; K.C. Patel, for the Respondent

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## Judgement

Divan, C.J.—This reference under the Estate Duty Act, 1953, has been made at the instance of the controller of Estate Duty and the

question which has been referred to us is as follows :

Whether, on the facts and in the circumstances of the case, there was disposition of property in favour of the relatives of the deceased within the

meaning of Section 27(1) of the Estate Duty Act, 1953, to the extent of the difference between the value of the share of the deceased and the

value of the property received by the deceased ?

2. The facts giving rise to this reference may shortly be stated. We are concerned in this case with the estate of Shri Vadilal Chhaganlal. Prior to

December 5, 1959, Vadilal Chhaganlal and his son, Chandulal Vadilal, were members of a joint Hindu undivided family. On December 5, 1959,

these two members of the joint family executed a document which they called ""vahchani patrak"" (document of partition) and this document has

been referred on the record by some of the authorities as a release deed. Under

the terms of this document, Vadilal Chhaganlal, the deceased, received an amount of Rs. 1,53,000 in cash and also a life interest in a portion of a building situated at Ahmedabad. He released his right over all the movable and immovable properties of the joint family in favour of his son, Chandulal. Under the terms of the document one of the daughters of the deceased, Vadilal Chhaganlal, was also given life interest on the ground floor of the same building wherein life interest was given to the deceased. The Assistant Controller of Estate duty found that the value of the assets of the Hindu undivided family before the execution of the document of December 5, 1959, was Rs. 7,44,156 to be divided into equal shares between the two coparceners. Vadilal Chhaganlal and his son, Chandulal Vadilal, had equal shares in the assets of the Hindu undivided family; hence the value of the one-half shares of the deceased in the assets of the joint family came to Rs. 3,72,078. As against this value of his shares in the joint family assets, Vadilal Chhaganlal accepted only the cash amount of Rs. 1,53,000 and life interest in a part of the property worth Rs. 15,000. Hence the Assistant Controller of Estate Duty found that at the time of the partition the deceased had received only assets worth Rs. 1,68,000 as against his share which was of the value of Rs. 3,72,078. According to the Assistant Controller of Estate Duty, the deceased had relinquished his right over the assets worth Rs. 2,04,078 in favour of his son and he treated this amount of Rs. 2,04,078 as the amount of gift which was covered by Section 27 of the Estate Duty Act. He, therefore, added this amount to the principal value of the estate and made the assessment accordingly. Against this decision of the Assistant Controller of the Estate Duty, the matter was taken in appeal to the appellate Controller of estate Duty by the accountable person and that appeal was dismissed. The accountable person thereupon carried the matter further in appeal before the Tribunal and the following the decision of the Gujarat High Court in Kantilal Trikamlal Vs. Controller of Estate Duty, Gujarat, held that there was partition between the coparceners and when there is a partition between such coparceners, if one of the coparceners prefers not to receive his full legal share, then the difference between the amount which he actually receives and the value of his share cannot be said to be disposition of the property within the meaning of Section 27(1) of the Estate Duty

Act. Hence, the Tribunal allowed the appeal and directed that the amount of Rs. 2,04,078 should not be included in the value of the assets

belonging to the estate of the deceased. Thereafter, at the instance of the revenue, the question hereinabove set out has been referred to this court

by the Tribunal.

3. u/s 27, sub-section (1) any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of the Act as gift

unless the disposition was made on the part of the deceased for full consideration in money or money's worth paid him for his own use or benefit;

or the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only;

and the proviso to sub-section (1) says that where the disposition was made on the part of the deceased for partial consideration in money or

money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property

for the purpose of estate duty. Section 2 defines the word "property" as including any interest in property, movable or immovable, the proceeds of

sale thereof and any money or investments any property converted from one species into another by any method. Under Explanation 2 to clause

(15), the extinguishments at the expenses of a deceased of a debt or other right shall be deemed to have been a disposition made by the deceased

in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" shall

include the benefit conferred by the extinguishments of the debt or right.

4. In Kantilal Trikamlal Vs. Controller of Estate Duty, Gujarat, a similar question came up before this High Court. In that case Trikamlal and his

son, Kantilal, constituted a Hindu undivided family owning immovable properties and a share in two firms. On November 16, 1953, Trikamlal and

Kantilal, executed an instrument called a "release deed" which recited, inter alia, that Trikamlal had withdrawn an amount of rupees one lakh on an

ad hoc basis from out of the joint family properties, and in consideration thereof Trikamlal was executing the release deed in favour of Kantilal who

became full and independent owner of the movable and immovable properties and Trikamlal became the full and absolute owner of the cash

amount taken by him. Trikamlal died on June 3, 1955, within two years of the

execution of the document. Kantilal, the accountable person, filed a return showing the principal value of the estate of Trikamlal as Rs. 1,06,794. The Assistant Controller held that the instruments of November 16, 1953, operated as a relinquishments by the deceased of his interest in the joint properties in favour of Kantilal and that the consideration of rupees one lakh for which the relinquishments was made was not full consideration since the value of the one-half share of the deceased in the joint family properties at the date of the said instruments was Rs. 3,44,058, and there was, therefore, a disposition by the deceased in favour of a relative for partial consideration and it was, accordingly, by reason of Section 27, sub-section (1), liable to be treated as a gift for the purpose of Section 9(1), and its value, that is Rs. 2,37,334, was includible in the value of the estate of the deceased. On appeal, the Central Board of Revenue agreed with the Assistant Controller and further held that, in any event, under the instruments there was extinguishments at the expenses of the deceased of his interest in the joint family properties and there was, therefore, a deemed disposition by the deceased of the benefit which accrued to Kantilal as a result of such extinguishments and the charge to estate duty was accordingly attracted u/s 9(1) read with Section 27(1). On a reference having been made to this High Court, it was held that the word ""disposition"" must possess the elements of transfer of an interest in property from one person to another. No meaning of the word ""disposition"" can take in partition which is nothing but a process in and by which joint enjoyment is transformed into enjoyment in severalty. There is no transfer of interest from one coparcener to another in the process of partition. It was held that the instruments of November 16, 1953, did not constitute a disposition by the deceased in favour of Kantilal within the meaning of Section 27(1) and was not liable to be treated as a gift for the purpose of Section 9(1). It was further held that merely because on partition a coparcener gets an unequal share, it does not cease to be partition and it cannot be held to be relinquishments of any ""right"" possessed by a coparcener which results in benefit to another coparcener, even if the partition is unequal, within the meaning of Section 2(15), Explanation 2, and the Explanation cannot be availed of for the purpose of bringing the case within section 27(1).

5. In the instant case also, the deceased Vadilal Chhaganlal, died within two

years of the execution of the documents dated December 5, 1959, the death having occurred on November 11, 1960. The documents of vahchani patrak which is in Gujarati clearly indicates that it was a deed of partition and though one of the terminologies used at one stage indicates that the deceased, Vadilal Chhaganlal, was giving up all the rest of the properties, read as whole, the documents is clearly a deed of partition. In one of the paragraphs it has been specifically mentioned that Vadilal Chhaganlal, the deceased, and his son, Chandulal Vadilal, had brought their coparcenary to an end and that from that date, December 5, 1959, onwards there was no joint family or no coparcenary between the deceased and his son, Chandulal. Under these circumstances, it is clear that this was a case of partition and hence in the light of the decision in Kantilal Trikamlal Vs. Controller of Estate Duty, Gujarat, , there was no question of this particular arrangement between the deceased and his son, Chandulal, being treated as a disposition for the purposes of Section 27(1) and hence the amount of Rs. 2,04,078 cannot be said to be includible in the value of the estate of the deceased.

6. In The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, , the Supreme Court held that a partition between members of a Hindu undivided family did not effect any transfer as generally understood in law and it, therefore, did not fall within the definition of ""gift"" in section 2(xii) of the Gift-tax Act, and in that particular case the question was whether by allotting greater share to the other members of the coparcenary than that to have made a ""gift"" of a portion of his share of the property to the others and whether such transactions was liable to be taxed under the Gift Tax Act, 1959. There was no finding that there was any division of status amongst the members of the family before they divided the properties. On these facts the Supreme court held that the partition in the family could not be considered to be a disposition, conveyance, assignment settlement, delivery, payment or other alienation of property within the meaning of those words in section 2(xxiv) of the Act. The Supreme Court further held that the partition was not a transactions entered into by the assessee with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other parson and, therefore, Section 2(xxvi)(d) did not apply and held that there was

no gift by the assessee on which he was liable to pay gift-tax.

7. In *The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao*, , the Supreme Court followed the earlier decision in

*The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, and the question before the Supreme Court was whether the property allotted to

one of the widows in the joint family at the time partition could be said to have passed on her death u/s 7 of the Estate Duty Act or whether the

arrangement under the partition deed was a disposition within the meaning of section 24. It was held that when the deceased died, her interest in

the lands ceased and it passed to the other members of the former joint family and, prima facie, Section 7 applied and it was merely an adjustment

of the rights of the various members of the family. The partition of the Hindu undivided family did not amount to a ""disposition"" within the meaning

of section 24 and that section did not apply. At page 265 of the report the Supreme Court has considered its earlier decision in *The Commissioner*

*of Gift Tax, Madras Vs. N.S. Getty Chettiar*, it has observed :

We see no reason why we should not place the same interpretation of the word "disposition" in section 24 of the Act.

8. It is thus clear that the Supreme Court has treated the word ""disposition"" occurring in the Estate Duty Act as equivalent to the word ""disposition

occurring in the Gift-tax Act. Since under the Gift-tax Act according to the decision in *The Commissioner of Gift Tax, Madras Vs. N.S. Getty*

*Chettiar*, , on partition between the members of a joint family there is no disposition of property for the purpose of the Gift-tax Act, it would not be

a disposition also for the purpose of the Estate Duty Act. Thus the view of this High Court in *Kantilal Trikamlal Vs. Controller of Estate Duty*,

*Gujarat*, is now strengthened by the two decision of the Supreme Court, on under the Gift-tax Act and the other under the Estate Duty Act when

both of them are read together.

9. In view of the above discussion and in view of the fact that there was a clear partition between the deceased and his son, Chandulal, there

cannot be said to be a ""disposition"" of property by the deceased to Chandulal, and, therefore the amount of Rs. 2,04,078 cannot be included in the

principles value of the estate of the deceased. We, therefore, answer the question referred to us in the negative. The Controller of Estate Duty will

pay the costs of this reference to the respondent.