

(1982) 09 MAD CK 0021

In the Madras High Court

Case No : Tax Case No. 667 of 1976 (Reference No. 535 of 1976)

Controller of Estate Duty, Madras

APPELLANT

Vs

B. Kamalamma

RESPONDENT

Date of Decision : 09-09-1982

Acts Referred:

Estate Duty Act, 1953 — Section 44

Citation : (1984) 148 ITR 434

Hon'ble Judges : V. Ramaswami-II, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

Balasubrahmanyam, J.—This is a reference under the E.D. Act, 1953. The question is whether, for the purpose of estate duty leviable on the

estate of a deceased Hindu, a reasonable provision for marriage of his unmarried daughter can be allowed as a deductible debt ?

2. The deceased, in this case, died possessed of an estate worth Rs. 4,17,844. The estate comprised of both ancestral property and self-

acquisitions. The deceased was survived by his wife and a minor daughter aged 17. The deceased's widow filed an estate duty account with the

Assistant Controller of Estate Duty. She claimed, inter alia, a deduction for Rs. 72,000 as provision for the marriage of the daughter. The Asst.

Controller, however, negated this claim. He took the view that the obligation to get the daughter married was a personal obligation of the

deceased and was not a charge on the estate. The Appellate Controller and the Appellate Tribunal, however, took a different view. They held that

under the Hindu law a n obligation of this sort is enforceable against the

ancestral property which the deceased died possessed of. They, however, limited the allowance in this case to Rs. 50,000 as representing a reasonable provision, as against the amount of Rs. 72,000 which the accountable person claimed as a deduction.

3. The Department now challenges the Tribunal's decision by means by the following question of law :

Whether, on the facts and in the circumstances of the case, the sum of Rs. 50,000 being the provision made for the purposes of maintenance and

marriage expenses of the unmarried daughter of the deceased was deductible from the principle value of the estate ?

4. It is urged for the Department that the obligation of a Hindu father to meet the marriage expenses of his daughter is a personal obligation which

comes to an end with his death and hence cannot figure as a deductible debt in the computation of the dutiable estate.

5. This contention, however, is untenable. The Hindu law on the subject is now well settled. A girl born in a Hindu family is entitled to look to the

family property for defraying the expenses for her marriage. What is more, she can enforce her right against the family property. This right stems

from her membership in the joint family and from her inherent right in the family property as an unmarried daughter. Courts have laid down time and

again, that the liability of family property in this regard is quite independent of the father's personal obligation to get the daughter married : vide

Chedalavada Subbayya Vs. Chedalavada Ananda Ramayya, , Cherutty alias Vasu and Another Vs. Nangamparambil Ravu alias Kuttaman and

Others, and T.S. Srinivasan Vs. Commissioner of Expenditure-tax, .

6. The Hindu Adoptions and Maintenance Act, 1956, provides, inter alia, for the obligation of a Hindu father to perform, and spend for, the

marriage of his unmarried daughter. The liability, however, is not declared by the Act to be an automatic charge on the father's property in every

case. The relevant provision in s. 27 of the Act lays down that the liability can be enforced against the father's estate after his death only if a

specific charge in that regard has been created either under his will, or under an agreement binding on him, or under a court decree. These

statutory provisions, however, do not affect the daughter's independent right under her personal law to render ancestral property liable for her

maintenance and marriage. See *Devchand C. Shah Vs. Commissioner of Expenditure Tax, Mysore*, . Estate duty is chargeable under the Act, not on the gross value of the estate, but on the net value after deductions. Section 44 provides for certain deductions. It allows debts and encumbrances to be deducted from the principal value of the estate. On the basis that the provision for the marriage of unmarried daughters in a Hindu family is enforceable against ancestral property, it has got to be deducted as a debt or encumbrance under s. 44 wherever the dutiable estate includes ancestral property of the deceased. Learned counsel for the Department drew attention to the fact that a few days before his death, the deceased had actually set apart 8 acres of land and settled it on his daughter as a provision for her marriage. The interpretation put on this act of settlement was that, with that settlement, the deceased, even during his lifetime, had wholly rid himself of his obligation to spend for the daughter's marriage, so that when he died the estate left by him was, by the same token, free from any liability in that regard. This contention, however, must be rejected as untenable. We do not accept the thesis that a Hindu father is relieved of his obligation to get his daughter married by merely giving her, or even by overwhelming her with gifts of money or other property. The obligation, in the true sense, is discharged only by actual performance of the marriage.

7. For the accountable person it is urged that it ill-becomes the Department to treat the settlement of the property as a discharge of the deceased's obligation towards the daughter's marriage when the Department had set at naught the settlement by imposing estate duty even on the settled property as property deemed to pass under s. 9 of the Act. The Department, it was said, cannot have it both ways. This contention of the accountable person can be rested only on some broad equitable considerations. Equity and estate duty, however, are strangers. That s. 9 imposes an extra burden on the dutiable estate can be no reason for claiming a countervailing allowance to neutralize its effect otherwise. The E D Act carries a number of similar deeming provisions which employ legal fictions for treating what ordinarily would be non-dutiable property as dutiable property. But there is no evidence in the statute of a general policy to go the whole hog with the statutory fictions and make corresponding

provision for allowance and deductions as well, in every situation in which the property is deemed to pass. The fictions under the Act generally

stop short with laying the charge; they do not extend their field to deductions climbable by the accountable person. The Act no doubt includes a

provision or two applying the statutory fiction even to the subject-matter of deductions. But the mischief of these rare provisions is not to allow

deductions, but to disallow them. Witness, for instances, ss. 45 and 46.

8. So far as this case is concerned, the accountable person cannot, and does not, dispute the charge under s. 9. This provision brings up for levy of

estate duty any property figuring in a disposition by way of gift inter vivos which had been effected by the deceased within two years prior to his

death. The deceased, in this case, executed the gift deed in favour of his daughter on September 27, 1970, and died a few day thereafter, on

October 6, 1970. The Asst. Controller was, therefore, well within the statute in including, in the principal value of the estate, the value of the gifted

property, which admittedly was worth Rs. 72,000 at that time. This assessment, correct in itself, cannot, however, give the accountable person a

handle to claim a deduction for the self-same figure of Rs. 72,000 or even any lesser figure as a reasonable estimate of the marriage provision for

the unmarried daughter. The truth of the matter is that the claim for deduction can succeed only on its own quality of eligibility, not otherwise.

9. On the last aspect of deductibility, we have earlier referred to the legal position which obtains in cases of this kind, namely, that where the

deceased is a Hindu, a reasonable provision for the marriage of an unmarried daughter in the family must be allowed either as a debt or as an

encumbrance if the dutiable estate includes ancestral or coparcenary property to the extent that it can take in, or absorb, that liability. In this case, it

is common ground that the deceased died without getting the daughter married. It is also common ground that the deceased's estate included

ancestral lands worth Rs. 1,51,470, not counting the item which formed the subject-matter of the gift to the daughter. Under the Mitakshara law,

as enunciated in recent decisions of our courts, the ancestral or coparcenary character of a property obtained by a separating coparcener in a

family partition continues to retain that character in his hands, and has to be regarded as such even though, after the partition, he happens to be the

sole male member his family : See N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, . We are, therefore, justified in our

conclusion that the estimated provision of Rs. 50,000 for the marriage of the deceased's daughter must be allowed as a deduction in the

computation of the principal value of the deceased's estate, since it is a debt for which the law imposes a liability on the ancestral properties which

the deceased dies possessed of.

10. We only wish to clarify a point of construction of s. 44 before concluding this reference, for, it is the pertinent provision which, as we earlier

indicated, grants deduction for debts and encumbrances. Clauses (1) to (d) of this section proceed to lay down certain limitations and qualifications

subject to which deductions will be granted in certain cases. These limitations and qualifications are not general in their scope. On the contrary,

each clause deals with a particular set of circumstances, and in each case the deduction of a debt or encumbrance is made subject to the limitations

provided thereunder. It follows, therefore, that where a debt or an encumbrance does not fall within any of these exceptional clauses, such a debt

or encumbrance is per se deductible. In our judgment, the liability of ancestral or coparcenary property of a Hindu to pay for the marriage

expenses of unmarried daughters in the family would be a proper debt or encumbrance deductible under the general provisions of s. 44 where the

deceased dies possessed of such property. This liability does not fall under any of the special categories covered by cls. (a) to (d) of s. 44, and is

not subject to the limitations found therein. The only condition for claiming a deduction in this kind of case is that which the Hindu law itself

imposes, namely, that the deceased's estate must comprise ancestral or coparcenary property of the requisite value to bear the liability for the

marriage expenses claimed.

11. In the circumstances, we answer this reference in favour of the accountable person and against the Department. The Department shall pay the

costs of this reference. Counsel's fee Rs. 500.