(1983) 08 MAD CK 0029

In the Madras High Court

Case No : Tax Case No. 1598 of 1977 (Reference No. 1130 of 1977)

Controller of Estate Duty, Madras — APPELLANT

Vs

R. Raghava Iyengar — RESPONDENT

Date of Decision : 11-08-1983

Acts Referred:

Estate Duty Act, 1953 — Section 9
Succession Act, 1925 — Section 88

Citation : (1984) 150 ITR 86 : (1984) 18 TAXMAN 2

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

Ratnam, J.—In this reference under s. 64(1) of the E.D. Act, 1953, at the instance of the Controller of Estate Duty, Madras, the following

question has been referred for the opinion of this court :

Whether, on the facts and in the circumstances of the case, the deceased had a life interest in the properties set out in Schedules B, C and D of

the will executed by his wife on March 30, 1967, and whether in view of the fact that he had executed a deed on April 10, 1968, giving up his right

therein, those properties should be deemed to have passed on his death u/s 9 of the Estate Duty Act ?

2. The factual backdrop giving rise to this question may now be noticed. One Desika Iyengar (deceased) had two brothers, Krishnaswamy

Iyengar and Raghunatha Iyengar. Raghunath Iyengar died in 1946 leaving behind him two sons. Desika Iyengar was employed in the (Central)

March 7, 1956, Desika Iyengar (deceased), his brother, Krishnaswamy Iyengar, and his nephews, sons of Raghunatha Iyengar, divided their joint

family properties under a deed and the properties set out in the A Schedule thereto were allotted to the share of Desika Iyengar. On March 30,

1967, Deskia Iyengar executed a will under which provision was made with reference to all his properties, movable and immovable. Thereunder,

he desired that all his properties should be taken by his wife, Lakshmi Ammal alias Thangammal, to be enjoyed by her for her lifetime without

powers of alienation and that on her death, the properties should be taken by Raghava Iyengar, one of the sons of Raghunatha Iyengar, who was

also described as ""Abhimana Putran"". On the same day, Lakshmi Ammal alias Thangammal, wife of Desika Iyengar, in turn, executed a will in

respect of properties. Therein, she had provided that after her death, her husband should enjoy the income from the properties without powers of

alienation and that the properties set out in A Schedule to that will should be taken by Raghava Iyengar after the death of her husband and that the

properties detailed in Schedules B, C, and D to the will should be taken after her death by Chembaka Lakshmi Ammal, Vasudeva Iyengar and

Subramania Iyer respectively absolutely. Lakshmi Ammal alias Thangammal died on December 6, 1967. On April 10, 1968, her husband, Desika

Iyengar, executed a deed of release purporting to relinquish his interest in all the properties under the will of his wife, Lakshmi Ammal alias

Thangammal. Desika Iyengar died on November 17, 1968. Reghava Iyengar filed an estate duty account disclosing all the assets of the deceased,

Desika Iyengar. In the course of the assessment proceedings, Raghava Iyengar contended that Desika Iyengar had adopted him as far back as

1922, that the properties belonged to the HUF comprising of the deceased, Desika Iyengar, his wife and himself of which the deceased, Desika

Iyengar, was the karta and that the deceased would have been entitled only to a half share which could be deemed to have passed on his death

under s. 7 of the E.D. Act. Consistent with this, a revised account was also filed by the accountable person.

3. The Assistant Controller of Estate Duty did not, however, accept the contentions raised by the accountable person. He held that the adoptions

of the accountable person by the deceased, Desika Iyengar, had not been established. After so holding, the Assistant Controller of Estate Duty determined the principal value of the estate of Rs. 6,83,742 and this included (1) the value of 11.74 acres of wet lands at Vaigainallur Village, Rs.

93,920 (B Schedule in the will executed by Lakshmi Ammal alias Thangammal), (2) the value of certain houses in Pallivasal Street, Kulithalai, Rs.

12,000 (C Schedule in the will executed by Lakshmi Ammal alias Thangammal), and (3) the value of 2.03 acres of thope at Krishnarajapuram. Rs.

10,556 (D Schedule in the will executed by Lakshmi Ammal alias Thangammal), as according to the Assistant Controller of Estate Duty, the

deceased, Desika Iyengar, had a life interest in the aforesaid three items under the will executed in his favour by his wife, Lakshmi Ammal alias

Thangammal, and Desika Iyengar had relinquished hi rights under the release deed executed by him in favour of Raghava Iyengar on April 10,

1968, within two years prior to the date of death of Desika Iyengar so are to attract the applicability of s. 9 of the E.D. Act.

4. On appeal by the accountable person, the Appellate Controller of Estate Duty, on a reappraisal of the evidence, concurred with the conclusion

of the Assistant Controller of Estate Duty that the adoption had not been established. However, on a consideration of the terms of the will of

Lakshmi Ammal alias Thangammal, the Appellate Controller of Estate Duty was of the view that what was bequeathed to the deceased, Desika

Iyengar under the will of Lakshmi Ammal alias Thangammal was only a life interest in the A Schedule Properties to the will, and that Desika

Iyengar was not entitled to the properties set out in Schedules B, C and D and consequently, there was no question of his having relinquished or

released his right in those properties and, therefore, the inclusion of the value of those properties under s. 9 of the E.D. Act was not in order.

Accordingly, the Appellate Controller of Estate Duty directed the deletion of the value of B, C and D Schedule properties in the will of Lakshmi

Ammal alias Thangammal.

5. The accountable person as well as the Department wentlon further appeal to the Tribunal. The accountable person, in his appeal, reiterated

before the Tribunal his adoption to the deceased, Desika Iyengar, while the Department challenged the correctness of the order of the Appellate

Controller of Estate Duty deleting the value of the properties in Schedules B, C and D to the will Lakshmi Ammal alias Thangammal from the value of adoption was called for in view of certain materials placed before the Tribunal and accordingly set aside the order of the Appellate Controller of

Estate Duty on that question and directed him to rehear the appeal. Dealing with the appeal by the Department, which is the subject-matter of the

present reference, the Tribunal concluded, on an interpretation of the terms of the will of Lakshmi Ammal alias Thangammal, that he did not secure

of acquire any interest in the properties show as B, C and D Schedules and, therefore, there is no question of the deceased having relinquished or

given up his rights with reference to the properties. In that view, the Tribunal upheld the deletion of the value of B, C and D Schedule properties

and dismissed the appeal.

6. The question whether the deceased, Desika Iyengar, acquired any right or interest in B, C and D Schedule properties under the will of Lakshmi

Ammal alias Thangammal would depend entirely upon the construction of its terms. In the preamble portion of the will executed by Lakshmi,

Ammal alias Thangammal, a reference has been made to her deteriorating condition and her desire to make a provision with reference to her

properties even during her lifetime with a view to avoid misunderstandings in relation to those properties after her death. Therefore, the bequests

follow. Firstly, the testatrix had, made a provision for her husband, Desika Iyengar, in that in the event of the testatrix predeceasing for her

husband, Desika Iyengar, Desika Iyengar, her husband, should enjoy during his lifetime the income from all the properties of the testatrix without

powers of alienation. Then follows a further provision the Raghava Iyengar, son of Raghunatha Iyengar, the brother of Desika Iyengar, who has

been attached to the family and who is also the Abhimana Putran, should perform the obsequies for the testatrix and her husband, Desika Iyengar,

and take the A Schedule properties. Then follow the bequests in respect of B, C and D Schedules properties. With reference to B Schedule, the

testatrix had provided that Chembaka Lakshmi Ammal, the daughter of Raghunatha Iyengar, and her Abhimana daughter, who had been attending

to her comforts should take the B Schedule properties absolutely after her death. Similarly, the C Schedule properties had been bequeathed to

Raghunatha, the grandson of Raghunath Iyengar, to be taken by him absolutely after the lifetime of the testatrix. The D Schedule properties had been bequeathed to one Subramania Iyer, who had been in the family of the testatrix for seven years and also rendering assistance and attending to

the comforts of her husband, Desika Iyengar, to be taken by him absolutely after the lifetime of the testatrix. While the learned counsel for the

Revenue would lay emphasis on the clause in the will which confers on Desika Iyengar a right to enjoy the income from all the properties of the

testatrix during his lifetime without powers of alienation to contend that the deceased had acquired such a right even over B, C and D Schedule

properties would also from part of the value of the estate in his case, the learned counsel for the accountable person would submit that on a

construction of all the recitals in the will of Lakshmi Ammal alias Thangammal, the B, C and D Schedule properties were bequeathed absolutely to

Chembaka Lakshmi Ammal Raghunatha and Subramania Iyer, to be taken by them immediately after the death of the testatrix and, therefor, the

deceased, desika Iyengar did not acquire any interest at all with reference to those properties and hence, the subsequent execution of a release

deed on April 10, 1968, was of no consequence.

7. In the will executed by Lakshmi Ammal alias Thangammal, in the first portion thereof, the testatrix had no doubt stated that her husband, Desika

Iyengar, should become entitled to enjoy the income from all her properties for his lifetime. Normally, this provision can be understood as being

applicable to B, C and D Schedules also because admittedly all those properties also belonged to the testatrix. But the further provisions in the will

make it clear that that was not the intention of the testatrix. With reference to the A Schedule, the testatrix had provided that her Abhimana Putran,

Raghava Iyengar, the accountable person, should perform the obsequies not only for the testatrix but also for her husband, Desika Iyengar, and

take the A Schedule properties. Similarly, with reference to B, C and D Schedule properties, the will provides that the respective legatees should

absolutely take those schedule properties after the lifetime of the testatrix. In the provision relating to the B, C and D Schedules, there is no

direction that those bequests will take effect after the lifetime of the husband of the testatrix, namely, Desika Iyengar. The absence of such a

provision clearly indicates that though by the earlier clause in the will the testatrix had desired that her husband should become entitled to the income from all the properties and also enjoy such income for his lifetime without powers of alienation, yet, by the subsequent bequest relating to

B, C and D schedules the right given by the earlier clause in the will had not only been taken away, but rights of other legates inconsistent with the

right of the husband of the testatrix in those properties had been conferred on the legatees even during the lifetime of the husband of the testatrix. In

other words, the bequest to the husband of the income from all the properties including B, C and D Schedule properties to be enjoyed by him

during his lifetime without powers of alienation and the bequests in favour of other legatees with reference to B, C and D Schedules to taken effect

immediately after the death of the testatrix cannot stand together and are indeed irreconcilable. In such a situation, in accordance with the principle

laid down in s. 88 of the Indian Succession Act, 1952 we hold that the earlier clause in the will of the testatrix by which her husband was given a

right to enjoy the income from all the properties during his lifetime without powers of alienation cannot be extended to B, C and D Schedule

properties, as with reference to those properties, the testatrix had provided that the other legatees should become entitled to those properties

absolutely and on her death. To hold that the husband of the testatrix had a right of enjoying the income from B, C and D Schedules properties

also during his lifetime without powers of alienation would be to ignore the subsequent clauses in the will providing specifically that the other

legatees, Chembaka Lakshmi Ammal, Raghunatha and Subramania Iyer, will be entitled to those schedule of properties absolutely and no the

death of the testatrix. We are satisfied, on a construction of the terms of the will as a whole, that the husband of the testatrix Desika Iyengar, did

not acquire any right or interest in the B, C and D Schedule properties under the will of his wife, Lakshmi Ammal alias Thangammal. We, therefore

hold that the Tribunal was quite correct in its conclusion. Accordingly, we answer the question referred to us in the negative and against the

Revenue. The accountable person will be entitled to the costs of this reference. Counsel''s fee Rs. 500.