

(1979) 09 BOM CK 0049

In the Bombay High Court

Case No : Estate Duty Reference No. 9 of 1971

Controller of Estate Duty, Pune

APPELLANT

Vs

R.G. Deshmukh

RESPONDENT

Date of Decision : 20-09-1979

Acts Referred:

Estate Duty Act, 1953 — Section 24

Citation : (1980) 124 ITR 273 : (1980) 3 TAXMAN 260

Hon'ble Judges : M. Jagannatha Rao, J;D.P. Madan, J

Bench : Division Bench

Advocate : V.C. Kotwal, for the Appellant; R.J. Kolah, for the Respondent

Judgement

Kania, J.—This is a reference under s. 64(1) of the E.D. Act, 1953 (hereinafter referred to as "the said Act"), made at the instance of the CED, Pune. The following two questions have been refereed to us for determination in this reference :

"1. Whether, on the facts and in the circumstances of the case, the ante-adoption agreement dated April 18, 1931, and the ratification agreement dated December 22, 1934, amounted to a settlement or disposition of the properties in question ?

2. Whether, on the facts and in the circumstances of the case, the estates in question covered by the agreements referred to in question No. 1 above are not includible in the estate of the deceased by virtue of section 24(1) of the Estate Duty Act ?"

2. The facts giving rise to this reference are as follows : One Sardar Gangadharrao Deshmukh was a second class Sardar holding a watan estate in the district of Khandesh under a sanad under the Golden Settlement granted by the then Government on May 12, 1899. Gangadharrao died on March 7, 1926, leaving surviving him his widow, Anandibai, but without leaving any male heir, lineal, collateral or adopted. After the death of Gangadharrao, Anandibai requested the revenue authorities concerned to enter her name to the cash

allowance and the watan inam lands in place of her deceased husband. This request was negated by the revenue authorities. Anandibai then made a petition to the Government on September 17, 1926, seeking permission to adopt a son from the outside the watan family. This permission was granted by the Government by its resolution No. 8345/24 dated April 13, 1927, which permitted Anandibai to adopt a boy from outside the watan family. On April 18, 1931, an ante-adoption agreement was entered into between Anandibai and one S. V. Dasture, the natural father of the boy proposed to be adopted, the said agreement having been entered into by the natural father on behalf of the said boy. We shall discuss this agreement in some detail a little later. It is sufficient to note at this stage that under condition 6 and 9 of the said agreement, it was agreed that Anandibai would possess and enjoy certain watan lands admeasuring 1463 acres and one house in Baliram Peth, Jalgaon, for her lifetime. As far as the said watan lands were concerned, it was clarified that Anandibai would not have any right to dispose of them in any way. As far as the house at Jalgaon was concerned, Anandibai was given the right to the possession thereof without any restrictions during her lifetime. On May 3, 1931, the said son of S. V. Dasture, on whose behalf the said agreement was entered into, namely, Ramachandrarao the accountable person herein was adopted by Anadibai. Ramchandrarao was at that time a minor and he attained majority on January 18, 1932. Pursuant to an application made by Anandibai, the Collector of East Khandesh district passed an order dated December 23, 1932, entering the name of Anandibai in the record of rights mentioning that she was to remain in possession and enjoyment of the said properties for her lifetime. Thereafter, there were some disputes between Anandibai and Ramachandrarao. These were amicably settled and on December 22, 1934, an agreement was entered into between Anandibai and Ramachandrarao which has been referred to by the Tribunal as a ratification agreement. Anandibai died on August 3, 1965, at Jalgaon. In the estate duty proceedings relating to the estate of Anandibai, a question was raised regarding the inclusion of the value of the aforesaid watan lands and the house at Jalgaon in the estate of Anandibai. The stand of Ramachandrarao, the accountable person, was that the value of these assets was not liable to be included in the estate of Anandibai by reason of s. 24 of the said Act, whereas the stand of the department was that the value of the said assets was liable to be included in the estate of Anandibai as s. 24 of the said Act had no application to the facts of the case. Both the Addl. Asst. CED, Pune, who passed the assessment order, as well as the Appellate CED held that the value of the said assets was liable to be included in the estate of Anandibai. The accountable person then appealed to the Income Tax Appellate Tribunal which decided the said question in favour of the accountable person. The present reference is directed against the said decision of the Tribunal.

3. In order to appreciate the submission advanced before us, it is desirable to take note of the relevant provisions of ss. 7 and 24 of the said Act. Sub-s. (1) of s. 7 of the said Act runs thus :

"7. (1) Subject to the provisions of this section, property in which the deceased, or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law."

4. The other provisions of s. 7 are not material for the purpose of this case. Sub-s. (1) of s. 24 of the said Act runs thus :

"24. (1) Where by a disposition of any property an interest is conferred on any person, other than the disponer, for the life of such person or determinable on his death, the remainder being conferred upon the disponer absolutely, and such person enters into possession of the interest, and thenceforward retains possession of it, then, on the death of such person, the property shall not be deemed to pass by reason only of its reverter to the disponer in his lifetime."

5. The rest of the provisions of s. 24 are not material for the purpose of this case.

6. The submission of Mr. Kotwal, the learned counsel for the department, is that as far as the said watan lands and the said house at Jalgaon are concerned, Anandibai had a life interest in the same and the said interest ceased on the death of Anandibai as a result of which a benefit accrued and hence the value of the said assets must be held to pass on the death of Anandibai. It was submitted by him that s. 24 of the said Act had no application to the case as there was no disposition of the property constituted by the said assets in favour of Anandibai. As far as the house at Jalgaon is concerned, it is conceded by Mr. Kolah, learned counsel for the respondent, that the value of the same must be held to pass on the death of Anandibai and that s. 24 of the said Act has no application in that connection.

7. What we have, therefore, to consider is the question as to whether the value of the aforesaid watan lands, which Anandibai was allowed to enjoy for her lifetime, should be included in her estate. In order to examine the correctness of the submission of Mr. Kotwal, it is necessary to consider the nature of interest which Gangadharrao, the husband of Anandibai, had in the said watan lands. These watan lands were granted to the family of Gangadharrao by a sanad on May 12, 1899. There were certain conditions set out in the said sanad on the fulfillment of which the grant of the said lands and cash allowances referred to in the sanad was granted. The first of these conditions runs as follows :

"The said lands and cash allowances shall be continued without demand of service, without increase of land tax over the above fixed amounts and without objection or question on the part of the Government as to rights of any holders thereof, so long as any male heir to the watan, lineal, collateral or adopted within the limits of the watandar family, shall be in existence."

8. The second condition runs as follows :

"No nuzzerana or other demand of the part of the Government will be imposed on account of the succession of heirs, lineal, collateral or adopted, within limits of the watandar family, and permission, to make such adoptions need not hereafter be obtained from Government."

9. The third condition runs as follows :

"When all the shares of the watan agree to request it, then the general privilege of adopting at any time, any person (without restriction as to family) who can legally adopted, will be granted by the Government to the watan, on the payment from that time forward in perpetuity of an annual nuzzerana of one anna in each rupee of the above total emoluments of the watan."

10. On a plain reading of these conditions, particularly the first condition, it is clear that the duration of the grant was only so long as there was any male heir to the family of the watandar in existence. The second and third conditions relate to the question of adoption. These provisions show that on the death of Gangadharrao the watan was liable to lapse and it was only by reason of the adoption made by Anandibai that the watan continued. As we have already pointed out, Anandibai adopted Ramchandrarao after obtaining permission from the Government. The said permission was given by the Government resolution on April 13, 1927, on payment of the annual nuzzerana of one anna in the rupee.

11. Coming now to the agreement of April 18, 1931, entered into by Anandibai with the natural father of Ramchandrarao, the said agreement has been entered into by the natural father of Ramchandrarao, who was then a minor, on his behalf. It is significant that the said agreement has been signed only by the natural father of Ramchandrarao and not by Anandibai. Clause (6) of the said agreement runs as follows :

"Out of the sources of revenue, you are having agricultural lands in Yawal and Raver talukas for which you pay special land cess. In these talukas, there are A-1463, G-28 of lands for which the details are given in the Schedule. All these lands stand in your name and you are possessing them till now. You will possess them till your lifetime and you will enjoy income therefrom till your lifetime freely and without any opposition. But you will not dispose of by sales or purchases these lands."

12. Clause (12) of the said agreement sets out that the said Ramchandrarao was a minor at that and the said agreement was being executed by his natural father, S. V. Dasture, on his behalf. The said clause further recited that the said agreement was for the benefit of minor, Ramchandrarao, and would be binding on him and that the said Ramchandrarao would be bound to execute a document on the lines of the said agreement according to law after attaining the majority. As far as the validity and legal effect of this agreement is concerned, we may refer to the decision of the Privy Council in AIR 1927 139 (Privy Council) In that case, it has been held by the Privy Council that having regard to a consensus of judicial decisions, an arrangement made on the adoption of a Hindu whereby the

widow of the adoptive father is to enjoy his property during her lifetime, or for a lesser period, that arrangement being consented to by the natural father before the adoption, is to be regarded as valid by custom. But an agreement or consent by the natural father is not effectual in law, or by custom, to validate any other disposition taking effect after the adoption and curtailing the rights of the adopted son as a co-sharer. In view of this decision, in so far as the said agreement confers on Anandibai a right to possess and enjoy the said watan lands for the duration of her life but without power to dispose of the same, it must be regarded as valid in law by reason of custom. The question which we have to consider is whether it can be said that by the said agreement there was any disposition of the said watan lands in favour of Anandibai. In this regard, we must point out, and it is conceded by the department, that Anandibai did have a life interest in the said watan lands. In fact, if there was no such interest, there could be no question of the value of the said lands being included in her estate. It is clear that, in view of the aforesaid sanad, on the death of her husband, who was the watandar, the watan was liable to lapse and Anandibai could not be said to have any interest in the said watan lands. It was only by reason of the adoption of Ramchandrarao that the watan could be continued. In this situation, we have to consider as to how Anandibai got the life interest in the said lands if not under this agreement, or under the agreement dated December 22, 1934. It appears to us that on a plain reading of clause (6) of the said agreement of April 18, 1931, it was under the said clause that the right was given to Anandibai to possess and enjoy the said watan lands during her lifetime. It must be appreciated that in view of the aforesaid decision of the Privy Council the said provision in the agreement dated April 18, 1931, is valid in law. Moreover, the said agreement is a registered document. In fact, both Mr. Kotwal and Mr. Kolah accepted the position that the said agreement is valid in law. At the time, when the said agreement was entered into, viz., on April 18, 1931, the adoption had not been made and the watan was liable to lapse. Anandibai, therefore, could have had no interest in the said watan lands at that time. As pointed out by the Supreme Court in *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others*, , the ground on which an adopted son is held entitled under the Hindu law to take in defeasance of the rights acquired prior to his adoption is that in the eye of law his adoption relates back, by a legal fiction, to the date of his adoptive father, he being put in the position of a posthumous son. The principle of relation back applies only when the claim made by the adopted son relates to the estate of his adoptive father. The doctrine of relation back cannot be applied when the claim made by the adopted son relates not to the estate of his adoptive father but of a collateral. Thus, once the adoption of Ramchandrarao was made, that adoption related back to the death of Gangadharrao and had the effect of divesting Anandibai of her widow's interest in Gangadharrao's property. In view of this, it is clear that the right conferred of Anandibai to possess and enjoy the said watan lands during her lifetime was conferred by clause (6) of the said agreement dated April 18, 1931. As it has been pointed out in *The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao*, , the word

"disposition" in s. 24 of the said Act means giving away or giving up by a person of something which was his own. In the present case, in our view, by clause (6) of the said agreement dated April 18, 1931, the natural father or Ramchandrarao on behalf of Ramchandrarao gave up in favour of Anandibai or transferred to Anandibai the right to possess and enjoy the said watan lands during the lifetime of Anandibai. The said agreement thus made a disposition of the said watan lands in favour of Anandibai to the extent and in the manner aforesaid. It was, however, urged by Mr. Kotwal that there was no disposition made by the said agreement of April 18, 1931, and that the said agreement was in the nature of a family arrangement. In support of this contention, Mr. Kotwal relied on the aforesaid decision of the Supreme Court in *The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao*, . In that case, in a partition effected between the members of a HUF, the deceased, a widow who had a right to her husband's share in the non-agricultural properties as well as a right to be maintained from the family allotted to her 25 acres of wet land, which she was to enjoy during her lifetime. The question was whether the property allotted to her passed on her death under s. 7 of the said Act or whether the meaning of s. 24 of that Act and there was merely a reverter to the disponer not attracting estate duty. It was held that under the partition deed there was merely an adjustment of rights of the various members of the family. The partition in the HUF did not amount to a "disposition" within the meaning of s. 24 and that section did not apply. We are afraid, the ratio of this decision has no application to the case before us. In that case, the widow in question gave up her rights to her husband's share in the non-agricultural properties as well as a right of maintenance from the family income and it was in exchange for this that she was allotted 25 acres of wet land. In the present case, under the agreement of April 18, 1931, there is nothing which Anandibai has given up. We have carefully perused the said agreement and we have failed to find that under the said agreement Anandibai gave up any of her rights which she had got prior to the said agreement. An adjustment must mean that parties thereto have given up certain rights and got certain rights in exchange. In this case, as we have pointed out, Anandibai had not given up any right under the said agreement. In fact, it is very significant that the said agreement has been signed only by the natural father of the minor. Ramchandrarao, and has not even been signed by Anandibai. In view of this, we fail to see how it can be said that the said agreement amounts to an adjustment of rights by members of the HUF.

13. As we have already held, as aforesaid, that there was a disposition of the said watan lands in favour of Anandibai, and on behalf of the minor, Ramchandrarao, by the said agreement of April 18, 1931, it is really not necessary for us to consider whether there was a disposition of the said lands by Ramchandrarao in favour of Anandibai by the agreement of December 22, 1934. In fact, it appears to us that question No. 1 has been wrongly framed, because there could not be disposition of the watan lands by both the agreements. If there was a disposition of the said watan lands by the agreement of April 18,

1931, there could not be another disposition of the said lands by the agreement of December 22, 1934, again in favour of Anandibai. We may, however, point out that even assuming that the agreement of April 18, 1931, did not amount to a disposition of life interest in the said watan lands in favour of Anandibai, such a disposition was made by the agreement of December 22, 1934, which has been signed by Ramchandrarao. Clause (3) of the said agreement sets out that there was a dispute between Ramchandrarao and Anandibai in respect of the immovable properties in the enjoyment of Anandibai but the same had been settled before the execution of the said agreement of December 22, 1934, and that the properties described in the agreement of April 18, 1931, and mutated in the name of Anandibai would remain in the enjoyment of Anandibai for her lifetime and that Ramchandrarao would take no objection to the same. By clause (4) of the said agreement it was recited by Ramchandrarao that the agreement of April 18, 1931, was executed by his natural father on his behalf and for his benefit and was lawfully binding on him and that the properties described in that agreement were to be enjoyed by Anandibai up to the time provided therein. Clause (6) of the said agreement is to the same effect. In view of this, if the disposition of the interest in the watan lands for the lifetime of Anandibai was not validly made by the agreement of April 18, 1931, such disposition was made by the agreement of December 22, 1934.

14. As we have already pointed out, question No. 1 has not been properly framed and with the consent of the counsel appearing before us, we reframe the said question as follows :

"1. Whether, on the facts and in the circumstances of the case, the agreement dated April 18, 1931, and the agreement dated December 22, 1934, or either of them amounted to a "disposition" of the properties in question within the meaning of the said expression in section 24 of the Estate Duty Act, 1953 ?"

15. As we have already pointed out, Mr. Kolah has conceded that as far as the house at Jalgaon is concerned, the same is liable to be included in the estate of Anandibai. We, therefore, answer question No. 1 as reframed as follows :

The agreement of April 18, 1931 amounts to a "disposition" of the watan lands referred to earlier within the meaning of the said expression in section 24 of the said Act, and assuming that this is not so, the agreement of December 22, 1934, amounts to a "disposition" of the said lands within the meaning of the said expression in section 24 of the said Act.

16. As far as question No. 2 is concerned, we hold that the value of the aforesaid watan lands is not liable to be included in the estate of Anandibai by reason of s. 24(1) of the said Act. As the entire argument have been advanced on the question of watan lands, in substances it is the applicant who has lost the reference. The application will pay to the respondent the costs of this reference.