
(1986) 06 MAD CK 0017
In the Madras High Court
Case No : Tax Case No. 56 of 1978

G. Shenbagammal

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 23-06-1986

Acts Referred:

Estate Duty Act, 1953 — Section 44

Hindu Adoptions and Maintenance Act, 1956 — Section 21, 22, 22(2), 27

Citation : (1986) 55 CTR 368 : (1986) 162 ITR 445

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

Bench : Division Bench

Advocate : S.V. Subramaniam, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

V. Ratnam, J.—During the course of the assessment proceedings, under the provisions of the Estate Duty Act, 1953, for the determination

of the principal value of the estate of deceased, K. C. A. D. Gnanagiri Nadar, who died on June 21, 1973, his widow, the accountable person,

claimed that her maintenance allowance and the estate duty payable on the principal value of the estate should be allowed as permissible

deductions while computing the dutiable estate of the deceased. The Assistant Controller of Estate Duty, Madurai, negated these claims. On

appeal, the Appellate Controller of Estate Duty concurred with the views of the Assistant Controller, relying upon a decision to the Tribunal in

Asst. CED v. N. Sundareswaramurthy (E. D. A. No. 22 (MDS)/1972-73 dated April, 1975) and on In Re: Mrs. Constance Lubeck, and V.

Pramila Vs. Controller of Estate Duty, Bangalore, . On further appeal, the Tribunal held that the claim for deduction of maintenance made by the

accountable person had been rightly negated. By a subsequent rectification order, the Tribunal rejected the claim of the accountable person

regarding the deduction of the estate duty in computing the principal value of the estate, relying upon the decision in V. Pramila Vs. Controller of

Estate Duty, Bangalore, .

2. In this reference, u/s 64(1) of the Estate Duty Act, 1953, at the instance of the accountable person, the following two questions have been

referred for the opinion of this court :

1. Whether, on the facts and in the circumstances of the case, the deduction of maintenance allowance claimed by the deceased's widow, is not

permissible while computing the dutiable estate of the deceased ?

2. Whether, on the facts and in the circumstances of the case, the estate duty payable by the accountable person is deductible in computing the

principal value of the estate of the deceased ?

3. In support of this reference, learned counsel for the accountable person first contended that the accountable person, even during the life-time of

the deceased, had two rights : (i) relating to maintenance; and death and that what passed on the death of the husband was his estate less the right

of maintenance from the husband. On the other hand, learned counsel for the Revenue, relying upon the general principle of Hindu law relating to

maintenance and the provisions of the Hindu Succession Act (30 of 1956) and the Hindu Adoptions and Maintenance Act (78 of 1956), submitted

that though the wife might have had a right to be maintained by her husband during his life time, that right had not taken a definite shape or form, in

that it had not ripened into a decree or resulted in a charge over the estate of the husband, and that, by the time the property passed a moment

after the death of the husband, her right to be maintained ceased and thereafter, the obligation to maintain her as a dependant was statutorily

imposed on others under the provisions of the Hindu Adoptions and Maintenance Act (78 of 1956), and even that right was lost to the

accountable person in this case, as she had become the sole heir inheriting all the properties of her deceased husband. Strong reliance, in this

connection, was placed by learned counsel for the Revenue upon the decision in CED v. P. Leelavathamma [1978] 112 ITR 379 .

4. There is no dispute in this case that on the death of her husband, the

accountable person succeeded as class I heir to all his properties u/s 8 of the Hindu Succession Act, 1956. The question is, whether, in such a situation, the accountable person can claim that what passed on the death of her husband was his estate, less her maintenance right. Under the general principles of Hindu law, the right of the wife to be maintained stems from matrimony and the maintenance of one's wife is a personal obligation cast on the husband, irrespective of whether the husband is possessed of property or not. Thus, the obligation of the husband to maintain his wife arises out of the relationship as husband and wife and is independent of possessions of any property, ancestral or self-acquired, by the husband. Even in a case where the husband possesses fixed on or fastened to any particular property of her husband. When the husband neglects to maintain his wife, the wife can institute a suit and obtain a decree with a charge on the whole or a portion of the property of the husband. The right of the wife to be maintained by her husband and the obligation of the husband to maintain his wife would not by themselves create any charge or encumbrance over the properties of the husband. The right to receive maintenance is one which is not of a very definite character unless and until it is made a charge upon the property, but is otherwise enforceable like any other liability in respect of which no charge exists. On the facts of this case, there was no anterior fixation or fastening of any liability on the husband for the maintenance of his wife during his life time either by a decree of court or by the creation of a charge over any property of the husband and it cannot, therefore, be said that what passed on the death of the deceased was the property less the right of maintenance.

5. We may also consider this question with reference to the provisions of the Hindu Adoptions and Maintenance Act (78 of 1956) (hereinafter referred to as "the Act"). u/s 4 of the Act which came into force on December 21, 1956, long prior to the date of the death of the deceased on June 21, 1973, overriding effect is given to the provisions of the Act. Section 19(1) of the Act provides for the maintenance of a Hindu wife by her husband during her life time. On the death of her husband, she become a "dependant" u/s 21(iii) of the Act, so long as she does not remarry. u/s 27 of the Act, it is provided that a dependant's claim for maintenance under the Act shall not be charge on the estate of the deceased or any portion

thereof, unless it had been created by the will of the deceased or by a decree of court or by an agreement between the dependent and the owner

of the estate. Statutorily, by section 22(2) of the Act, the right of a dependent to be maintained by the heirs of the deceased, out of the estate

inherited by them from the deceased u/s 22(1) of the Act, is taken away, in a case where the dependent had obtained by testamentary or intestate

succession, a share in the estate of the Hindu dying after the commencement of the Act. Section 22(3) of the Act provides for proportionate

contribution, according to the value of the share of the estate taken, in a case, where more persons than one take the estate and are bound to

maintain the dependent. Section 22(4) frees a dependent from the liability to contribute for the maintenance of others, if the value of the share

obtained by the dependant would become less than what would be awarded to such a dependant by way of maintenance under the Act, in the

event of the enforcement of the liability to contribute. We may also note that though the events, viz., the death, the passing of the property by

succession, etc., take place at one point of time, at that moment they are related as event and effect and naturally, therefore, the event must

precede the effect. Thus, if a wife entitled to be maintained by her husband during her lifetime dies, her right to maintenance is also extinguished by

her death. Similarly, when the husband predeceases the wife, the right of the wife against the husband for maintenance comes to an end. Viewed

thus, the personal obligation of the husband to maintain his wife terminates on his death and one moment after the death of the husband, when

property passes, the right of maintenance of the wife cast on the husband during his lifetime, ceases to exist and there is, therefore, no question of

the property of the deceased passing subject to the right of maintenance in favour of his wife. We may also state that on the death of the husband,

the obligation to maintain the widow is statutorily imposed on her father-in-law u/s 19(1) of the Act, subject to the limitations contained in the

proviso therein and in sub-section(2) and on the other heirs, u/s 22(1). Section 19(1) has no application in this case. However, by reason of

section 8 of the Hindu Succession Act, 1956, the accountable person, as class I heir, had inherited the properties of her husband. Even on the

assumption that the accountable person had some sort of statutory right to be maintained by her husband or the father-in-law or the other heirs,

either as wife, widow or as a dependent, just one moment after the death of her husband, when the property passed, the accountable person had

inherited the entire properties of her husband, as class I heir u/s 8 of the Hindu Succession Act and that in turn would attract section 22(3) of the

Act, so that statutorily the right to maintenance claimed by the accountable person stood extinguished. Thus, during the lifetime of the husband, the

right to maintenance claimed by the wife had not taken the shape of a definite liability and it cannot, therefore, be the subject-matter of deduction

On the death of the husband, his obligation to maintain his wife came to an end and even on the footing that the obligation statutorily stood imposed

on others under the provisions of the Act, that also stood extinguished u/s 22(2) of the Act. Considering the succession to the property of the

deceased a moment after his death and giving effect to the provisions of the Act referred to above, it is clear that at the time of the passing of the

property, the right of maintenance in favour of the accountable person was not available to her and she could not, therefore, project a claim that

whatever passed was subject to that.

6. We may also refer in this connection to the decision in *Controller of Estate Duty Vs. Smt. P. Leelavathamma*, , which fortifies the above view of

ours. In that case, the accountable person claimed deduction towards maintenance expenses of the widow of the deceased from the estate, on the

ground that the deceased, during his lifetime, was under a legal obligation to maintain his wife and daughter. The claim for maintenance of the wife

was negated on the ground that the wife, being an heir of the deceased u/s 8 of the Hindu Succession Act, is not entitled to separate maintenance

after the demise of the husband u/s 22(2) of the Act and that so long as the right to maintenance did not take a definite or concrete shape, the right

was only personal to her and no right against the property of the deceased would at all arise. We are, therefore, unable to accept the argument of

learned counsel for the accountable person that she had two different rights, viz., the right to obtain maintenance and the right to succeed, and that

what passed on the death of the deceased, was the estate, less the right of maintenance.

7. Learned counsel for the accountable person next contended that the analogy of a provision for the marriage expenses of an unmarried daughter

in a Hindu family and its deduction as a debt or encumbrance would be applicable and relied on the decision in Controller of Estate Duty, Madras

Vs. B. Kamalamma, . We are of the view that the obligation of the father to perform and spend for the marriage of his unmarried daughter and his

obligation his wife, now statutorily provided for u/s 19(1) of the Act and other provisions, cannot be viewed on the same footing. the decision

relied on was rendered on the basis that the provision for the marriage of a daughter of the deceased can be allowed as a deduction in the

computation of the principle value of the estate of the deceased, as it is a debt for which the law imposes a liability on the ancestral properties,

which the deceased died possessed of. A claim for deduction from the dutiable estate of the right of maintenance, as we have in this case,

governed by the statutory provisions, referred to earlier, was not considered there. Besides, in that decision, the liability to provide for the marriage

expenses of an unmarried daughter was characterised as one referable to an imposition in that regard by the Hindu law. However, u/s 21(v) of the

Act, an unmarried daughter, so long as she remains unmarried, would be a dependent and the expression ""maintenance"" with reference to her

would include reasonable expenses of and incidental to her marriage, by reason of section 3(b)(ii) of the Act and if she had obtained a share in the

estate of her father u/s 8 of the Hindu Succession Act, 1956, the operation of section 22(2) of the Act cannot be excluded. We find that this

aspect has not been adverted to. Further, we are not persuaded to hold that the right of maintenance as claimed by the accountable person in this

case would be in the nature of a debt or an encumbrance imposed by the Hindu law and within the meaning of section 44 of the Estate Duty Act.

The principle of the decision in Controller of Estate Duty, Madras Vs. B. Kamalamma, cannot, therefore, have any application to this case. On the

facts of this case, it has already been seen that there was neither a debt nor an encumbrance over the estate of the deceased and, therefore, there is

no question of granting any deduction in terms of section 44 of the Estate Duty Act. We, therefore, answer the first question referred to us in the

affirmative and against the accountable person.

8. We now proceed to a consideration of the second question referred to us and that relates to the deduction of the estate duty payable in

computing the principle value of the estate passing on the death of the deceased. On a plain reading of section 44 of the Estate Duty Act, the expression ""debts and encumbrances"" prima facie refer to debts and encumbrances created by the deceased during his lifetime. The other debts and liabilities inclusive of those created by the Estate Duty Act, 1953, would not fall within the scope of the expression ""debt"" or ""encumbrance"" occurring in that section. RM. ARUNACHALAM Vs. CONTROLLER OF ESTATE DUTY, MADRAS., , this identical question had been considered and the estate duty payable on the estate of a deceased in the hands of the accountable person has been held to be not an admissible deduction in computing the principle value of the estate passing on the death of the deceased. In view of this, the accountable person cannot claim deduction of the estate duty payable in the computation of the principle value of the estate. We accordingly answer the second question in the negative and against the accountable person. There will be no order as to costs.