

(1967) 01 GAU CK 0002
In the Gauhati High Court
Case No : Gift Tax Reference No. 1. of 1966

Ghasiram Agarwalla

APPELLANT

Vs

The Commissioner of Gift Tax

RESPONDENT

Date of Decision : 04-01-1967

Acts Referred:

Hindu Succession Act, 1956 — Section 8

Citation : AIR 1967 Guw 48

Hon'ble Judges : S.K. Dutta, J;C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : N. Sharma and R.L. Rara, for the Appellant; M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Judgement

C.S. Nayudu, J.—The following questions have been referred to us by the Income Tax Appellate Tribunal, "A" Bench, Calcutta, namely,-

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of Rs. 91,668/- inherited by Ghasiram Agarwalla from his deceased father u/s 8 of the Hindu Succession Act. 1956 was his absolute property?

(2) Whether, on the division of the aforesaid amount of Rs. 91,668/- between Ghasiram Agarwalla and his three sons, there was a gift of Rs. 68,751/- by Ghasiram Agarwalla to his three sons which was assessable to Gift-tax?

2. The facts of the case which are beyond doubt may be briefly stated. The rice mill called Sagarmal Ghasiram Rice Mill of Ramgiya was owned by a Hindu undivided family governed by the Mitakshara School of Hindu Law of which Sagarmal Agarwalla was the Karta. Subsequently there was a partial partition in this family as a result of which the rice mill, was taken out of the joint family assets and a partnership firm consisting of Sagarmal Agarwalla, his son Sri Ghasiram Agarwalla, and three sons of Ghasiram Agarwalla as partners took over the mill. These partners owned different shares as are set out in the statement of

the case. Sagarmal died on 1-6-60 and at the time of his death, in the firm's book there was an account of Rs. 91,668/- standing to his credit. This account in the name of Sagarmal continued in the firm's books up to 24-3-61, the last day of the accounting year, and there after it was shown as equally divided between Ghasiram and his three sons and the amount was transferred accordingly to the individual accounts.

3. The Gift-tax Officer held that on the death of Sagarmal the entire amount of Rs. 91,668/- devolved on Ghasiram as the sole heir, and since Ghasiram allowed three-fourth of this amount to be credited to his three sons, he had made a gift of Rs. 68751/- to his sons, and on this finding after allowing the statutory exemption of Rs. 10,000/-, determined the taxable gift at Rs. 58,751/-. On appeal by the Assessee, the Appellate Assistant Commissioner held that as Sagarmal died on 1st June, 1960, succession to his estate would be governed by the Hindu Succession Act, 1956. He further held that as there was a complete partition between Sagarmal and his sons and grandsons in respect of the rice mill, the capital standing in the name of Sagarmal was his separate property and on his death Ghasiram inherited this separate property as his sole heir u/s 8 of the Hindu Succession Act. So holding the learned Appellate Assistant Commissioner found that the transfer by Ghasiram to his three sons was rightly treated as a gift and assessed as such by the Gift-tax Officer. This decision was confirmed by the Income Tax Appellate Tribunal who has made this reference to us in this case. The Tribunal also held that whatever might have been the position under the Hindu Law before the enactment of the Hindu Succession Act, after the coming into operation of the said Act, the estate inherited u/s 8 would be absolute property of the inheritor and could not be regarded as ancestral property in his hands. In this view of the matter the Tribunal upheld the decision of the authorities below.

4. Reference has been made to Article 223 of Mulla's Hindu Law, 18th Edition. This Article dealt with ancestral property. Obviously it has no application to a case of this kind where the Courts below have definitely found that it was the separate property of Sagarmal -Agarwalla and inherited as such by Ghasiram. The proper Article to apply is Article 222 which dealt with incidents of separate or self-acquired property as it was therein stated as follows:

A Hindu, even if he be joint, may possess separate property. Such property belongs exclusively to him. No other member of the coparcenary, not even his male issue, acquires any interest in it by birth. He may sell it, or he may make a gift of it, or bequeath it by will, to any person he likes. It is not liable to partition, and, on his death intestate, it passes by succession to his heirs, and not by survivorship to the surviving coparceners.

This is exactly what Section 8 of the Hindu Succession Act indicates. This section is as follows:

8. The property of a male Hindu dying intestate shall devolve according to the

provisions of this Chapter:

- (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedules;
- (b) secondly, if there is no heir of Class I, en upon the heirs, being the relatives specified in Class II of the Schedule;....

5. It is clear from the above that so far as separate property of a Hindu is concerned, it devolves as his separate self-acquired property on his heirs and does not pass by survivor ship even if he happens to be joint. Hence the view taken by the members of the Appellate Tribunal that after the passing of the Hindu Succession Act the law is changed does not appear to be sound, because even before the Act the separate property devolved on the (SIC) of the individual concerned. Hence in (SIC) of the findings of the Court below on the facts that Rs. 91,668/- left by Sagarmal Agarwalla at the time of his death in his account of the partnership business was his self-acquired property, we answer the questions as follows:

Question No. 1 - The answer is in the affirmative.

Question No. 2 - The answer is also in affirmative.

6. The reference is answered accordingly. But in the entire circumstances, we feel that we should make no order as to costs.