
(1971) 02 DEL CK 0029

In the Delhi High Court

Case No : Estate Duty Reference No. 3 of 1967

Jag Mohan and Others

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 08-02-1971

Acts Referred:

Citation : (1972) 85 ITR 1

Hon'ble Judges : Hardayal Hardy, J; D.K. Kapur, J

Bench : Division Bench

Advocate : P.N. Chopra, for the Appellant; A.N. Kirpal, for the Respondent

Judgement

Kapur, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953, relating to the estate of Shri Prem Raj, who died on August 2, 1954. The account of the estate of the deceased was furnished to the Assistant Controller of Estate Duty, Delhi, by his son, Brij Mohan. However, by the time the reference was made to this court, Brij Mohan had also died, and the estate is now represented before us by three other persons. Those persons are, Jag Mohan, the second son of the deceased, his widow, Shrimati Sona Devi, and the widow of Brij Mohan, Shrimati Kamla Devi. They are referred to hereinafter as the accountable persons.

2. The account furnished by Brij Mohan declared the share, of the deceased as being from a Hindu undivided family and the main contention on his behalf was that there was a joint family nucleus from which the deceased had built up his business. The said nucleus is said to have come into being as a result of the partition in 1903 of the joint family properties belonging to the deceased and his brother, Shri Bhola Nath, who predeceased him. It was further his case that the deceased had treated his self-acquired properties also as belonging to the Hindu joint family consisting of himself and his sons. Accordingly, it was claimed that only the share of the deceased in the joint family properties was chargeable to estate duty.

3. The Assistant Controller found that Brij Mohan had also raised a similar

contention before the Income Tax Officer and the Appellate Assistant Commissioner in connection with the Income Tax assessment for the assessment year 1953-54, but the same was rejected by both of them. In view of the fact that the deceased had been showing himself as an individual in his Income Tax returns right up to his death, and also, in view of the fact that he had left a will in which he had declared all the properties belonging to him to be personal self-acquired properties, the Assistant Controller held that the entire property was the personal estate of the deceased, Shri Prem Raj.

4. Brij Mohan then appealed to the Central Board of Revenue and claimed there also that the entire property had been acquired with the help of the nucleus, which came to the deceased as a result of the partition with his brother in 1903 A.D. (Sambat year 1960). A reference was made to a Lekha Bahi for the Sambat years 1944 to 1960 where an entry pertaining to the formal partition was recorded. In the alternative, it was submitted that even if there was no such nucleus, there was sufficient evidence to show that the deceased had thrown his self-acquired properties into the common stock and thus converted the same into joint family property. The Board, however, rejected these contentions and came to the conclusion that the Assistant Controller was correct in holding that the properties were owned by the deceased in his individual capacity, and hence the assessment on that basis was correct.

5. The accountable persons mentioned above then sought a reference of the following question of law to this court :

"(i) Whether the order of the Central Board is vitiated in law as based on wrong assumption and erroneous inferences both of fact and law and the consequent finding regarding the status of the deceased is not sustainable ?

(ii) Whether the Central Board has erred in the application of the relevant principles of law in the determination of issues involved and consequently the finding of the Board regarding the issue of status is erroneous based on misdirection in law and not sustainable ?

(iii) Whether there is any material or warrant in law for assigning the deceased the status of an individual and business belonged to the deceased, Prem Raj, in his individual status as distinct from and in contradiction to the finding of the learned Income Tax Appellate Tribunal that the status of the deceased was that of a karta of a Hindu undivided family and the properties and business in question belonged to the Hindu undivided family of which the deceased was a karta?"

6. But the only question which has been referred to this court is ;

"Whether, on the facts and in the circumstances of the case, the Board were justified in holding that all the properties included in the estate duty assessment of the deceased were correctly treated as belonging to the deceased in his individual capacity ?"

7. The first contention raised on behalf of the accountable persons is that the Central Board of Revenue did not deal with all the material evidence and the order passed by Shri Jamna Pershad Singh, Member, Central Board of Revenue, is vitiated and the case should be sent back for a consideration of all the material evidence, which according to Shri P.N. Chopra, counsel for the accountable persons, has not been considered. In relation to this contention an application u/s 64(5) of the Estate Duty Act has been moved and, along with the same, a large number of documents have been filed. It is said that this court should refer to the said documents and on their perusal hold that the decision of the Central Board of Revenue is incorrect and come to the conclusion that the properties were joint properties or direct a reconsideration of the case by the Controller.

8. The provisions of Section 64(5) of the Estate Duty Act are in the following terms :

"If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modifications therein as it may direct."

9. It is clear from this provision that it is the High Court which has to be satisfied that the case as stated is not sufficient to enable the question of law to be determined and a modified statement may be required to be made. Mr. Chopra, on the other hand, has tried very strenuously to convert the question of law referred to this court for opinion into a question of fact and he wants to refer to the large number of documents that he has filed along with this application to try to prove satisfactorily that the properties were indeed the joint family properties, and not individual properties. Mr. Chopra relies in support of this application on a judgment of the Bombay High Court in N. Vs. KHANDVALA v. COMMISSIONER OF Income Tax., . That judgment does not really help him. It was there held that the applications should be heard along with the reference. We have heard the application with the reference.

10. It is necessary now to note the submissions in support of the application.

11. In this behalf Mr. Chopra chiefly relies on the decision of the Income Tax Appellate Tribunal for the assessment year 1953-54, in which the Tribunal decided that the properties were the joint family properties of the deceased, Shri Prem Raj. It would appear that in relation to that assessment order the return was filed by the deceased, Prem Raj, in his individual capacity but after his death his son, Brij Mohan, who is also the accountable person in the present case, wrote a letter on September 7, 1956, claiming that the business carried on by the deceased was in his capacity as karta of the Hindu undivided family and not in his individual capacity. It will be seen that this claim was made more than two years after the death of the deceased, and though the claim was rejected by the Income Tax Appellate Assistant Commissioner, it was accepted by the Income Tax Appellate Tribunal. At the stage of the appeal before the Tribunal there was a remand order made by the Tribunal on 20th October, 1961, and fresh oral and

documentary evidence was produced before the Appellate Assistant Commissioner, which led to a finding that Shri Prem Raj came into possession of a small property and Rs. 1,783 in cash in Sambat year 1960, corresponding to 19th October, 1911. It may be mentioned that in fact the Sambat year 1960 corresponds to 1903 A.D. Acting on this, the Income Tax Tribunal came to the conclusion that it was possible for the deceased to have set up his business as a contractor with the help of the nucleus acquired by him as a result of the family partition. There are several other documents also which Mr. Chopra wants us to refer to.

12. This does not, however, appear to be the proper way of proceeding on reference under the Estate Duty Act. The Tribunal under the Income Tax Act and the appellate authority under the Estate Duty Act are different. The evidence before either of them can also be different and in view of the remand order made by the Income Tax Appellate Tribunal it is clear that the evidence, which was produced before the Tribunal, was not the evidence which was produced before the Assistant Controller of Estate Duty. It, is Therefore, absolutely impossible to refer to a conclusion arrived at by another Tribunal on different facts that relate to the same contention. Each case has to be decided according to the facts presented to a particular body expressly enjoined by law to decide it. In this case, we have to consider the facts as found by the Central Board of Revenue acting as the appellate authority under the Estate Duty Act and not the finding recorded by the Income Tax Appellate Tribunal under the Income Tax Act. Furthermore, this court sitting as a court to decide a reference of law is not a court of fact and the accountable persons are not entitled to treat this court as another court of fact sitting in appeal above the Central Board of Revenue. We are only concerned in giving our opinion on the question of law which has been referred to us and with nothing else. It, Therefore, must be concluded that the application moved on behalf of the accountable persons is misconceived and we are not entitled to refer to any other evidence except that which was before the estate duty authorities. In this connection it may be mentioned that the appellate order passed by the Central Board of Revenue does show that the decision of the Income Tax Appellate Tribunal was considered by it before the order was passed. A comparison of the two orders also shows that the circumstances considered by both were more or less the same, the only difference being as to the date on which the partition took place as well as the amount which came to the share of the deceased.

13. Mr. Chopra has referred to C.P. Sarathy Mudaliar Vs. Commissioner of Income Tax, Andhra Pradesh, in support of his contention. It was there held by the Supreme Court :

"If the High Court finds that material facts are not stated in the statement of the case, or the Tribunal has not stated its conclusion on material facts, the High Court may call upon the Tribunal to submit a supplementary statement of case u/s 64(4)."

14. In that case the Supreme Court allowed an appeal from a judgment of the High Court which had set aside the order of the Tribunal and remitted the case back to the Tribunal. This authority seems to be opposed to Mr. Chopra's contention. In the circumstances, the application u/s 64(5), Estate Duty Act, must be rejected.

15. The second contention on behalf of the accountable persons is that on the facts found by the Board it should have been held that the estate of the deceased was Hindu joint family property and not individual property. It is, Therefore, necessary to consider in detail as to what exactly has been found by the Board and to re-examine the correctness of its decision on the question of law referred to this court.

16. The facts, which have been considered by the Central Board of Revenue, are that there was a partition between the brothers some time in 1901 A.D. but this date has been corrected to 1903 A.D. in the statement of the case. The properties acquired by the deceased, Shri Prem Raj, by this partition were house property and two debts due to the family amounting to Rs. 616 and Rs. 983. The debts have been found to be payable in the form of Installments. There is no documentary evidence according to the Board's order as to when these debts were actually realised and there was no evidence that there was any other source of income. The deceased started working as a P.W.D. contractor in 1907. As regards the question whether the business as a P.W.D. contractor was started with the help of the nucleus, i.e., the house property and the debts, it was held by the Board as follows :

"It seems to me that if the deceased was able to collect any amounts at all out of the debts allotted to him on partition he could have done so only in Installments and since, at the relevant time, he had no other source of income, it is reasonable to conclude that such periodical collections (if any) must have been spent on his own and the family maintenance. Further, the probabilities of the case are that the deceased started the contract business in a humble way, as a petty Sub-contractor, and for that kind of business, little or no capital would have been required. On this analysis of the available evidence, I hold that it is not proved that any nucleus of joint family property was invested in the business started by the deceased."

17. There is thus a clear finding in the Board's order that it was not established that any part of the alleged nucleus was invested in the business started by the deceased. In this connection, it is useful also to refer to the will of the deceased, which is annexed to the statement of the case. According to this will, which was made 50 years after the partition, the deceased was 66 years old, which means that at the time of the partition he was only 16 years old and, Therefore, there is inherent evidence to support the finding of the Board that the deceased started business in a small way. In any case, he must have spent something on his own and his family's maintenance for the intervening period between the partition and the starting of the business as a contractor.

18. The Board has also referred to the fact that right up to the date of his death the deceased always submitted his Income Tax returns in the status of an individual. There does not seem to be any reason why he should have done so if the property was in fact ancestral. The will of the deceased dated 8th October, 1953, also declared that all his properties were self-acquired properties acquired by dint of his own labours. It is thus clear, as the Board has held, that he made no attempt during his lifetime to treat the properties as ancestral in nature.

19. Mr. Chopra relies on the proposition of Hindu law that if there is a nucleus with which certain property could have been acquired, there is a presumption that the property has been acquired by the help of the joint family property.

20. He refers in this respect to K.A. Subramaniam, *Ambi's Cafe Vs. Controller of Estate Duty, Madras*, which was a similar case to the present. In that case, the Calcutta High Court held that, as there was evidence that the deceased had ancestral property, which he sold just before he acquired the hotel business, it was probable that the proceeds of the sale were invested in the business. It was thus concluded that the estate, though described as individual in Income Tax proceedings, was in reality Hindu joint family property.

21. That case seems to be distinguishable because there was, (a) a sale of ancestral property, and (b) a close proximity in time between the sale and the investment in the hotel business, which were in the same year. In the present case, there is no evidence of any sale of the house property and also a gap of several years before the contractor business was started. Also, and this seems to be even more important, there is no purchase of immovable property involved. The deceased carried on business as a contractor which is more properly a personal business dependent on his own efforts, than a business dependent on investment. There are thus no facts which can help to conclude that the deceased in the present case also left only joint family property.

22. The nucleus in the present case was not used to acquire any property. The property of the deceased was acquired, as the facts disclosed, from the income of the deceased from his business as a P. W. D. contractor and, Therefore, it was necessary that it should have been established that this business was carried on with the help of the joint family funds. There is no evidence whatsoever regarding this. The various authorities to which reference will presently be made are clear on this point. The law may be stated thus. There is a presumption that a Hindu family living jointly is joint. But there is no presumption that the family owns joint family property. Once it is established that there was a nucleus, a presumption arises that the property acquired may be joint but in order to apply this presumption there must be some evidence to show that the nucleus was employed at some stage to acquire some of the property under dispute. There is no such evidence in the present case and, Therefore, the Central Board has rightly come to the conclusion as a matter of law that the estate of the deceased is not joint family property.

23. Mr. Chopra has cited a number of authorities in support of his submission that the legal question should have been decided in his favor. It is now necessary to refer to those authorities. In *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others*, reliance was placed on the judgment of the Privy Council in *Appalaswami v. Suryanarayanamurthi* AIR 1947 P.C. 189, wherein it was held as follows :

"The Hindu law upon this aspect of the case is well-settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon any one asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property."

24. This statement of law would seem to suggest that it is for the department to establish that the contract business was not carried on out of the joint property if there was a nucleus at that time. However, as the Board has held that the nucleus was not used to carry on the contract business. this judgment does not help Mr. Chopra.

25. This judgment was followed in *Mangal Singh Vs. Harkesh and Another*, , wherein it was held that it is not enough to prove that there was a nucleus, but the nucleus must be shown to be such a nucleus that it could be established that the property in dispute had been acquired with its help. In view of the finding of the Board that the nucleus was not in fact used, this judgment also does not help the case of the accountable persons.

26. Then reference was made to *Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others*, , where it was held that where a manager claims that he has acquired immovable property from his separate funds it is for him to prove by clear evidence that he bought the property from his separate funds. This judgment has no application to the present case. What has to be seen here is whether the contract business could have been separate and carried on without the aid of the joint family funds. As the only property admittedly was the house which was never sold and the two debts whose amount is not large and which were payable in Installments, it cannot be said that any further proof was required to show that the income providing the purchase money for the property of the deceased had come from the contract business and from no other source.

27. In this connection one of the most important considerations to be borne in mind is that the property has been treated as separate and self-acquired for about 50 years. If a party wants to establish that this long and uninterrupted treatment of the property was wrong, surely the burden of proving so falls on him. General rules regarding presumption and onus cannot take the place of the

ordinary rule that it is the person who alleges a particular fact, who has to prove it. During the lifetime of the deceased, there was not a single attempt by any one to challenge his ownership. This, coupled with the fact that the ancestral house was not sold, is sufficient to uphold the decision of the Board on this point. It is for the accountable persons to displace the presumption arising from long usage. Mr. Chopra's contention on this point, Therefore, fails.

28. The third contention raised by Mr. Chopra is that, on the facts found in the present case, it should have been held that the property of the deceased, even if self-acquired, had been thrown into the common stock and had thus become joint family property. There is no doubt that Mr. Chopra states the law correctly ; Therefore, the only question to consider is as to whether there has been any throwing into the common stock by the deceased. In the circumstances of the present case, the evidence relied upon for this purpose has been summarised in the order of the Central Board of Revenue as follows :

(1) Certain partnership business with outsiders was described by the deceased as Prem Raj Brij Mohan and Prem Raj and Sons.

(2) The name of the proprietor in the deceased's books is shown as Lala Prem Raj & Sons.

(3) The receipts in respect of the house property were issued by Brij Mohan.

(4) The contract work was supervised by Brij Mohan without any salary.

(5) In a letter written by Brij Mohan to the Delhi Municipality, he has signed for Messrs Prem Raj & Sons.

(6) A car purchased in the name of Brij Mohan was utilised in the business.

(7) There was an affidavit filed by Brij Mohan in which he declared the business to be the family business.

(8) The assessment of the business for the assessment years 1955-56 and 1956-57 has been made on the Hindu undivided family.

29. The Board considered these facts and held that the stand taken by Brij Mohan after the death of the deceased was irrelevant to establish the conduct of the deceased in his lifetime. The Board held that it was not enough for the deceased to have allowed his family members to enjoy his self-acquired property. There must, in addition be a clear renunciation of his separate rights over the property. The will of the deceased clearly shows the opposite. The contention that the will was not a proper guide, as even the jewellery of the daughter-in-law was described as belonging to the deceased, was rejected on the ground that the jewellery might have belonged to the deceased and he might only have allowed her to use the same.

30. The proposition of Hindu law which has been relied upon by the Board seems to be entirely correct. It has been held that a clear intention to waive and

renounce separate rights must be established : vide Lakkireddi Chinna Venkata Reddi Vs. Lakkireddi Lakshmama, , where it was held as follows :

"Law relating to blending of separate property with joint family property is well-settled. Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein; but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation."

31. The statement of law given in paragraph 227 of Mulla's Hindu Law is to the same effect and is fully applicable to the facts of the present case. No clear intention by the deceased of waiving or renouncing his separate rights has been established in the present case. In the circumstances, this contention of Mr. Chopra also fails.

32. In the result the question of law referred to this court is answered in the affirmative and in favor of the revenue. The Controller of Estate Duty will have his costs in this court. Counsel's fee Rs. 250.