

(1968) 10 AP CK 0004
In the Andhra Pradesh High Court
Case No : Case Referred No. 2 of 1965

Jaishankar Gowd (by Guardian)

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 23-10-1968

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1969) 74 ITR 206

Hon'ble Judges : Jaganmohan Reddy, C.J; Ramachandra Rao, J

Bench : Division Bench

Advocate : C. Mallikarjuna Rao, for the Appellant; T. Ananta Babu, for the Respondent

Judgement

P. Jaganmohan Reddy, C.J.—The Central Board of Direct Taxes, New Delhi, has referred the following question for our opinion, viz. :

" Whether, on the facts and in the circumstances of the case, the following properties were correctly included in the estate of the deceased as property passing or deemed to pass on his death under the provisions of the Estate Duty Act :

1. House property at Feelkhana.
2. House property at Kachiguda.
3. Lorry property at Kachiguda ? "

2. The facts as ascertained from the statement of the case are as follows. The deceased, one Lingampeta Raja Gowd, died on 8th January, 1954, leaving two daughters, Manikamma and Tajbai, both married, the latter to one Somalingam. Tajbai and Somalingam had a minor son, Jaishankar Gowd, who is the person accountable for the estate of the deceased, under the Estate Duty Act (hereinafter called " the Act").

3. The Assistant Controller assessed the estate of the deceased on August 31,

1958, determining the net principal value of the estate of the deceased to be Rs. 2,24,202, the duty payable thereon being Rs. 11,775.25. In computing the principal value of the estate of the deceased, the Assistant Controller included three items, namely, (1) house at Feelkhana in the name of Tajbai, valued at Rs. 82,286, (2) house at Kachiguda, valued at Rs. 30,000 which was said to belong to Manikamma, and (3) a lorry, valued at Rs. 1,714 which was in the name of Somalingam, the husband of Tajbai. It is in respect of these three properties that this reference has been made.

4. On appeal from the Assistant Controller's order of assessment, the Central Board of Direct taxes held on May 25, 1960, that the land at Feelkhana was purchased by the deceased in 1945 in the name of his daughter Tajbai and, subsequently in 1947, he built the house in her name with his money. It appears that on December 17, 1952, by a sale deed, annexure " F " of the material papers, Tajbai had sold the house to one Bhagwandas, the recitals in which show that, as the income of her husband has been dwindling away due to losses in business, and the family is facing troubles and difficulties, it was necessary to sell the house to advance money to her husband to extend his business. The property was sold for O.S. Rs. 30,000. Tajbai stated (the English translation as found in Annexure " F ") thus : " I have undertaken this sale transaction, after giving full thought to the matter and after well pondering over the result of fall or decline, that may come upon the possession of the house, and also after fully consulting my husband, Somalingam Sahib, and gathering his opinion on the matter, along with the consultations that I made with my father and other relatives. And I have managed after due consideration and thought to get the contents of this document fully and completely executed in the presence of my husband, Somalingam Sahib. Therefore, I have executed these few words by way of sale deed, which shall be binding upon me, and my L. Rs. "

5. This document was not even attested by the deceased. The amount was received in cash before the Registrar. Thereafter, the house was re-purchased by Tajbai. There is nothing to show that the consideration flowed from the father, the deceased. On November 18, 1953, Tajbai mortgaged the property (annexure " G ") for a sum of O.S. Rs. 20,000 to one S. G. Ramireddi, through her husband, Somalingam, as her power of attorney. In the recitals, it was stated that Tajbai " singularly and exclusively holds her possession over the double-storeyed plastered house No. 553, Circle No. 2, Ward " C ", block No. 1 situated at Old Feelkhana, Hyderabad ". It was found that an amount of Rs. 15,833 was utilised for the deceased's business in abkari contracts, and the amount was credited in the books to the capital account which the deceased has maintained in the name of his son-in-law Who held a general power of attorney for the deceased and was looking after his business. From the fact that Rs. 15,833 out of Rs. 20,000 obtained from the mortgage of Tajbai's house was utilised in the business of the deceased, both the Assistant Controller as well as the Central Board have inferred that the earlier purchase of the land and the construction of the building, for which the deceased had paid, was benami in the name of Tajbai and,

secondly, that Section 10 of the Act is applicable to this case. On these grounds the property at Feelkhana was held to be part of the estate of the deceased.

6. It appears to us that where property is in the name of a person other than the deceased, the onus is upon the department to show that it was a benami transaction. This is also the general rule, namely, that a party who alleges that a transaction is a benami transaction, must prove it. Secondly, for the purpose of application of Section 10, it must be shown that bona fide possession and enjoyment was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise. Section 10 is as follows :

" Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise :

Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death. "

7. From the facts set out above, it appears to us that there is no evidence whatever from which either the Assistant Controller of Estate Duty or the Central Board could have inferred that the Feelkhana house was acquired by the deceased benami in the name of Tajbai. Tajbai, as we have stated, sold the house for the benefit of her husband in 1952, and re-purchased it. This itself would show that she exercised her right of ownership and possession and utilised the moneys therefrom for their family purposes, namely, to enable her husband to extend his business. This is quite inconsistent with the donor having any possession over the property or any semblance of title or interest therein.

8. Even otherwise, as we have stated, there is no evidence to show that the original transaction itself was benami, except for the finding that Rs. 15,000 and odd out of Rs. 20,000 obtained from the mortgage of 1953 subsequent to the re-purchase, was utilised in the deceased's business. Here again, as the statement of the case shows, the deceased had credited this amount to the capital account of his son-in-law, who was power-of-attorney holder of the deceased and also the power-of-attorney holder of his wife, Tajbai. This fact indubitably shows that the money was not advanced to the father by the daughter but by the son-in-law who was acting as power- of-attorney of both his wife and his father-in-law. In fact, the mortgage was effected by the son-in-law on behalf of his wife ; and therefore an inference that the property is benami in the name of the daughter cannot be drawn from the mere fact that the amount is shown to be credited to the capital account of the son-in-law.

9. Sri Ananta Babu for the department strenuously contends that, since the

Assistant Controller as well as the Central Board have not taken into consideration the fact that Tajbai had sold the house in 1952 and re-purchased it, an additional statement of the case should be called for from them on this question. We do not find this to be necessary, inasmuch as the Central Board had itself annexed a copy of the sale deed, which is unimpeachable. What legal effect follows from that admitted transaction and the recitals therein is a question of law, on which we require no assistance from the Central Board. In our view, therefore, there is no evidence or material on record from which an inference of benami can be drawn in respect of the Feelkhana house.

10. In respect of the Kachiguda property and the lorry, the statement of the case shows that the title to the Kachiguda house had not been vested in Manikamma, the first daughter, and that the circumstance that the lorry was in the name of Somalingam, the son-in-law, as power of attorney would not show that the property did not cease to be of the deceased. The learned advocate for the assessee was not able to challenge that these two properties belong to the estate of the deceased.

11. In this view, our answer to the reference is that the house property at Feelkhana does not form part of the estate of the deceased, while the house property at Kachiguda and the lorry bearing registration No. APV 175 are part of the estate of the deceased. Let the reference be answered accordingly. Since success and failure are equal, we award no costs. Advocate's fee, Rs. 200.