
(1979) 07 MAD CK 0036

In the Madras High Court

Case No : Tax Case No. 529 of 1975 (Reference No. 368 of 1975)

K. Madhavakrishnan

APPELLANT

Vs

Commissioner of Gift-tax

RESPONDENT

Date of Decision : 16-07-1979

Acts Referred:

Gift Tax Act, 1958 — Section 2
Transfer of Property Act, 1882 — Section 123

Citation : (1980) 17 CTR 340 : (1980) 124 ITR 233

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; A.N. Rangaswamy and Nalini Chidambaram, for the Respondent

Judgement

Sethuraman, J.—In this reference u/s 26(1) of the G.T. Act, the following questions have been referred:

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in upholding the order of the Gift-tax Officer that there was a gift of the properties to the donee in the year of account ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in its conclusion that the memo of compromise itself constituted the gift in the case ?

3. Whether the Appellate Tribunal was justified in holding that even if the memo of compromise is not registered, it will still constitute a gift in the circumstances stated by the Appellate Tribunal ?"

2. The GTO started proceedings u/s 16(1) of the G.T. Act, on the basis that by reason of the omission or failure on the part of the assessee to make a return u/s 13 in respect of the taxable gift made by him the taxable gift has escaped assessment. In response to the notice, Paramayee Animal, the donor, filed a return on January 29, 1971. She stated : "I have given agricultural lands to my

daughter, Srimathi Lakshmi Ammal, in May, 1956. I have not gifted any property to anybody later. I am not liable under the Gift-tax Act." The donor died on April 4, 1971, and her son, Madhavakrishnan Pillai, was brought on record as her legal representative. He wanted the donee also to be brought in as legal representative.

3. Accordingly, the donee was given a notice and she appeared and contended that there was no gift at all in the relevant previous year, i.e., for the assessment year 1967-68. The GTO had before him a compromise decree passed in O.S. No. 42 of 1966, dated April 18, 1966. It was contended for the assessee that the compromise decree did not create any interest in any immovable property and that it merely declared the pre-existing rights of the donee. It was admitted by the donee that there was no written document in her favour of the year 1956. She claimed to be in possession of the properties since 1956.

4. The GTO rejected the contentions of the donee and came to the conclusion that she became entitled to the property only by virtue of the decree of the court dated April 18, 1966. He found also that the donee had been subjected to agricultural Income Tax only after the decree of the court. He determined the value of the gifted property to be Rs. 3,00,000 and assessed the same to gift-tax.

5. The assessee appealed to the AAC. The contention before him also was that there was no taxable gift in the assessment year under consideration and that the lands had been gifted even in the year 1956 when the G.T. Act had not been enacted. The AAC rejected these contentions. He pointed out that the patta had not been transferred in the donee's favour and that she had been recognized by the Agrl. ITO only after the decree was passed in the suit mentioned above and that, therefore, the title to the property was obtained by the donee only in the year 1966. He, therefore, confirmed the assessment to gift-tax.

6. The matter was taken on appeal to the Appellate Tribunal and the same contentions which were unsuccessfully urged before the gift-tax authorities were also urged before the Tribunal. The Tribunal held that there was a valid gift by the memo of compromise made on 18th April, 1966, and there was no gift prior to the compromise. It, therefore, confirmed the assessment to gift-tax. This order of the Tribunal is now challenged by the assessee by obtaining the reference on the questions mentioned above.

7. The first and primary question that has to be decided is, whether there was a gift as contemplated by law during the relevant previous year under consideration. Section 3 of the G.T. Act provides for levy of gift-tax in respect of gifts made by a person during the previous year. The previous year in the present case is the year ending on March 31, 1967. " Gift " is defined in s. 2(xii) as meaning transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth. The expression " transfer of property " is defined in s. 2(xxiv) thus :

" "Transfer of property " means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes--

(a) the creation of a trust in property ;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property ;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power ; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person."

8. The short point for our consideration is whether there was any creation of interest in the property in the present case during the relevant previous year ?

9. Learned counsel for the assessee contended that there was a gift in the year 1956. According to him, the donee's father was a very wealthy individual, that the donee herself was married in the year 1933 or so and that at the time of the marriage he had promised to give her substantial properties. He had not effected any such gift during his lifetime and he died in the year 1953 in April. It was further stated that at the time of his death, he had instructed his wife to transfer the property in favour of the donee as undertaken by him at the time of her marriage. The donee was said to have been put in possession of the property in or about May, 1956.

10. Section 123 of the Transfer of Property Act provides that for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. The G.T. Act does not enact any exception to the general law as found in s. 123 of the Transfer of Property Act. Therefore, in order to effectuate a valid gift, the requirements of s. 123 of the Transfer of Property Act should have been complied with. Section 123 of the Transfer of Property Act requires a registered instrument. There was no instrument in May, 1956, and mere delivery of possession would not satisfy the requirements of s. 123 of the Transfer of Property Act. It would, therefore, follow that there was no gift in the year 1956.

11. The next question that arises is whether there was a gift as found by the gift-tax authorities and the Tribunal in the year 1966. The gift is said to have been made under a compromise memo filed in court on April 18, 1966. There was a suit between Lakshmi Ammal and her mother, Paramayee Animal. The prayers in the said suit, which was numbered as O.S. No. 42 of 1966 on the file of the Subordinate Judge's Court, Erode, were : (a) for a declaration that the plaintiff was absolutely entitled to the suit property ; (b) for a permanent injunction

restraining the defendant and her men from interfering with her (plaintiff's) peaceful possession and enjoyment of the suit property ; (c) and (d) and for other appropriate directions. The suit was filed on March 9, 1966. The compromise was entered into on April 18, 1966. As recorded in the preliminary portion of the decree, it appears that there was a joint endorsement made by the parties on the back of the plaint and in terms thereof the court passed the compromise decree. The Tribunal is wrong in looking for a compromise deed as no such deed was ever entered into. Under the compromise decree, it was declared that the plaintiff would be entitled to the suit property absolutely and the defendant and her men would be restrained by an injunction from interfering with the peaceful possession and enjoyment of the suit property. In the endorsement, the following passage occurs :

12. The word clearly goes to show that the compromise decree did not declare any pre-existing right of the parties and that it brought about or created or declared a right of the donee in the property in and by the compromise decree. Therefore, on a proper construction of the endorsement made on the plaint, it is clear that it created a right or interest in the property only on the date on which the compromise was recorded by the court. This is also in substance the finding of the Tribunal. But this compromise memo or the decree has not been registered and the requirement u/s 123 of the Transfer of Property Act is not, therefore, complied with. Even in the case of a compromise decree it is stated in Mulla's Commentary on the Indian Registration Act, 7th Edn., at page 60 as follows :

"A compromise affecting immovable property is not a sale within the meaning of Section 54 of the Transfer of Property Act. The nature of a compromise is that it is an acknowledgement of the existing rights of the parties and as such does not require registration. But it may be a declaration of rights and require registration."

13. With reference to the last sentence, the decision of the Supreme Court in Tek Bahadur Bhujil Vs. Debi Singh Bhujil and Others, , is relied on. In the light of the legal position as set out above, it is clear that in the present case there was no gift in the year 1966 because there was no registered instrument effecting transfer of the property. In fact, the learned counsel for the Commissioner was in the horns of a dilemma. If he accepted the position that the decree merely declared some pre-existing rights of the parties, then the gift would have been effected in 1955 or 1956 when delivery of possession was given. If the compromise memo itself created an interest in the property, then it fails for want of registration. The result is that there is absolutely nothing to show that there was a gift of property as required by law in the year under consideration.

14. The Tribunal has also referred, in the course of its order, to two decisions of the Privy Council. The first of those decisions is in AIR 1927 42 (Privy Council) . In that case, the donor executed a trust deed on September 9, 1891. It was registered on September 15, 1891. In between that period, there was an

adoption and the question was whether by reason of the adoption the gift of the property became invalid. The Privy Council held that where the donor of an immovable property has handed over to the donee an instrument of gift duly executed and attested, and the gift has been accepted by the donee, the donor has no power to revoke the gift prior to the registration of the instrument. On the principle that the registration took effect from the date of the instrument, the gift in that case was held to be valid and effective from September 9, 1891, prior to the adoption. Therefore, the adoption did not affect the rights of the donee with reference to the property. This case is absolutely of no assistance to the problem before us.

15. The other case referred to is Venkat Subba Srinivas Hegde v. Subba Rama Hegde AIR 1928 PC 86. In that case, the deed under consideration was a gift deed. It was executed and delivered on a particular date but it was not registered until certain events subsequently happened. Those events included the grantor himself changing his mind and bringing a suit containing an application for injunction against the registration by the donee of the deed of gift. It was held that once a gift deed was executed and had been delivered to the donee, the donor cannot revoke the gift even before its registration on the ground that the gift is not completed until the deed is registered. This decision also is of no relevance to the point in issue because we are concerned here with a case where there is no registered instrument of gift as required u/s 123 of the Transfer of Property Act. In both cases, a deed had been executed and the only question was whether the deed became invalid or useless because of adoption in one case, and attempted revocation in another. There is no such deed here. The instrument in writing is only the compromise memo or decree. As they are not registered, there is no gift in this year. There is no liability to gift-tax in the previous year under consideration.

16. The result is, the questions referred are answered in the negative and in favour of the assessee. The assessee will have his costs. Counsel's fee Rs. 500.