

(2001) 02 SC CK 0179

In the Supreme Court Of India

Case No : Civil Appeals Nos. 1518 to 1520 of 1996

Kamala Ganapathy Subramaniam and Another

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (2002) 253 ITR 692 : (2001) 2 MLJ 154

Hon'ble Judges : Y. K. Sabharwal, J; S. P. Bharucha, J; Doraiswamy Raju, J

Bench : Full Bench

Advocate : Krishnamurthi Swami and K. Srinivasan, for the Appellant; V. Gauri Shankar K.C. Kaushik, B.V. Balaram Das and Sushma Suri, for the Respondent

Final Decision : Allowed

Judgement

1. The judgment and order under appeal was passed by a Division Bench of the High Court at Madras (see 1991 MAD 287) on a reference application under the Estate Duty Act made at the behest of the Revenue. The following questions were considered by the High Court (page 425) :

"(1) Whether, on the facts and in the circumstances of the case, the value of the agricultural lands settled by the deceased in favour of his wife, including those lands which the lady settled in favour of her relatives, from out of the lands received by her, could be included in the principal value of the estate passing on the death of the deceased ?

(2) Whether, on the facts and in the circumstances of the case, the value of the properties settled by him on his five settles by documents dated December 28, 1956, was includible in the principal value of the estate on his death ?

(3) Whether, on the facts and in the circumstances of the case, the value of the agricultural lands received by the late P. S. Srinivasa Iyer by way of settlement from the late Shri Ganapathi Subramaniam could be included in the principal value of the estate of the deceased ?"

2. We are concerned in these appeals with the first question, leave to appeal having been granted only in respect thereof. The High Court answered this first question in the affirmative and in favour of the Revenue. As is obvious, the question relates to section 10 of the said Act. The relevant portion thereof reads thus :

"10. 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."

3. The Tribunal, in an appeal filed by the present appellant as the accountable person in respect of the estate of her late husband, had held, on a consideration of all the evidence placed on record, that the lands gifted to the appellant by her deceased husband had to be regarded as belonging to her and as having gone out of the hands of the deceased husband. The Tribunal said :

"Looking at the position, therefore, we have nothing before us to hold that all the transactions from 1956 to 1962 are bogus or manipulated or a make-believe. Transfers made to the settles were by registered deeds. There is nothing to show that the settles had not taken possession of these lands and enjoyed them for themselves. Some of the settles of the deceased had alienated some of the lands. The deceased's wife had alienated a good portion of her lands and the alienations were recognised even by the High Court."

4. In the opinion of the Tribunal, "therefore, in law the settlement of June, 1956, in favour of the wife, the wife's settlement in December, 1956, in favour of the five relatives are all genuine transactions and duly acted upon by the parties .. There is nothing to show that the wife or the settles, both his own and that of the wife of the deceased, had not taken possession of the settled lands and enjoyed them". The Tribunal, therefore, held that the settlements made by the deceased were legal, effective and the properties vested in the transferees. Possession and enjoyment had been taken by the transferees to the entire exclusion of the deceased, by contract or otherwise. The deceased had absolutely no benefit or enjoyment left in these transferred properties. It was upon this basis that the Tribunal held in favour of the appellant.

5. The High Court, in the judgment under appeal, has traversed all the evidence that was placed before the Tribunal and, upon an assessment thereof, come to the contrary conclusion.

6. Learned counsel for the appellant submitted that the High Court had

considered what was a pure question of fact and it had reappraised the evidence to come to a conclusion thereon which was contrary to that reached by the Tribunal. Learned counsel for the Revenue submitted that the Tribunal had gone through the maze of transactions listed in the order of the Tribunal and come to a conclusion. In his submission, it was entitled to do so upon a construction of the documents.

7. It is evident from the judgment and order of the High Court that it has not construed documents but has reached a conclusion, upon reappraisal of the evidence of the transactions that was placed before the Tribunal and analysed by the Tribunal, different from that reached by the Tribunal. The Tribunal is the final fact-finding authority. The High Court may not enter into the realm of fact unless the party seeking a reference has successfully proposed a question that suggests that the conclusion reached by the Tribunal is perverse ; in other words, that no person could reasonably have reached it upon the material placed before him. There was no question before the High Court which suggested that the conclusion reached by the Tribunal was perverse. It was, therefore, not open to the High Court to go into the questions of fact. Upon that basis alone, the judgment and order under appeal must be set aside and the question answered in the negative and in favour of the appellant.

8. The civil appeals are allowed accordingly.

9. No order as to costs.