
(1968) 09 GUJ CK 0017
In the Gujarat High Court
Case No : Estate Duty Reference No. 3 of 1967

Kantilal Trikamlal	Vs	APPELLANT
Controller of Estate Duty, Gujarat		RESPONDENT

Date of Decision : 27-09-1968

Acts Referred:

Estate Duty Act, 1953 — Section 2(15), 27, 27(1)

Citation : (1969) 74 ITR 353

Hon'ble Judges : P.N. Bhagwati, C.J;B.J. Divan, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; J.M. Thakore, for the Respondent

Judgement

Bhagwati, C.J.—This reference raise a question of some importance depending for its determination on the inter-action of the provisions of

Hindu law and the Estate Duty Act, 1953. Prior to 3rd January, 1950, one Trikamlal Vadilal (hereinafter referred to as the deceased), his son,

Kantilal, and his two grandsons by a pre-deceased son, namely, Lalbhai and Parshottam, constituted a Hindu undivided family. There was a

partition between the deceased and Kantilal, on the one hand, and Lalbhai and Parshottam, on the other, by a deed of partition dated 3rd January,

1950, and as a result of the partition, certain movable and immovable properties including a share in two partnership firms, namely Messrs. Manilal

Premchand and Messrs. Chimanlal Premchand, came to the share of the deceased and Kantilal. These movable and immovable properties

continued to be held by the deceased and Kantilal as members of a joint and undivided Hindu family until 16th November, 1953, when an

instrument styled ""release deed"" was exerted by and between the deceased and Kantilal. Considerable controversy between the parties turns on

the interpretation of this instrument and it will therefore be necessary for us to refer to its terms in some detail and we shall do so when we deal

with the arguments advanced on behalf of the parties. Suffice it to state for the present that, under this instrument, a sum of rupees one lakh out of

the joint family properties was taken by the deceased in lieu of his share in the joint family properties and he relinquished his interest in the

remaining properties of the joint family which were deceased to belong to Kantilal as his sole and absolute properties and Kantilal also, in his turn,

relinquished his interest in the amount of Rupees one lakh given to the deceased and declared that the deceased was the sole and absolute owner

of the said amount. Within two year from the date of this instrument, on 3rd June, 1955, the deceased died and on his death, the question arose as

to what was the estate duty chargeable on his estate. Kantilal, who is the accountable person before us, filed a return showing the status of the

deceased as individual and the principal value of the estate as Rs. 1,06,724. The Assistant controller was, however, of the view that the instrument

dated 16th November, 1953, operated as relinquishment by the deceased of his interest in the joint properties in favour of Kantilal and that the

consideration of Rupees one lakh for which the relinquishment was made was not full consideration since the value of the one-half share of the

deceased in the joint family properties at the date of the said instrument was Rs. 3,44,058 and there was, therefore, a disposition by to deceased in

favour of a relative for partial consideration and it was, accordingly, by reason of section 27, sub-section (1), liable to be treated as a gift for the

purpose of section 9, sub-section (1), and its value, namely, Rs. 3,44,058, after deducting Rs. 1,06,724 (being the amount received by the

deceased together with interest) was includible in the principal value of the estate of the deceased. The Assistant Controller, accordingly, included

a sum of Rs. 2,37,334, being the difference between Rs. 3,44,058 and Rs. 1,06,724, in the principal value of the estate of the deceased. On

appeal by the accountable person, the assessment made by the Assistant controller was confirmed by the Central Board of Revenue. Though the

main ground on which the Central Board of Revenue based its decision was the same as that which found favour with the Assistant Controller,

namely, that under the instrument there was a disposition by the deceased of his interest in the joint family properties in favour of Kantilal for partial

consideration and it was therefore by reason of section 27, sub-section (1), liable to be treated as a gift for the purpose of section 9, sub-section

(1); another argument also appealed to the central Board of Revenue and that was an argument based on section 2(15), Explanation 2. The central

Board of Revenue held that, in any event, under the instrument there was extinguishment at the expense of the deceased of his interest in the joint

family properties and there was therefore a deemed disposition by the deceased of the benefit which accrued to Kantilal as a result of such

extinguishment and the charge to estate duty was accordingly attracted u/s 9, sub-section (1), read with section 27, sub-section (1). The

accountable person, being aggrieved by the decision of the Central Board of Revenue, thereupon applied for a reference of the question of law

arising out of its order and on the application of the accountable person, the central Board of Revenue referred the following question for the

decision of this court :

Whether, on the facts and in the circumstances of the case, the release deed executed by the deceased on the 16th November, 1953, was

correctly held to constitute a disposition in favour of a relative, within the meaning of section 27(1) read with Explanation 2 of section 2(15) of the

Estate Duty Act, 1953 ?

2. The question, though arising under the Estate Duty Act does not depend solely on the interpretation of the provisions of that Act, but also

involves consideration of the provisions of Hindu law and the impact of the Estate Duty Act on those provisions.

3. Before we examine the arguments advanced on behalf of the parties, it would be convenient at this stage to refer to a few provisions of the Estate

Duty Act. Section 1(15) defines "property" in these terms :

2. In this Act, unless the context otherwise requires, -.....

(15) "property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time

being representing the proceeds of sale and also includes any property converted from one species into another by any method.....

Explanation 2. - The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by

the deceased in favour of the person for whose benefit the debt or right was

extinguished, and in relation to such a disposition the expression

"property" shall include the benefit conferred by the extinguishment of the debt or right.

4. Section 5, which is the charging section, provides that in the case of every person dying after the commencement of the Act there shall be levied

and paid upon the principal value of all property, settled or not settled, rates fixed in accordance with section 35. Then follow several sections

which specify different categories of properties which are deemed to pass on the death of the deceased and of them, section 9, sub-section (1),

which is material for our purpose, says :

9. (1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of

transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or

more before the death of the deceased shall be deemed to pass on the death :

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

5. The next relevant section is section 27, sub-section (1) which deals with dispositions in favour of relatives. It reads :

27. (1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of this Act as a gift unless -

(a) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit;

or.....

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his

own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

6. These are the only relevant provisions of the Act having a bearing on the determination of the question referred for our opinion.

7. The broad line of argument advanced on behalf of the accountable person was that the instrument dated 16th November, 1953, though styled

under which the joint family properties were partitioned between the deceased and Kantilal : the deceased took a sum of rupees one lakh in lieu of

his share in the joint family properties while the remaining joint family properties

went to the share of Kantilal, each of them relinquishing his right, title and interest in the properties which went to the share of the other. It was urged that we should not place undue weight on the label given by the parties to the transaction nor should we allow ourselves to be influenced unduly by one expression or the other used by the parties in the instrument but we should look at the instrument as a whole and ascertain the true nature of the transaction recorded in the instrument by examining the legal relationship which, on a true construction of its terms, it seeks to bring about. So approached, it would be apparent, said the counsel for the accountable person, that the instrument was not one of renunciation by the deceased of his interest in the joint family properties in favour of the coparcenary but was an instrument partitioning the joint family properties, it obviously did not involve any transfer of interest in property by the deceased in favour of Kantilal and there was therefore no disposition of any interest in the joint family properties by the deceased in favour of a relative within the meaning of section 27, sub-section (1). It was also urged on behalf of the accountable person that section 2(15), Explanation 2, had no application on the facts of the present case, first, because partition did not involve extinguishment at the expense of the deceased of any right and secondly, even if there was no partition and the transaction was merely one of renunciation by the deceased of his interest in the joint family properties, there was, at the highest, extinguishment of interest in property and not extinguishment of "other right" and the Explanation could not therefore be availed of by the revenue for the purpose of bringing the case within section 27, sub-section (1). Lastly, it was contended - and this contention was in the alternative - that even if on a true construction of the instrument, there was a renunciation by the deceased of his interest in the joint family properties, such renunciation was in favour of the coparcenary and not in favour of Kantilal and, therefore, even if such renunciation could be regarded as a disposition, it was not a disposition in favour of a relative and section of the way, said the counsel for the accountable person, there was admittedly no gift by the deceased which would attract the applicability of section 9, sub-section (1).

8. The revenue contested the proposition that the instrument dated 16th November, 1953, was an instrument partitioning the joint family properties

between the deceased and Kantilal and contended that it was not open to the court, under the guise of ascertaining the substance of the transaction, to make out a different legal relationship between the parties than what was disclosed by the instrument. The instrument, according to its apparent tenor, said the revenue, was one by which the deceased renounced his interest in the joint family properties in favour of Kantilal and it was not interest in the joint family properties in favour of Kantilal and it was not possible to infer from the fact of renunciation severance of status which would necessarily be involved in partition of joint family properties. It was urged on behalf of the revenue that renunciation by a coparcener of his interest in coparcenary property was ""disposition"" within the meaning of the term as used in section 27, sub-section (1), and clearly, therefore, there was a disposition by the deceased of his interest in the joint family properties in favour of Kantilal within the meaning of section 27, sub-section (1). The revenue, in the alternative, contended that even if the instrument was constructed as partition of joint family properties between the deceased and Kantilal, it was still within the mischief of section 27, sub-section (1), for the word ""disposition"" in section 27, sub-section (1), was a word of large import and it included within its wide compass partition as well. Reliance was also placed by the revenue on section 2(15), Explanation 2, and it was urged that, in any event, there was extinguishment at the expense of the deceased of his interest in the joint family properties in that he received only Rs. 1,06,724 (inclusive of interest) as against the value of his half share which was Rs. 3,44,058 and there was therefore a deemed disposition by the deceased to the extent of the benefit of Rs. 2,33,324 conferred on Kantilal by such extinguishment and section 27, sub-section (1), was attracted.

9. On these rival contentions, the first question which arises for consideration is : What is the true nature of the transaction recorded in the instrument dated 16th November, 1953 ? Is it renunciation by the deceased of properties between the deceased and Kantilal ? Now it is no doubt true, as contended by the revenue - and there is ample authority for this proposition in the speeches of Lord Macmillan and Lord Russell of Killowen in *Inland Revenue Commissioners v. Duke of Westminster* and the speech of Lord Normand in *Potts' Executors v. Inland Revenue*

Commissioners. - that the court cannot go behind a transaction, legal, competent and regular in form, and, by resort to what is called"" the

substance of the matter"", ignore the true legal relationship brought about by the transaction and constructed for the parties a new and different legal

relationship than what is embodied in the transaction. But it is equally true - equally beyond doubt or controversy - that to determine the true nature

of the transaction we must look at the substance of the transition evidenced by the document and not be bound by the mere use of the words. We

must ascertain the substance by a consideration of the rights and obligation of the parties to be derived from a constriction of the whole of the

document : in other words, as pointed out by Warrington L. J. in *In re Hinckes : Dashwood v. Hinckes* ""we must look at the legal effect of the

bargain which the parties have entered into"". That is the approach we must adopt in determining the true nature of the legal is the approach we

must adopt in determining the true nature of the legal relationship brought about by the transaction embodied in the instrument.

10. Before, however, we examine the relevant provisions of the instrument dated 14th November, 1953, in the light of this approach, it would be

convenient at this stage to notice the distinction between renunciation by a coparcener of his interest in joint family properties and partition of joint

family properties amongst the coparceners. Where a coparcener renounces his interest in the joint family properties, renunciation operates to

extinguish his interest in the joint family properties and he goes out of the coparcenary but the status of the remaining members quoad the joint

family properties is not affected and they continue to be coparceners as before. The effect of renunciation by a coparcener of his interest in the

joint family properties was stated by the Judicial Committee of the Privy Council in *Alluri Venkatapathi Raju v. Dantuluri Venkatanarasimha Raju* in

these terms :

What is the effect of this renunciation upon the status of the other members of the family ?..... no re-division of shares need take place., when

the separating member does not receive any share in the estate but renounces his interest therein. His renunciation merely extinguishes his interest in

the estate, but does not affect the status of the remaining members quoad the family property, and they continue to be coparceners as before. The

only effect of renunciation is to reduce the number of the persons, to whom shares would be allotted, if, and when, a division of the estate takes

place.

11. It is also clear from the decision of the Bombay High Court in *Sanveerangouda v. Basangouda*, that a coparcener cannot renounce his interest

in the joint family properties in favour of any particular coparcener : renunciation can only be in favour of the whole coparcenary so that, save for

the separation of the coparcener renouncing, the coparcenary continued as before and the joint family properties, in which the interest of the

renouncing coparceners is extinguished, continued to be the properties of the coparcenary.

12. Partition, on the other hand, is a totally different concept under Hindu law. It means both division of status and division of property but it is only

with the latter sense that we are concerned, for a question as to estate duty can arise only in reference to property. Partition in the sense of division

of property is, according to the Mitakshara school of Hindu law, division of joint family properties amongst the coparceners. Now partition may be

either total or partial : it may be partial as to property or partial as to person. Either all the joint family properties may be partitioned or only some

of them may be partitioned and others may continue to remain joint family properties. So also, all the coparceners may sever their joint status and

divide the joint family properties or only one coparcener may separate taking his share in joint family properties. Where one coparcener takes his

share of the joint family properties and separates, the question may arise as to whether the other coparceners also get separated or they continue

to remain joint in status. At one time this question had given rise to considerable divergence of judicial opinion but it is now settled by the decision

of the Supreme Court in *Bhagwati Prasad Sah v. Dulhin Rameshwari Juer*, where it has been held :

..... there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that

because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined

in each case upon the evident relating to the intention of the parties whether there was a separation amongst the other coparceners or that they

remained united.

13. It will therefore be seen that there is a material distinction between rhinestone and partition, conceptual as well as in terms of legal

consequences. The distinction lies in two points. The first point of distinction is that where a coparcener renounces his interest in the joint family

properties, his interest in the joint family properties is extinguished. There is no division of the joint family properties and he does not receive

anything in respect of his share in the joint family properties, while in case of partition, there is division of the joint family properties : the separating

coparcener does not renounce his interest in the joint family properties but takes his share of the joint family properties and goes out of the

coparcenary. Basically, renunciation is in antithesis to partition. This point of distinction is clearly brought out in the passage from the judgment of

the Judicial Committee of the Privy Council in *Alluri Venkatapathi Raju v. Dantuluri Venkatanarasimha Raju*, which we have quoted above. We

may repeat a sentence from it which reads : ""..... but no definement of shares need take place when the separating member does not receive

any share in the estate but renounces his interest therein"". Secondly, where a coparcener renounces his interest in the joint family properties, the

coparcenary continues as before intact and unimpaired save for the exit of the remaining coparcener, while in case of partition where a separating

member takes his share of the joint family properties and goes out, the question remains whether the other coparceners are also divided or they

continue joint and that depends upon their intention to be gathered from their conduct.

14. Turning now to the relevant provisions of the instrument dated 16th November, 1953, we find that there are certain features which stand out

prominently and reveal the true nature of the transaction. There are two parties to the transaction, the deceased and Kantilal, and each of them has

executed the instrument. It may be noted that, at the date of the instrument, the Hindu undivided family consisted only of two coparceners, namely,

the deceased and Kantilal (excluding the sons, it any, or Kantilal who would belong to their father's branch), and the transaction evidenced by the

instrument was between these two coparceners. The instrument, after specifying the movable and immovable properties belonging to the Hindu

undivided family of these two coparceners, proceeded to state :

..... Trikamlal Vadilal, the party of the second part, has voluntarily taken his rights, claims and shares on Aso Vad 30 of Samvat year 2009;

and for so withdrawn his rights, claims and shares, the party of the second part, Trikamlal Vadilal, has withdrawn an amount of Rs. 1,00,000

(rupees one lakh) on an ad hoc, basis from out of the aforementioned joint family properties; and in consideration thereof, Trikamlal Vadilal, the

party of the second part, is executing this deed of release in favour of Kantilal Trikamlal; the party of the first part has become full and independent

party of the second part has become full and absolute owner of the cash amount taken by him in lieu of his share in the aforesaid movable and

immovable properties. Hence forward the party of the second part, his heirs, assigns, creditors or partners have no right, title or interest in or over

the aforesaid movable and immovable properties and henceforward if anybody on behalf of the party of the second part claims any right, title or

interest or creates any obstruction in respect of the aforesaid properties, the party of the second part would be answerable to the party of the first

part. Henceforward let the party of the first part, his heirs, sons, grandsons, etc., enjoy the aforesaid properties till the sun and moon endure : they

may enjoy the said properties, live therein, add to them or they may do whatever they like with those properties. Whatever may come out of the

said properties would belong to the party of the first part. Hereafter we have no claims against each other in respect of the joint family properties

and that is why we have executed in favour of each other this release deed giving up his right, title and interest in respect of the properties belonging

to the joint family.....

15. Though the instrument is styled as release deed and it is also referred to as release deed, it is not a release deed simpliciter by which the

deceased renounced his interest in the joint family properties but is an instrument partitioning the joint family properties between the deceased and

Kantilal. The instrument shows nearly and indubitably that the joint family properties were divided in two parts, one part consisting of rupees one

lakh and the other part consisting of the remaining properties and the former was taken by the deceased and the latter by Kantilal. The amount of

rupees one lakh was, as the instrument states in so many terms, arrived at on

an ad hoc basis and that was obviously done in view of the fact that a part of the joint family properties consisted of a share in two running businesses. To determine the exact amount coming to the share of the deceased on partition would have involved taking of accounts of the two businesses and of ascertaining the value of the share of the Hindu undivided family in the two businesses. That would have been a long and unbroken procedure and the deceased and Kantilal therefore decided that, instead of going into the details of accounts, a sum of rupees one lakh should be taken by the deceased on an ad hoc basis in respect of his share in the joint family properties and the remaining joint family properties should go to the share of Kantilal. It must be remembered that this was a partition between a father and a son and there was nothing unnatural or unreasonable in what they did. Having divided the joint family properties in this manner, they declared in the instrument that each became the sole and absolute owner of the portion of the joint family properties which came to his share. The deceased became the sole and absolute owner of the sum of rupees one lakh which came to his share out of the joint family properties and Kantilal became the sole and absolute owner of the remaining joint family properties which went to him. Both the deceased and Kantilal then proceeded to state in the last paragraph of the instrument that neither had any claim against the other in respect of the joint family properties and that each of them was relinquishing his interest in the joint family properties which went to the share of the other. The transaction thus possessed all the characteristics of a partition which are clearly and succinctly set out in the following passage from the judgment of Patanjali Sastri (when he was a judge of the Madras High Court) in *Narasimhalu v. Someswara Rao*.

..... a partition arrangement under which each co-owner gets a specific property in lieu of his rights in all the joint (family) properties; that is to say, each co-sharer renounces his rights in the other common properties in consideration of his getting exclusive right to and possession of specified properties in which the other co-owners renounced their rights. It is thus a renunciation of mutual rights.....

16. It is impossible to imagine how this transaction could possibly be construed as renunciation by the deceased of his interest in the joint family

properties particularly when the deceased took a portion consisting of a sum of rupees one lakh in respect of his share in the joint family properties.

Moreover, the closing part of the first and the opening part of the second of the two paragraphs of the instrument above quoted clearly negative a

case of renunciation by the deceased of his interest in favour of the coparcenary. These paragraphs in so many terms declare that the remaining joint

family properties shall be of the sole and absolute ownership of Kantilal and that Kantilal, his heirs, sons, grandsons, etc., shall be entitled to enjoy

the same in such manner as they think fit. We are therefore of the view that the instrument in question was not an instrument of renunciation by the

deceased of his interest in the joint family properties but was an instrument partitioning the joint family properties between the deceased and

Kantilal.

17. That takes us to the next question whether partition of joint family properties constitutes ""disposition"" within the meaning connection 27, sub-

section (1). That raises the question as to what is the true nature and legal effect of ""partition"". What happens when a partition of joint family

properties takes place ? Prior to the decision of the Supreme Court in Commissioner of Income Tax v. Keshavlal Lallubhai Patel, there was a sharp

cleavage of opinion amongst the different High Courts on this question and there were two competing divergent views :

(1) Partitions a conversion of joint enjoyment into enjoyment in severalty; the crucial test of transfer by a person having an interest in involved in the

prices of partition as each share has an accident title to the property which comes to his share on partition.

(2) It is a conveyance of a portion of joint right in exchange for similar right from the co-shares.

18. Subba Rao J., as he then was, delivering the judgment of a Division Bench of the Madras High Court in Gutta Radhakrishnayya v. Gutta

Sarasamma, pointed out that the latter view was wrong and, expressing his approval of the former view, said :

Partition, therefore, is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the shares had

an antecedent title and therefore no conveyance is involved in the process as a conferment of a new title is not necessary.

19. This observation of the Madras High Court was referred to with approval by the Supreme Court in Commissioner of Income Tax v. Keshavals

Lallubhai Patel where the Supreme Court had occasion to consider whether a partition of joint family property is a transfer in the strict sense. Shri

J., speaking on behalf of the supreme Court observed :

We are of the opinion that it is not. This was so held in Gutta Radhakrishnayya v. Gutta Sarasamma. Subba Rao J. (then a judge of the Madras

High Court), after examining several authorities came to the conclusion that partition is really a process in and by which a joint enjoyment is

transformed into an enjoyment in severalty. Each one of the share had an antecedent titled and therefore on convene is involved in the process, as a

conferment of new title is not necessary. The Madras High Court again examined the question in M. K. Stremann v. Commissioner of Income tax,

with reference to section 16(3)(a)(iv). It observed that "obviously on question of transfer of assets and arise when all that happens is separation in

status, though the result to such severance in status is that the property hitherto held by the coparcenary is held thereafter by the separated

members as tenants in common. Subsequent partition between the divided members of the family does not amount either to a transfer of assets

from that body of the tenants in common to each of such tenants in common".....

Agreeing with these authorities we hold that when the joint Hindu family property was partitioned there was no transfer of assets within section

16(3)(a)(iii) and (iv) to the wife or the minor son.

20. It can therefore now no longer be disputed that partition is merely a process in and by which joint enjoyment is transformed into enjoyment in

severalty and since each one of the coparceners had an antecedent title which extended to the whole of the joint family properties and had

therefore full interest in the specific property which ultimately goes to his share no transfer of interest in such specific property takes place in his

favour and, as observed by Subba Rao J., as he then was, "no conveyance is invoked in the process as conferment of new title" or interest "is not

necessary. " There is no transfer of interest from one coparcener to another in the process of partition.

21. If this be so it is difficult to see how it can be regarded as "disposition" within the meaning of section 27, sub-section (1). Two or three English

decision were relied upon by the learned Advocate General on behalf of the revenue for the purpose of showing that the word "disposition" is a word of very large import and it would comprise all forms of transfer, whether inter vivos or by operation of law. But we do not think it necessary to refer to these decision for it is well settled that the language of a statute has always to be construed with reference to its context and the same word may carry a variety of signification depending on the contents in which it is used. Construction *en vitermini* involves fitting together of words with their context. Words in most case take their colour from the environment. Barring certain words which are so precise and distinctive as to admit of only one meaning, the majority of words depend on the context and hence the familiar phrase that they must be construed *secundum* subjection material. We must therefore gather the meaning of the word "disposition" having regard to the context in which it is used, and authorities bearing on the construction of that word as used in other statutes cannot help us to arrive at the proper meaning of that word occurring in section 27 sub-section. (1) Let us see what is the meaning of the word "disposition" in the context in which it occurs in section 27, sub-section (1) Section 9, sub-section (1) provides that property taken under a disposition made by the deceased paupering to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust settlement upon persons in succession or other wise which shall not have been owed find made two years or more before the death of the deceased shall be deemed to pass on his death. Having dealt with "disposition" made without consideration, which a gift as ordinarily understood in the law of transfer would always be the legislator proceeded to bring within the charge of estate duty u/s 27, sub-section. (1) dispositions made for partial consideration provided they were made by the deceased in favour of a relative. The legislature said that a disposition made by the deceased in favour of relative shall be treated for the purpose of section 9, sub-section (1) as a gift unless it was made for full consideration in money or money's worth, that is if it was made for partial consideration. Section 9, sub-section, (1) and section 27, sub-section (1), thus formed part of a single scheme under which dispositions made by the deceased in favour of a relative for partial consideration were both sought to be treated on the same footing and the properties taken under such dispositions were deemed to pass on

the death of the deceased. The word "disposition" must therefore possess the element of transfer of an interest in property from one person to

another an element which is possessed in common by the concept of "transfer, delivery declaration of trust, settlement upon person in secession".

Even if the word "otherwise" were not construed in a limited sense to refer only to disposition ballooning to the same genus as the preceding words

and were given a wide meaning so as to include every transfer or creation of an interest in property, we do not think it can possibly comprise

partition which does not involve transfer of any interest in property. No meaning of the word "disposition" howsoever wide in its ambit and broad

in its coverage, can possibly be taken in partition which is nothing but a process in and by which joint enjoyment is transformed into enjoyment in

severalty. Section 27, sub-section (1) cannot therefore be invoked by the revenues for the purpose of contending that the instrument dated 16th

November, 1953, constituted a disposition by the deceased in favour of Kantilal and it was therefore liable to be treated as a gift for the purpose

of section 9, sub-section (1).

22. Before we part with this point, we must refer to one more intention of the learned Advocate-General, namely that the deceased did not take his

full one half share in the joint family properties but took only a sum of rupees one lakhs which was very much less than his one half share and

therefore to the extent to which he too, less, it just be held that he relinquished that part of one half share in favour of Kantilal. This intention,

plausible though it may seem is not well founded. It suffers from the fallacy pointed out by Lord Toulson in *Island Revenue Commissioners v.*

Duke of Westminster, when he said :

..... it is said that in revenue cases there is a doctrine that the court may ignore the legal position and regard what is called "the substance of the

matter"..... This supposed doctrine..... seems to rest from its support upon a misunderstanding of language used in some earlier cases. The

sooner this misunderstanding is dispelled and the supposed doctrine given its quietus, the better it will be for all concerned,.....

23. The attempt behind the contention is to ignore the true legal relationship between the parties by resorting to what may be called the substance

of the matter and that is clearly impermissible. It is no doubt true that if on

partition the deceased had taken his full one half share in the joint family properties and then disposed of a part of it in favour of Kantilal, there would have been a gift of that part to Kantilal. But that is not what the deceased did in the present case and the revenue cannot fasten liability on the estate of the deceased by treating as if the is what the deceased had done. That the same final result is achieved as by the deceased taking his full one half share in the joint family properties and then giving away a part of it in favour of Kantilal. The deceased and Kantilal partitioned the joint family properties and it may be that, on that basis of an expert fact determination made by the revenue, the deceased received less than what he sought to have received in respect of his share in the joint family properties but merely because of partition. Even the case of unequal partition, the process which ultimately results in the receipt of specific properties in severalty by the coparceners is the same as in the case of equal partition and if there is no transfer of interest in the property from one coparcener to another in the latter case, equally there is none in the former. We cannot therefore construe the transaction in the present case as one of relinquishment by the deceased of his interest in the joint family properties in favour of Kantilal to the extent to which he received less than what according to the revenue he ought to have received less than what according to the revenue he ought to have received on partition.

24. We then turn to the argument based upon section 2(15), Explanation 2. We fail to see how that Explanation can have any application on the facts of the present case. There are two difficulties which face the revenue when the revenue seeks to rely on this Explanation. In the first place as already pointed out above partition even if unequal, does not involve extinguishment of any interest in property at the expense of the coparcener who receives less than what he might have received according to his rightful share. Secondly, the condition which attracts the applicability of this Explanation is that there must be extinguishment of a debt or "other right". The words used are "other right" as distinguished from "interest in property" which we find in the main part of the definition in section 2(15). What the Explanation therefore contemplates is extinguishment of some right of the deceased as a result of which benefit is conferred on another and it does not include extinguishment of an interest in property. Where the

legislature wanted to refer to interest in property, the legislature has done so in lead and explicit terms in the main part of section 2(15) and section

7(1) but here the words used are "other right" and we cannot therefore regard these words as comprising within their scope and ambit "interest in

property". It is apparent that in case of partition there is in extinguishment of any "right" possessed by a coparcener which results in benefit to

another coparcener. It is therefore evident that in the present case there was no extinguishment at the expense of the deceased of any "right" within

the meaning of the Explanation and the Explanation cannot avail the revenue for the purpose of bringing the case within section 27, sub-section (1).

25. We must therefore hold that there was no disposition made by the deceased in favour of relative within the meaning of section 27, sub-section.

(1), nor was there a deemed disposition by the deceased in favour of a relative u/s 2(15), Explanation 2, and the legal fiction of passing of property

on death enacted in section 9, sub-section (1), was not attracted. The Central Board of Revenue was, therefore, in error in including in the

principal value of the estate of the deceased the value of one half share of the deceased in the joint family properties after deducting from it the

consideration of Rs. 1,06,724 received by the deceased. Our answer to the question referred to us is in the negative. The Controller of Estate Duty

will pay the Costs of reference to the accountable person.