
(1978) 03 MAD CK 0048

In the Madras High Court

Case No : Tax Case No. 193 of 1974 (Reference No. 69 of 1974)

Kuttiammal (Deceased) (by L.R.)

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 13-03-1978

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1979) ILR (Mad) 276 : (1979) 119 ITR 740

Hon'ble Judges : P. Govindan Nair, C.J;Varadarajan, J

Bench : Division Bench

Advocate : T.S. Ramu, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

Varadarajan J.

1. The questions referred by the Income Tax Appellate Tribunal, Madras " B " Bench, for the opinion of this court at the instance of the revenue and the assessee are the following :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rs. 1,38,630 being the value of 46.21 acres of wet lands settled by the deceased on his daughter cannot be included in the estate duty assessment u/s 10 of the Estate Duty Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the value of 46.93 acres of wet lands gifted by the deceased to his wife was liable to be included in the estate duty assessment u/s 10 of the Estate Duty Act ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rs. 31,000, being the value of the house bearing door No. 4, Singara Mudali Street, T. Nagar, Madras, purchased by the deceased in the name of his wife and subsequently gifted by her to her daughter cannot be included in the estate duty assessment u/s 10 of the Estate Duty Act ? "

2. The second question has been referred at the instance of the assessee and the other two questions at the instance of the revenue.

3. One Rangaswami Iyengar, a businessman, who passed away on January 21, 1958, had executed a will dated January 17, 1947, and a settlement deed dated June 30, 1954, in favour of his wife, Kuttiammal alias Alamelu, and a settlement deed dated June 30, 1964, in favour of his then minor married daughter, Rukmani alias Sulochana. In the will he had stated that the house bearing door No. 4, Singara Mudali Street, Thiagaraya-nagar, Madras, bequeathed to his wife, was in the occupation of a tenant, Ramachandra Naidu, to whom a notice had been issued by the City Civil Court, Madras, and that on his vacating the house both the testator and the legatee shall reside there, as it was with that object he had purchased that property in the name of the legatee. By the settlement deeds he had given 46.93 acres of wet lands situate in Moulimbakkam Village, Chingleput District, to his wife and 46.21 acres, of wet lands situate in the same village to his minor married daughter, Sulochana. Those lands and other lands had been leased by the settlor by a lease deed dated June 26, 1953, to one Ponnurangam Naicker on a rent of Rs. 6,480 per annum for a term ending with June 30, 1956. The settlor had stated in the settlement deeds that the settlees shall take possession of the lands from Ponnurangam Naicker after the expiry of the lease on June 30, 1956.

4. The original assessment made in the case on September 27, 1965, u/s 58(4) by the Estate Duty-cum-income tax Officer was set aside by the Appellate Controller with a direction to make a fresh assessment in accordance with law. The wife, Kuttiammal, filed the estate duty account on July 23, 1965, and the daughter, Sulochana, filed a letter dated August 12, 1967, agreeing to abide by the estate duty account filed by her mother. The Estate Duty Officer scrutinised the accounts and discussed with Kuttiammal's representative. The Tahsildar of the Taluk concerned had reported to the Estate Duty Officer in his letter dated April 14, 1963, that the lands had not been transferred in favour of the wife and the daughter of the deceased, though the settlement deeds had been executed four years prior to the death of the deceased and that the headman of the village had reported that the lands were actually in the management and enjoyment of the deceased himself and he was paying the kist for all the lands until his death. When this fact was brought to the notice of the accountable persons, it was represented to the Estate Duty Officer that they themselves paid the kists and that since the patta continued to stand in the name of the settlor, the revenue officials issued the kist receipts in his name. The lessee, Ponnurangam Naicker, continued to be in possession of the lands even after June 30, 1956, and he had paid higher rent of Rs. 7,480 on October 1, 1956, and again on October 16, 1957, to the settlor himself and he had credited those amounts in his own current account with the Indian Bank at Madras. The settlor had utilised those monies for his own expenses, for payment of taxes, etc. When these facts were pointed out to the settlees, it was reported to the Estate Duty Officer that the lessee refused to recognise the settlements and declined to comply with the

settlor's request to pay the proportionate rent to the settlees. The Estate Duty Officer was of the opinion that the settlees could not have paid the kist, as claimed by them, when the settlor himself had been collecting the entire rent from the lessee, and he rejected the suggestion that the settlor had paid the proportionate amount to the settlees after initially depositing the entire rent in his bank account. The Estate Duty Officer overruled the objections of the accountable persons and found, on the basis of the above materials, that the deceased had not been entirely excluded from the enjoyment of the properties settled on the ladies and that the value of the settled properties was includible in the principal value of the estate of the deceased.

5. The Estate Duty Officer found that the deceased had lived in the house bearing door No. 4, Singara Mudali Street, settled on his wife, until his death and that from the intention expressed in the will it was clear that the testator purchased the house on July 5, 1946, in the name of the wife with the specific intention of living in the property and he held that the deceased had never been excluded from the property gifted by him and that its value also was includible in the principal value of the estate of the deceased notwithstanding the subsequent settlement of the property by the wife in favour of the daughter by a deed dated July 11, 1953.

6. The accountable persons, Kuttiammal and Sulochana, took the matter in appeal before the Appellate CED, who agreed entirely with the Estate Duty Officer and dismissed the appeal.

7. The accountable persons took the matter further in appeal to the Tribunal. The Tribunal found that the very fact that the deceased had executed the settlement deeds in respect of the lands in favour of his wife and daughter would show that from the date of the settlement deeds his interest in the properties came to an end and he was not in a position to hand over possession of the lands to the donees because there was a subsisting lease in favour of Ponnurangam Naicker until 30-6-1956. The Tribunal further found that it was in the interest of the donor's minor daughter, Sulochana, that the entire rent received by the donor was not handed over to her but credited in his accounts in the bank and that it was just and reasonable for the father to let the daughter withdraw the amounts as and when required by her. But so far as the wife is concerned, the Tribunal opined that the rent due to the wife " was perhaps utilised by the husband " and that the donor was not entirely excluded from the enjoyment of the amounts gifted to her. As regards the house property, the Tribunal found that though it was the intention of the deceased in 1946 to buy the house in the name of his wife and live in the house, it could not be stated that after the wife settled the property on the daughter on the occasion of her marriage he had domain over the property even if he had retained domain over the property after the gift in favour of his wife. In this view, the Tribunal allowed the appeal in respect of the lands gifted to the daughter, Sulochana, and the house gifted to the wife, Kuttiammal, and dismissed the appeal in respect of the value of the lands gifted

to the wife.

8. Since the decision of the questions turns upon the construction of Section 10 of the E.D. Act, we shall extract that section :

" 10. Gifts whenever made where donor not entirely excluded.--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 :

Provided further that a house or part thereof taken under any gift made to the spouse, son, daughter, brother or sister, shall not be deemed to pass on the donor's death by reason only of the residence therein of the donor except where a right of residence therein is reserved or secured directly or indirectly to the donor under the relevant disposition or under any collateral disposition."

9. We find the following passage in Green's Death Duties, 7th edn., at pages 139 and 140 :

" The requirements for non-liability, all of which must have been fulfilled outside the statutory period, are thus I

(1) The assumption of possession and enjoyment of the subject-matter by the donee; and

(2) the final exclusion of the deceased--

(i) from such possession and enjoyment; and (ii) from any benefit by contract or otherwise.

(1) Assumption of possession, etc. : If the gift comprised two parcels of property and the donee took up the one but not the other, the latter alone is taxable. Actual possession and enjoyment are required : it is not sufficient that the donee had the right to possession and enjoyment....

But, if property is held in trust for the donee, then the trustee's possession is the donee's possession for this purpose ; and it is immaterial that the trustee is the donor himself....

The condition is taken as satisfied if possession and enjoyment were assumed outside the statutory period, even if they were not assumed immediately upon the gift....

(2) Exclusion of deceased : It is important to distinguish clearly between

condition 2(i) above (the so-called "first limb" of Section 11(1) of the Act of 1889), requiring the deceased's exclusion from possession and enjoyment of the subject matter of the gift, and condition 2(ii) (the "second limb"), requiring his exclusion from any benefit by contract or otherwise...

(i) Exclusion, from possession, etc. : This condition is not satisfied if, within the statutory period, the deceased in fact had some measure of possession or enjoyment of the gifted property, however he came to acquire it. It is immaterial for this purpose whether or not he had any enforceable right to possession and enjoyment; he may, for example, merely have been allowed by the donee to occupy, or to receive the income of, the gifted property..."

10. We shall examine the questions in the light of Section 10 of the E.D. Act and the aforesaid passage in Green's Death Duties, as also the decisions to which our attention had been invited by both sides.

11. The learned counsel for the accountable persons relied upon the decision of a Bench of this court in *M. Ranganatha Sastri and Another (Executors to the Estate of the Late Dewan Bahadur R. Subbaiah Naidu) Vs. Controller of Estate Duty, Madras*, where it has been observed that where a Hindu husband lived with his wife in a house gifted by him to his wife, collected the rents and included the rent in his own Income Tax return, though the rent note was in the name of his wife, those facts alone would not be sufficient material to come to the conclusion that the wife was not in exclusive possession and enjoyment of the house having regard to the relevant facts and circumstances, including the relationship, manners and customs of the persons concerned, habits of living and the manner of dealing with his or her property. However, the learned judges held that the property in that case passed on the death of the donor, as there was a finding that the husband had used the rents realised from the property for his own purposes and there was no reference on that question. This decision was rendered before the addition of the second proviso to Section 10 of the E.D. Act, 1953.

12. The learned counsel for the revenue invited our attention to the decision of a Division Bench of the Allahabad High Court in *Bibi Ahmadi Begum Vs. Controller of Estate Duty*, which was rendered after the amendment of Section 10 of the Act by the introduction of the second proviso. In that case the donor, who gifted his property to his wife in 1918, continued to live in the house until his death in March, 1958, in the same manner as he was living there before the gift. The wife had transferred the property to a wakf in 1922. It was contended that the donor, was only a licensee after the date of the gift in favour of the wife and that the donee had parted with the property in favour of the wakf. The learned judges held, following the principle laid down in *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, that whether the continued residence of the donor in the property was in exercise of a proprietary right or because of a personal relationship between the parties or for any other reason, was a matter wholly immaterial to the application of Section 10 until the second proviso was added to

the section by the Finance Act, 1965, and that since the proviso was not retrospective in operation, the property was includible in the estate which passed on the death of the deceased and that the mere fact that the donee subsequently made the property the subject of a will does not preclude the application of Section 10 if the donor continued to live in the property.

13. In *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, the Supreme Court has observed at page 501 :

"(1) the donee must bona fide have assumed possession and enjoyment of the property, which is the subject-matter of the gift, to the exclusion of the donor immediately upon the gift, and (2) the donee must have retained such possession and enjoyment of the property to the entire exclusion of the donor or of any benefit to him, by contract or otherwise. As a matter of construction we are of opinion that both these conditions are cumulative. Unless each of these conditions is satisfied, the property would be liable to estate duty u/s 10 of the Act.....

The second part of the section has two limbs : the deceased must be entirely excluded (i) from the property, and (ii) from any benefit by contract or otherwise.....In the context of the section, the word "otherwise" should, in our opinion, be construed ejusdem generis and it must be interpreted to mean some kind of legal obligation or some transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit on the donor."

14. In a subsequent case which came up for consideration before the Supreme Court in *Satyanarayana Modi Vs. Controller of Estate Duty Delhi and Rajasthan, New Delhi*, the deceased held three fixed deposit receipts with a bank in her name in April, 1953. One of these receipts was taken in the joint names of the deceased and her minor grandson in July, 1953, and the other two were renewed in the joint names of the deceased and her minor grandson in August, 1953. Later, in August, 1953, herself the deceased executed a gift deed in respect of the three fixed deposit receipts in favour of her grandson and on the next day she wrote to the bank, enclosing a copy of the gift deed, saying that her grandson was the sole owner of the deposit receipts and that they should remain in the joint names of herself and her grandson until her grandson attained majority. The deceased thereafter presented the receipts from time to time, discharged by herself alone, for renewal when they matured and obtained fresh receipts in the joint names of herself and her grandson. She encashed one of the receipts in August, 1955, and invested the amount in the name of her grandson. The other two fixed deposit receipts were encashed by the grandson himself after the death of the deceased in February, 1956. The question was whether the value of the three fixed deposit receipts could be included in the estate of the deceased. Their Lordships of the Supreme Court have held that bona fide possession and enjoyment of the property gifted was not immediately assumed by the grandson and thenceforward retained by him to the exclusion of the deceased and that the fixed deposit amounts were includible in the estate of the deceased u/s 10 of the

Act.

15. In *L. Jose Kannampilly Vs. Controller of Estate Duty, Kerala, Ernakulam*, which was decided by a Division Bench of the Kerala High Court, one Lonakunju, who died in December, 1962, had deposited a sum of money in a bank in the name of his minor son, Baby, with himself as his guardian, and also gifted immovable property to his seven sons, of whom three were minors. The donor himself was receiving the interest on the amount gifted and managing the properties gifted to his sons as guardian of the minor sons and as power-of-attorney agent of the major sons until his death. He had executed a will in September, 1972, saying that he had utilised to the extent of Rs. 40,000 the income from the gifted properties and that it could be recovered from his estate by the donees. The learned judges held that the donees did not retain possession and enjoyment of the gifted property to the entire exclusion of the donor and that the Tribunal was right in holding that the properties and the money in the bank passed on the death of the donor by virtue of Section 10 of the Act.

16. In the subsequent decision of a Division Bench of the Kerala High Court in *Dr. K.P. Mohamed Babu Vs. Controller of Estate Duty*, one Kunhalu, who died in August, 1963, had gifted four items of properties to his sons and daughters. The gift deed provided for the payment of a certain sum of money to the donor and his wife separately on a charge of all the four items of properties. The deceased had made a gift of another property, a building, in favour of one of his sons and taken it on lease for running a nursing home. The learned judges held that the value of all the four items of properties gifted to the sons and daughters and even the building gifted to one of the sons is liable to be included in the principal value of the estate of the deceased u/s 10 of the Act.

17. The second proviso to Section 10 of the Act and the decision of this court in the said *M. Ranganatha Sastri and Another (Executors to the Estate of the Late Dewan Bahadur R. Subbaiah Naidu) Vs. Controller of Estate Duty, Madras*, do not help the accountable persons in this case in respect of the house property having regard to the fact that the donor was not living in the house gifted to his spouse merely on account of his relationship with her. The property had been purchased by the donor in the name of his wife in 1946 with the intention that he should live in that house along with the donee and that intention had been made clear in the will executed by him in her favour in respect of that property. It would be clear from a reading of the will in the light of the intention with which that property had been purchased by the donor in 1946, that the donor had retained an enforceable right to live in the property until his death and that he was living in the property not only by virtue of his relationship with his wife in whose favour he had gifted the property, but also in exercise of the enforceable right which he had retained in the property. Therefore, we do not find any difficulty in holding that the value of the house property is includible in the principal value of the estate of the deceased u/s 10 of the Act especially having regard to the fact that the property had only been bequeathed by the donor by a will and not by any

settlement deed.

18. Though in the earlier decision in *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, , their Lordships of the Supreme Court have observed (p. 501) :

" The second part of the section has two limbs : the deceased must be entirely excluded, (i) from the property, and (ii) from any benefit by contract or otherwise.....In the context of the section, the word " otherwise" should, in our opinion, be construed ejusdem generis and it must be interpreted to mean some kind of legal obligation or some transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit on the donor."

19. Their Lordships of the Supreme Court appear to have departed from that strict view in the later decision, as we find in *Satyanarayana Modi Vs. Controller of Estate Duty Delhi and Rajasthan, New Delhi*, , to which reference has been made above. In the subsequent decision it has been held that bona fide possession and enjoyment of the property gifted was not immediately assumed by the grandson and thenceforward retained by him to the exclusion of the donor and that the fixed deposit amounts were includible in the estate of the deceased u/s 10 of the Act, though the donor had informed the bank with a copy of the gift deed executed by her in favour of her grandson, that the grandson was the sole owner of the deposit receipts and that they should remain in their joint names until her grandson attained majority, and she encashed one of the deposit receipts and invested the amount in the name of her grandson and the grandson himself had encashed the other two receipts after the death of the deceased. Similar view had been taken by the Kerala High Court in the decision in *L. Jose Kannampilly Vs. Controller of Estate Duty, Kerala, Ernakulam*, and *Dr. K.P. Mohamed Babu Vs. Controller of Estate Duty*, , referred to above.

20. In the present case, so far as the lands are concerned, it has been found that immediate possession of the lands could not be delivered to the donees in pursuance of the settlement deeds executed in their favour on June 30, 1954, in view of the fact that the lands were in the possession of the lessee Ponnurangam Naicker, who had a subsisting leasehold right in his favour until June 30, 1956. Ponnurangam Naicker had admittedly refused to recognise the settlements in favour of the accountable persons and declined to pay the proportionate rent to the ladies and he continued to pay the rent to the donor himself and the donor had received the increased rent of Rs. 7,480 once on October 1, 1956, and again on October 6, 1957, and credited those amounts in his current accdunt with the Indian Bank at Madras and he used those for his own expenses, for payment of taxes, etc. The patta for the lands continued to stand in the name of the donor himself and the estate duty authorities had found that the donor himself was paying the kist for the lands and they have rejected the contention put forward on behalf of the accountable persons that the donor had paid the proportionate rents received by him to the donees, though he had initially credited those amounts in his current account in the bank. These facts establish clearly that

bona fide possession and enjoyment of the lands was not immediately assumed by the donees and thenceforward retained by them to the entire exclusion of the donor. Therefore, there is no reason to hold that the Tribunal erred in holding that the value of the lands gifted to the wife, Kuttiammal, was includible in the principal value of the estate of the deceased.

21. The reasoning of the Tribunal in holding to the contra in regard to the lands gifted to the daughter, Sulochana, is totally not acceptable. The Tribunal had found that the entire rent had been received by the donor and had not been handed over to the daughter, Sulochana, but credited in his own accounts in the bank. It is not possible to see how under these circumstances it could be stated that the daughter had assumed bona fide possession and enjoyment of the lands gifted to her immediately and retained it to the entire exclusion of the donor. It would have been just and reasonable for the father to let the daughter have the money as and when required by her. But so long as the money continued to stand in the current account of the father with the bank, the daughter could not withdraw the amount as and when required by her. The Tribunal had overlooked the fact that the daughter, who was 17 years old at the time of the settlement on June 30, 1954, was married even then and had attained majority long before the death of the donor on January 21, 1958. The donee's husband was the guardian of the donee and not the father and such possession of the property as it is capable of should have been handed over by the donor to the husband of the donee as her guardian. This has not been done and the father continued to receive the rent from the lessee, who continued to be in possession of the lands even after June 30, 1956, and utilised the same for his own purposes of payment of taxes, etc. In these circumstances, we hold that bona fide possession and enjoyment of the property gifted to the daughter was not immediately assumed by the donee and thenceforward retained by her to the exclusion of the donor and that the value of the lands gifted to the daughter is includible in the principal value of the estate of the deceased under, Section 10 of the Act.

22. We, accordingly, answer questions 1 and 3 in the negative and in favour of the revenue and against the accountable persons and question 2 in the affirmative and in favour of the revenue and against the accountable persons. The accountable persons shall pay the costs of the revenue. Advocate's fee Rs. 500.

23. A copy of this judgment under the signature of the Registrar and the seal of this court shall be forwarded to the Income Tax Appellate Tribunal, Madras.