
(1968) 12 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Reference No. 24 of 1963

Madan Lal

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 06-12-1968

Acts Referred:

Estate Duty Act, 1953 — Section 44, 46(1)

Citation : (1969) 74 ITR 84

Hon'ble Judges : V.P. Tyagi, J; D.M. Bhandari, J

Bench : Division Bench

Advocate : Hastimal, for the Appellant; S.C. Bhandari, for the Respondent

Judgement

Bhandari, J.—This is a reference by the Central Board of Revenue u/s 64(1) of the Estate Duty Act, 1953, hereinafter called the Act. The statement of the case submitted by the Central Board of Revenue discloses the following facts which have given rise to this reference:

Daudas, son of Sukhdeo, submitted a statement of account u/s 53(1) of the Act to the Assistant Controller of Estate Duty, Jaipur, giving the details of various properties belonging to a Hindu undivided family consisting of his father, Sukhdeo, who died on February 24, 1957, and his sons and grandsons. On the death of Daudas on 3rd May, 1957, his son, Mukandas, pursued the proceedings before the said officer. The properties of the deceased, Sukhdeo, comprised of several items, such as mortgage deeds executed in favour of Sukhdeo and his four sons, house property and money-lending business. The statement further shows that Sukhdeo, after having served a jagirdar, started tobacco business under the name and style of Messrs. Sukhdeo Gopikishen at the ripe age of 49 years. At that time, he had four sons. Gopikishen was the eldest son. Some time after, he started money lending business in the name of Sukhdeo Daudas. Daudas was his second son. Various immovable properties were acquired in the joint names of the deceased and his sons out of the profits of these two businesses. On 10th of January, 1941, he executed a deed of partition which is

annexure "C". It purports to record the partition of certain properties--movable and immovable--between the father as party No. 1 and his four sons as parties Nos. 2 to 5. The preamble of the document mentions that "party No. 1 owns movable and immovable properties which have been earned and acquired by party No. 1 only and none else has got a right or share therein". Then it is stated that party No. 1 had effected the division of the properties amongst parties Nos. 2 to 5 as detailed in the deed. The first paragraph of the deed mentions that party No. 1 had already handed over gold and silver ornaments and other movable properties to parties Nos. 2 to 5. Then in paragraph 2, it is mentioned that party No. 1 had divided immovable properties including houses and shops between parties Nos. 2 to 5. Paragraph 3 is important and it runs as follows :

"Party No. 1 has debtors secured against gold, silver and jewellery amongst his other movable and immovable properties and also his personal account books of money-lending and other promissory notes, the sole owner thereof is party No. 1 himself. Hence he is at liberty to spend it as he likes whether on charity or by way of gift. When party No. 1 has attained the age of 100 years or when he breathes his last, parties Nos. 2 to 5 will perform obsequies and incur other necessary expenses on charity, etc., from these properties of his and whatever remains from the same will be equally divided and taken possession of by parties Nos. 2 to 5 who happen to be brothers. Party No. 1 is much advanced in age and, therefore, party No. 1 will reside with anyone of the parties Nos. 2 to 5 and they all will tend and look after him properly."

2. Paragraph 4 mentions that there is a tobacco business in the name and style of Sukhdeo Gopinath which will be a partnership affair of parties Nos. 2 to 5. The contents of other paragraphs have no relevance and they therefore need not be mentioned here. This deed is signed by all the five parties and was registered on 13th of January, 1941. It may be mentioned that the properties for which estate duty is held to be chargeable has nothing to do with the properties which had been given to the sons by the father under the partition deed. The estate duty is being charged on the property which Sukhdeo owned under paragraph 3 or those which he had acquired by his assets after the year 1941. It may be further mentioned that after the year 1941, several mortgage deeds had been executed for various amounts by the debtors mortgaging their property to Sukhdeo and his sons and these mortgage deeds have been included in the property of the deceased. Further facts are that on 3rd July, 1947, the deceased had withdrawn Rs. 20,000 from his account in the partnership concern of Messrs. Sukhdeo Gopinath (which carried on tobacco business) and deposited this amount of Rs. 20,000 in the names of his four daughters-in-law in the account books of Messrs. Sukhdeo Daudas, the deposit amount of each daughter-in-law being Rs. 5,000.

3. The Central Board of Revenue held that the entire property including the mortgage deeds formed part of the estate of the deceased and was liable to be charged to estate duty and that the sum of Rs. 26,436 (Rs. 20,000 and the interest thereon) standing in the names of the daughters-in-law of the deceased

could not be deducted in computing the principal value of the estate of the deceased. On the application filed by Madanlal on 30th March, 1960, the following questions have been referred to this court for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Board were correct in holding that the deceased was the absolute owner of the several properties included in the estate ?

(2) Whether, on the facts and in the circumstances of the case, the Board were correct in holding that the sum of Rs. 26,436 standing in the names of the daughters-in-law of the deceased, could not be deducted in computing the principal value of the estate of the deceased ?"

4. Notice of the reference was given to the parties and elaborate arguments of learned counsel for the parties were heard.

5. We take up the first question. It is contended by learned counsel for Madanlal, at whose instance the reference has been made, that Sukhdeo, when he started business, had four sons, two of whom were majors at that time, namely, Gopinath and Daudas, and that the entire business was jointly started by the deceased and his major sons and was subsequently developed by them, the sons assisting the father in carrying on the business.

6. It is however, contended that there was no joint family nucleus. The finding of fact arrived at by the Central Board of Revenue is that the business was started by Sukhdeo, deceased, and all the properties were acquired by him out of the profits of the business. In addition, there was a categorical statement made in the partition deed of 1941 (annexure "C") that the property was the sole property of Sukhdeo and could be disposed of by him as he liked. Taking these facts into consideration, it was held that the entire property was the property of the deceased which he owned in his individual capacity.

7. It is contended before us that this view is unsound and it should have been held that property acquired by the joint efforts of a father and his sons was joint family property even though there was no nucleus. Reliance has been placed for this proposition on *Haridas Narayandas Bhatia Vs. Devkuvarbai Mulji, Sanwal Das v. Kuremal* AIR 1928 Lah. 224 , *Amirdham Vs. Valliammai and Others*, *Gulab Chand v. Mannilal* AIR 1941 Oudh 230 and *Gunna J. Krishnan and Others Vs. G.K. Rengachari and Others*, .

8. These cases show that, if the father and sons jointly start the business, then it may be presumed that the entire business is joint family business. But the case before us is not of this type. The finding of the Central Board of Revenue is that the business was started by Sukhdeo and, as there was no nucleus of joint family property for starting that business, it remained the business of the father in spite of the fact that later on the sons may have assisted the father in carrying on that business. In our opinion, there is no presumption under the Hindu law that a business started by any member of the joint family is a joint family business. It

makes no difference whether the member starting the business is the father of the coparcenary or karta of the family. This is the law which has been approved by their Lordships of the Supreme Court in *Chattanatha Karayalar Vs. Ramachandra Iyer and Another*, in the following passage :

"The appellant contends that the statement of law by the Tribunal that there is a presumption that a new business started by the father is joint family business is erroneous, and that its finding that the joint family of which the appellant was a member had an interest in the contract of Krishnaswami could not be supported, as it was based solely on the view which it took of the law. This criticism is, in our opinion, well founded. Under the Hindu law, there is no presumption that a business standing in the name of any member is a joint family one even when that member is the manager of the family, and it makes no difference in this respect that the manager is the father of the coparceners."

9. It has, however, been urged before us that the two major sons contributed to the development of the business when it was started by the father and later on the other two sons, as they grew in age and became majors, also joined that business. But these circumstances by themselves would not make the business started by the father a joint family business. The father was in duty bound to maintain his sons and he must have been keen to train his sons in the business which he carried on. It was thus natural for the sons to assist their father in the business which he carried on. Simply because the sons assisted the father, it cannot be inferred that the business had become a joint family business. This aspect of the matter has been discussed by the Allahabad High Court in *Kailashi v. Shankar* [1945] A.L.J. 60 :ILR [1945] All 135. It was held in that case that where a business is started by a father separately, the mere fact that his sons, who are dependent on him and are being maintained by him, give him some help in the carrying on of the business would not necessarily make the business cease to be his own business and make it the joint business of himself and his sons. It was further observed that in the absence of any satisfactory proof that the business at any time became joint family business, properties acquired with the funds of this business must also be the properties of the father.

10. The father may no doubt blend his properties with the joint family property and this is known in Hindu law as the doctrine of blending, but there must be facts and circumstances which show such a blending. Their Lordships of the Supreme Court in *Lakkireddi Chinna Venkata Reddi Vs. Lakkireddi Lakshmama*, have pointed out in the following observations the law relating to blending :

"Law relating to blending of separate property with joint family property is well settled. Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein : but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or

that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation."

11. Thus, in order to show that Sukhdeo converted his separate property into the joint family property, it was necessary to show that he had voluntarily thrown in the common stock his separate property. Such an intention may no doubt be proved by showing that he had expressly done so or there are circumstances on record from which it could be inferred that he had manifested such intention. But the circumstances must be of unequivocal nature. The intention of abandonment of his separate claim and throwing his property in the common stock must be manifested clearly. When we examine the facts of this case, we find that instead of manifesting an intention to treat his property on which estate duty is being levied as joint family property, Sukhdeo clearly asserted in the deed of partition (annexure "C") executed by him on 10th January, 1941, that all the property which he had--movable and immovable--had been earned and acquired by him and were owned by him and by none others. While he gave some of his property to his sons, he kept the property mentioned in paragraph 3 of the partition deed to himself. He stated in that paragraph that he was the sole owner thereof and he was at liberty to spend it as he liked whether on charity or by way of gift. It was only after his death that the same shall be equally divided between parties Nos. 2 to 5. Thus, up to the date of execution of this deed, Sukhdeo intended to keep the property mentioned in paragraph 3 as his separate property.

12. It has, however, been urged by learned counsel for Madanlal that thereafter the way in which he conducted himself in dealing with that property showed that he had abandoned his right to own it solely and had begun to treat it as joint family property of himself and his sons. Two circumstances have been mainly relied on in this connection :

(1) That he lent money to various persons securing from them mortgage deeds not in his favour alone but in favour of himself and his sons.

(2) That after the application of the Income Tax Act to the State of Rajasthan, the income from this property was taxed as joint family income of Sukhdeo and his sons.

13. What inference has to be drawn from these circumstances is a question of fact and the Central Board of Revenue has drawn the inference that these circumstances were not sufficient to hold that Sukhdeo had abandoned his separate claim on this property and had begun to treat it as joint family property. Judged in the light of the law to which we have referred, it cannot be said that this inference was in any way wrong. Take, for example, the first circumstance. This circumstance is that the father by investing his own money by way of advancing loans to other persons secured mortgage deeds not only in his favour

but in favour of himself and his sons. These acts can be explained on the ground that the father had grown old enough and he thought it proper that his sons may recover from the debtors in case he died the amounts due under these deeds without any controversy. His property was eventually to pass to the sons as they were his legal heirs and also as he had bequeathed all his property to them under annexure "C". Under these circumstances, he thought that it would be proper to get the mortgage deeds executed both in his favour and in favour of his sons. In *Suraj Mal and Others Vs. Mohammed Bux and Others*, it was held that if a father purchased property with his own money in the name of his children, the presumption was in favour of the transaction being benami and if the children claim the property as their own by alleging that the father intended to make a gift of the property to them, the onus lay on them to establish such a gift.

14. In *Jetharam and Others Vs. Hazarimal*, the test as to when the self acquired property became joint family property was laid down in these words :

"Separate or self-acquired property of a member of a joint family becomes joint family property where it is voluntarily thrown by him into the common stock with the intention of abandoning all separate claims upon it. But a clear intention to waive the separate rights of the person who acquired the property must be established and that it will not be so inferred from the mere fact of his allowing the other members of his family to reside with him in that property or to use it conjointly with himself."

15. It was a case in which the minor son's name was included in the document of title, namely, Patta obtained by the father for the immovable property purchased by him out of his own funds. But it was pointed out that the inclusion of the minor's name in the document of title did not confer any title on the son unless it was proved that the minor had any independent source of income and the minor's money was utilised in the acquisition of the property.

16. Learned counsel for Madanlal has, however, argued that consideration is not the sole test for the purpose of holding that there has been a blending or that the purchase by a person in the names of others is not benami. For this he has relied on *Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another*, In that case, the consideration had been provided by the husband, but the property was purchased by the wife and the question was whether it was a benami purchase or not. Their Lordships examined the circumstances of the case, and relying mainly on certain admissions made by the husband, came to the conclusion that the property which had been purchased by the wife in her own name was her property. The decision of this case shows that the deciding factors in that case were the admissions made by the husband and it could not be explained that the intention of the husband was not to treat the property in that case as his wife's property.

17. But such admissions have not been made in this case by Sukhdeo. The

association of the names of the sons in the mortgage deeds can very well be explained that it was done merely for the purpose that there might not arise difficulties in litigation in future.

18. In this connection we may also refer to the case of the Privy Council in *Muddun Gopal Lal v. Khikhinda Koer* ILR [1890] Cal 341. In that case there were three brothers, Kuldip Narain, Madharam and Sadharam. Sadharam was born deaf and dumb and remained incurable. Of the three brothers, he survived. In spite of incapacity to inherit, Kuldip Narain treated him as jointly interested with him in the family property. This he recognised in several documents. It was contended before their Lordships that these acts of Kuldip should not be construed against him by inferring a gift when it was plain that no gift could have been intended. Their Lordships observed as follows :

"They are unable to agree with the High Court in thinking that the acts and conduct of Kuldip operated to create a new title in Sadharam. Undoubtedly up to the year 1856 Kuldip did in every way and on every occasion recognise Sadharam as jointly interested with him in the family property. Nothing, perhaps, shows this recognition more plainly than the line of defence adopted in the litigation with Rajbunsi, in which her claim was defeated by setting up Sadharam's interest. It is also shown by a deed of conveyance, by a petition for registration, by leases, and other documentary evidence. But nevertheless their Lordships think it would be wrong to hold that Kuldip's position was prejudiced by his conduct. Kuldip naturally and properly treated his afflicted brother as a member of the family, and entitled to equal rights, until it became absolutely clear that his malady was incurable. Their Lordships think it would not be reasonable, or conducive to the peace and welfare of families, to construe acts done out of kindness and affection to the disadvantage of the doer of them, by inferring a gift when it is plain that no gift could have been intended."

19. In our opinion, the acts of Sukhdeo should also be construed in the same manner when he got his sons' names associated in the various mortgage deeds executed by the debtors when they took loan from him.

20. Now we take up the second circumstance into consideration. After the coming into force of the Indian Income Tax Act in the State of Rajasthan, for three years till the death of Sukhdeo in 1954, the income from the properties on which the estate duty is being levied was taxed on the basis of joint family property of the father and his four sons. The argument is that in getting the income so assessed, it must be inferred that after the Income Tax Act had come into force, Sukhdeo started treating the property as the property of the joint family. But the other side of the picture is that it may be that by treating the property as joint family property and filing the returns on the basis of joint family, there was to be a saving in the tax and Sukhdeo might have taken recourse to this only to secure this advantage. In our opinion, in the absence of any other circumstances, the filing of returns and getting his property taxed on the basis of joint family property were not sufficient to show an intention of

abandonment of his claim on the part of Sukhdoo. It has been observed in *Govind Narain Mathur v. Mohini Devi* ILR [1960] Raj 1219 that a statement in connection with the assessment of Income Tax that certain property was joint family property may be made for the purpose of getting some advantage under the law relating to Income Tax and that it could not be evidence of any unequivocal intention on the part of the assesses to waive his interest in the self acquired property. We, therefore, cannot say as a matter of law that the Central Board of Revenue was in error in holding that these circumstances did not show on the part of Sukhdeo an intention to treat his separate property as joint family property. In this connection, we may further point out that on 3rd July, 1947, the deceased had a separate account in the account books of the firm, Messrs. Sukhdeo Gopinath, which was at that time the partnership concern owned by his four sons, This shows that the father, even as late as 1947, had an intention to own some property separately. For the aforesaid reasons, our answer to the first question is in the affirmative.

21. Now we take up the second question. We have already narrated the facts as to how it came about that Rs. 26,436 were shown in the account books of Sukhdeo as standing in the names of the daughters-in-law of the deceased. It was claimed by the accountable party that this amount represented the debts which the deceased owed to the daughters-in-law and, therefore, allowance should be made for the debts in determining the value of the estate for the purpose of estate duty u/s 44 of the Act. The Central Board of Revenue has held that even if the aforesaid sum represented the debts which the deceased owed to his daughters-in-law, the allowance could not be made in view of Section 46(1) of the Act, the relevant part of which runs as follows :

"(1) Any allowance which, but for this provision, would be made u/s 44 for a debt incurred by the deceased as mentioned in Clause (a) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefore which consisted of-

(a) property derived from the deceased; or."

22. The circumstances of the case, even if taken to be sufficient for holding that Sukhdeo made a gift of Rs. 5,000 to each of his daughters-in-law and had kept this amount of Rs. 20,000 as deposit with himself, the fact remains that Sukhdeo incurred these debts to persons to whom he had made gifts of Rs. 20,000. Such a debt cannot be allowed as a deduction u/s 46(1). In our view, the Central Board of Revenue has correctly interpreted that provision. Our answer to question No. 2 is also in the affirmative. The answers are given accordingly. No order as to costs.