
(1964) 12 MAD CK 0024

In the Madras High Court

Case No : T.C. No. 217 of 1962 (Ref. No. 122 of 1962)

Manian Natesan and Chandran Natesan

APPELLANT

Vs

The Controller of Estate Duty, Madras

RESPONDENT

Date of Decision : 14-12-1964

Acts Referred:

Estate Duty Act, 1953 — Section 40

Citation : AIR 1965 Mad 458 : (1965) ILR (Mad) 478 : (1965) 56 ITR 5 : (1965) 1 MLJ 339

Hon'ble Judges : Venkatadri, J;Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—By his will dated 2-7-1947, the testator G. A. Natesan made certain dispositions of his property. One item of property is a

building known as Mangala Vilas. Paragraph 8(a) of the Will in respect of this property states--

My wife shall be entitled to live in the separated and demarcated main building, i.e., ""Mangala Vilas"" bungalow for her life. It is my desire that my

two sons with their family should live with my wife amicably. But, if for any reason differences arise between them, they shall remove themselves to

the houses separately allotted...

Paragraph 8(b):

After the life time of my wife, the said "Mangala Vilas" bungalow shall be enjoyed by my two sons for life in equal life in equal shares...

Paragraph 8(e) is to the following effect:--

I give my two sons, Manian Natesan and Chandran Natesan power to sell the "Mangala Vilas" bungalow.....if a good price be offered

provided the previous consent and concurrence of my wife shall have been obtained thereto. The sale proceeds shall be invested in the purchase of other houses or in approved securities. The dispositions made herein as to the original property shall govern the substituted property or other investment made out of the proceeds of the original property.

2. This will came into effect on the death of the testator on 10-1-1949. The widow of the testator died on 25-10-1954. Thereupon the Assistant

Controller of Estate Duty held that there was passing of property on the death of the widow and valued the property under S. 40(a) of the Estate

Duty Act. The accountable persons are the two sons of the testator and they appealed to the Central Board of Revenue contending that on the

death of their mother, no property passed or could be deemed to have passed in so far as the Mangala Vilas bungalow was concerned. The

Central Board of Revenue however accepted the decision of the Assistant Controller as correct and dismissed the appeal. On the application of

the accountable persons under S. 64(1) of the Estate Duty Act, the following question:--

Whether on the facts and in the circumstances of the case the property known as "Mangala Vilas" was correctly included in the estate of the

deceased as property on her death?" stands referred to his court.

3. It seems to us, on the mere statement of facts and a perusal of the terms of the will, that the question has to be answered in the affirmative. We

shall, however, briefly record our reasons for doing so. Under S. 5 of the Estate Duty Act, in the case of every person dying after the passing of

the Act, estate duty is liveable on the principal value of the property which passes on the death of such a person. The questions whether any

property passed on the death of the widow of the testator. Since the property was settled on the widow, the title thereto being vested in her, there

must necessarily be a passing of the property on death, within the meaning of Section 5. Section 7 deals in particular with interest ceasing on death.

4. It provides that the property in which the deceased had an interest ceasing on the death of the deceased shall be deemed to pass on the

deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest. In the present case, that the deceased lady, the

widow of the testator, was entitled to live in the property Mangala Vilas for her

life is not denied. The further provision is that after the life time of that lady, the property shall be enjoyed by the two accountable persons. The cesser of the interest of the lady in this property by reason of her death leads to a corresponding benefit which accrues to the two accountable persons, her sons. Under the terms of the Section therefore, the right of residence in this property is property which is deemed to pass on the death of that person and if so the principal value of the property ascertained according to the provisions of the Act can be made subject to the levy of estate duty.

5. Mr. Mohan Kumaramangalam argues that since the sons along with their families were also live in the house, the widow did not have any exclusive interest therein. We are however unable to agree with this as a reasonably correct interpretation of the relevant clause of the will. The testator, while conferring a title upon his wife to live in the bungalow for her lifetime, merely expressed a wish that his two sons should live with the widow amicably. He also provided that if they could not live with the widow amicably, they should remove themselves to the houses separately allotted to them. It is clear from these terms that the widow's right of residence in the property and her enjoyment of that property (without the power to alienate it) was absolute for the length of her life. That right was not cut down in any manner by any provision of the will. In Clause 8(b) again, the testator provides that after the life time of the widow, the two sons shall enjoy the property equally. In Clause 8(e) of the will, the two sons have been given a power to sell subject to the concurrence on the part of the widow and further in the substituted property whether in the shape of other houses purchased or investments made, the widow has been given the same right as laid down in Clause 8(a).

6. It is, therefore, incorrect to say that the sons had a joint interest along with the widow in the property in question. Mr. Mohan Kumaramangalam has not argued, as it appears to have been argued before the Assistant Controller, or before the Board, that the right conferred upon the widow is not property at all. We may point out that S. 2(15) of the Act defines property so as to include any interest in the property which should certainly include the right of residence as well.

7. There is no doubt, to our minds that the widow's interest in the property is

property which passed on death within the meaning of either S. 5 or S. 7 of the Estate Duty Act.

8. Under S. 40 of the Act, the mode of valuation of benefits from interests ceasing on death has been provided for. Broadly it is sufficient for our purpose to state that if the interest possessed by the deceased extended to whole income of the property, then the value of the benefit would be the principal value of that property. If the widow had the exclusive right of residence in the property, the sons, even if they also enjoyed the property, could do so only, by licence and it necessarily follows that the widow was entitled to the entire income from the property. Her interest did extend to the whole of the income from the property and the valuation could rightly be made under S. 40(a) of the Act. That point does not really arise out of the question raised. We refer to it incidentally as the question was argued by learned counsel.

9. In the light of what we have stated, the question is answered in the affirmative. The applicants will pay the costs of the department, counsel's fee Rs. 250.

10. Reference answered accordingly.