
(1968) 11 AP CK 0012

In the Andhra Pradesh High Court

Case No : Case Referred No. 19 of 1965

M.S. Narayanacharyulu

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 22-11-1968

Acts Referred:

Estate Duty Act, 1953 — Section 63

Citation : (1969) 2 AnWR 383 : (1970) 77 ITR 594

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Ramachandra Rao, J

Bench : Division Bench

Advocate : G. Venkatarama Sastry and A. Siva Rao, for the Appellant; T. Anantha Babu, for the Respondent

Judgement

Jaganmohan Reddy, C.J.—The Central Board of Direct Taxes has referred the following question for our decision, viz.:

"Whether, on the facts and in the circumstances of the case, and on a true construction of a will dated February 21, 1896, executed by Sri Venkatacharyulu, father of the deceased, the properties derived by the deceased from his father (other than those described in the will as ancestral property) were correctly included in the estate of the deceased as his individual property ?"

2. It appears from the statement of the case that the deceased, M.N. Narasimhacharyulu, died on May 3, 1955, leaving behind him his four sons, with whom during his lifetime he constituted a Hindu undivided family of which he was the karta. The eldest son, Narayanacharyulu, who is the applicant, is the accountable person. It is the case of the applicant that the properties of which the deceased died possessed belonged to the Hindu undivided family and that he had only a 1/5th interest therein, on which alone the estate duty is leviable. The Assistant Controller of Estate Duty found that the deceased was the adopted son of one Sri M. Venkata Narasimhacharyulu who died in 1896, leaving a will dated February 21, 1896, that all the properties specified in the will, with the exception of four items were described by the testator as his self-acquisitions, that the

properties so described were inherited by the deceased under the will of his father in his individual capacity and that there was no evidence to show that the deceased had, during his lifetime, relinquished his separate rights over those properties in favour of the family. Accordingly, the Assistant Controller determined the principal value of the estate of the deceased at Rs. 3,13,895 comprising,--

(a) individual property of total value: Rs. 3,13,495.00. (b) 1/5th interest in joint family property : Rs. 400. The applicant thereupon preferred an appeal to the Board u/s 63 of the Estate Duty Act, 1953, against the order of the Assistant Controller. The main contention of the applicant before the Board was against the determination of the status of the deceased as "individual" with reference to a major portion of the properties derived by him under the will of his father. It was contended before the Board that the will dated February 21, 1891, was merely designed to appoint certain persons as executors during the minority of the deceased, but that it contained no provision which could be interpreted as conferring upon the deceased an absolute interest in the self-acquired properties of his father. Further, it was contended that the subsequent conduct of the deceased showed that he had relinquished his separate rights, if any, over the properties derived from his father as evidenced by the sale deeds relating to immovable properties sold by the deceased from time to time, wherein, according to the applicant, the properties were either described as ancestral or the sons were included as parties to the sale or at least as witnesses to those documents. It was also stated that the deceased had declared his status in the Income Tax returns as Hindu undivided family and that he had made certain investments in the joint names of himself and his sons, and that these facts indicated the deceased's intention to treat the properties held by him as joint family property.

3. The Board considered the relevant clauses of the will, in particular, Clauses 12 and 13, and were of the view that there was sufficient indication that the testator intended to vest the estate absolutely in the deceased. Dealing with the contention that the deceased had impressed the properties with the character, of joint family property, it was held that the evidence of the sale deeds was not such as to justify a general inference that all the properties were treated by the deceased as joint family properties. In so far as the Income Tax returns of the deceased are concerned, it found that the deceased has described himself variously as "Hindu undivided family", or as "advocate", or as "manager of the Hindu undivided family", and that, at any rate, he had declared himself as manager of the Hindu undivided family ever since 1938-39, but the assessments were in fact made on him in the status of "individual" up to 1947-48, even though he had sons for several years prior to that date and notwithstanding the declaration of status as "manager of a Hindu undivided family" from 1938-39 onwards. The Board did not, therefore, consider that the declarations made by the deceased could be taken as conclusive evidence as to his status. As regards the investments made by the deceased, the Board examined the various

transactions but did not find any convincing evidence to support the applicant's case that the properties belonged to that joint family. In this view, it rejected the applicant's contention and confirmed the finding of the Assistant Controller, that the properties derived by the deceased under the will of his father belonged to him absolutely.

4. We are not here concerned with the valuation of the properties which was also in dispute upto the stage of the appeal before the Central Board of Direct Taxes, New Delhi. All that we are concerned with is whether on the facts and circumstances of the case, the properties which the deceased got under, the will of his adoptive father were ancestral properties in the hands of himself and his four sons or were they his separate properties in which the sons had no share during his lifetime.

5. It would appear from the will, annexure "C", to the statement of the case that Madabusi Venkatacharyulu had become divided from his brothers in the year Kshaya (about 1867) and, therefore, recited that his gnatis had no concern with regard to his property. He then recited about taking in adoption the deceased and stated that he had written a separate list of his existing movable and immovable property and signed therein which, apart from his ancestral properties, viz., the Tripurapuram Agraharam, Julakallu Inam, Kancharagottipadu Inam and vacant sites at Nuzvid, consisted of movable and immovable properties acquired by him alone. With respect to his entire properties, he appointed certain executors named therein with a direction that they should assume position and manage the same and improve it. He gave certain further directions to them, which, apart from certain bequests, were that when his adopted son emerges from minority, they should, when handing over the estate to him, see that there is no breach with regard to the bequests, mentioned in paragraph 6 of will, namely, payment of a sum of Rs, 20 per month to his first younger brothers son, Lakshmi Narasimhacharyulu, etc. It was further stated that the estate will be handed over only if the executors were satisfied that the adopted son was able to manage the estate properly and with dignity ; otherwise, the executors will retain the estate and will pay him such amounts befitting his family conditions. If for any reason before the estate is handed over to his adopted son there was any act of providence which renders the above direction impossible, the whole of the estate shall be utilised for proper charity approved by Hindu Shastras. Again, he stated:

"I have arranged that my adopted son shall be entitled only to my immovable property. Hence, even after he attains age, only the immovable property shall be handed over to him. The executors shall retain my movable assets and improve the same."

6. It is clear from the terms of this will, and we are inclined to agree with the finding of the Central Board of Direct Taxes, that the testator did intend to dispose of his properties, which he received on partition as well as that which he earned by himself. While it is clear that the testator could not have dealt with the

property which he received in partition by a will in so far as his half interest is concerned, at any rate he did evince an intention to dispose of the property to which he was entitled. In other words, the will would operate in respect of the property which the deceased (testator) could dispose of, and that property he disposed of in a particular manner. It cannot, therefore, be said that all that the will intended to do was to appoint the executors and that there was no dispositive clause making a bequest of the property which could be construed as evincing an intention that the property acquired by him as also the property in which he has a half interest should descend on the deceased adopted son as on a testate succession, conferring an absolute interest on him in the self-acquired properties of his father.

7. We may here state that no contention was ever raised before the estate duty authorities that the property which the testator is said to have acquired after he became divided from his brothers was acquired from the joint family nucleus so as to impress that property also with joint family character. There is a presumption, where joint family has sufficient nucleus, that the property acquired by a member of the joint family would be deemed to be from that nucleus. But inasmuch as the testator, who was a man of learning, could have acquired the properties from his learning and since he himself had stated that certain properties other than those indicated in the will were properties acquired by him alone, it would not be too much to assume, unless there is evidence to the contrary, that these properties were his self-acquired properties.

8. Prior to the decision of their Lordships of the Supreme Court in *Arunachala Mudaliar v. Muruganatha Mudaliar*, there was a considerable diversity of judicial opinion on the question whether the self-acquired property of a Hindu, instead of being allowed to go by descent, is gifted or bequeathed to a son by will, is the separate property of the son or whether it is ancestral property in the hands of the son in respect of the son's male issue. The Supreme Court, after a consideration of the texts on the subject and the variant opinions of the High Courts, took the view that the question was primarily one of intention of the donor or the testator to be gathered from the terms of the deed of gift or will, that if there are no clear words describing the kind of interest intended to be given, the court would have to collect the intention from the language of the document taken along with the surrounding circumstances in accordance with the established canons of construction; that the material question in such cases would be whether the grantor really wanted to make a gift of the property to his son or the apparent gift was only an integral part of a scheme to partition the same, and that there is no presumption that he intended the one or the other (vide also Mulla's Hindu Law, 13th edition, page 250).

9. Assuming that the properties bequeathed under the will to the adopted son were his self-acquired properties, the next question is whether the deceased had blended them with his joint family properties, or, as the saying goes, put them in the common hotchpot. It is here that we find ourselves in disagreement with the

findings of the Board. While the Board had stated that during his lifetime the deceased had described himself in the Income Tax returns as "Hindu undivided family" or as "advocate" or as "manager" of the Hindu undivided family prior to 1947-48 and had in fact been shown as individual up to that date, it did not go further and state as it should have done, that after 1947-48 the deceased was assessed in respect of the income of all the properties which he claimed to be his self-acquired properties as a member of the Hindu undivided family. It is apparent from the appellate order of the Board that the accountable person had claimed that the income accruing up to the date of the death and the assets arising therefrom should be excluded, as such income was assessed in the hands of the Hindu undivided family in the Income Tax assessments, in respect of which the Board said :

"Although the income had been declared as that of the Hindu undivided family, to my mind the income cannot be divorced from the assets themselves."

10. The Assistant Controller also while noting that, in the Income Tax returns right from 1947, the deceased declared his status as Hindu undivided family and that this declaration in the Income Tax returns is tantamount to a declaration that the individual properties were thrown in the family hotchpot, gives a curious reason for ignoring this fact. He says:

"... the declaration in the Income Tax returns, to my mind, is not conclusive in this connection. It is of a confidential nature of which the sons are not necessarily aware. It cannot certainly take the place of a declaration before the sons as contemplated under Hindu law with the avowed object of converting "self-acquired" property into joint family ones."

11. There is no doubt that both the Assistant Controller as well as the Board have fought shy of acknowledging the fact that not only in the Income Tax returns after 1947 did the deceased declare the properties to be joint family properties, but that the Income Tax authorities assessed him as such. We have been shown the original assessment orders (and copies also have been filed) which give credence to the contentions raised before the estate duty authorities, which the said authorities have not in fact denied. In some of the assessments, such as for 1951-52 and 1954-55, as the taxable limit was below that prescribed for a Hindu undivided family, the assessee was held not liable to tax. These facts, in our view, clearly establish that not only had the deceased expressed an unequivocal intention to throw all his properties into the hotchpot, but was also allowed to do so by the Income Tax authorities when they assessed him as such.

12. In *Commissioner of Income Tax v. M.K. Stremann, Sikri J.*, delivering the judgment of their Lordships of the Supreme Court, had observed, that even giving instructions to a lawyer to draft a declaration to throw the self-acquired properties into a common hotchpot would be sufficient to convert these properties into joint family properties. Much more so would it be where the deceased had made successive attempts, ultimately succeeding in persuading

the authorities to assess the income of his self-acquired properties as income from joint family properties, and this course was adopted for over a period of 5 years till the death of the deceased. A Bench of this court, to which one of us (the Chief Justice) was a party, in *T.R. Ekambaram v. Controller of Estate Duty*, where the accountable persons contended that the property was earned with the nucleus of the joint family property and that the deceased was showing the income from this property as belonging to the Hindu undivided family in the Income Tax returns which were accepted by the department also and that they also were declaring it to be so in their returns, and that, therefore, the property should be treated as joint family property, held that the uninterrupted course of conduct of the deceased declaring his property as joint family property in the Income Tax returns and the acceptance of such returns by the department coupled with the continued treatment of the same as joint family property even after the execution of the will, there was a presumption that it was not only joint family property acquired with ancestral nucleus, but also that it was treated as joint family property. To the same effect was the view of the Punjab High Court in *Kanwar Sardari Lal Chopra v. Controller of Estate Duty*. We must, therefore, conclude that there is prima facie evidence in this case of the treatment by the deceased of his self-acquired properties as joint family properties.

13. Even apart from that, there is also other evidence which will substantiate this conclusion, namely, that the deceased had, in the deed of sale of the house at Lalpet on February 18, 1925, stated that the three sons were joint owners with their father. In *Mangalagiri Chowki*, which was the subject-matter of the sale deed dated February 2, 1942, the lands were described as ancestral property, and in the deed of sale dated October 14, 1943, the eldest son was made to attest the same. All these were properties which were the self-acquired properties of the deceased, because, as we have noted from the will of the deceased's adoptive father, none of these were shown as joint family properties. We cannot accept the assumptions made by the Board which were without foundations that Lalpet house might have been purchased and constructed out of the sale proceeds of ancestral lands in Julakallu or Nuzvid (which are mentioned in paragraph 3 of the will). Nor can we agree that the recital in the deed of February 2, 1942, that the property was ancestral is not of significance, as the sons who were majors at that time did not join as vendors. It is not necessary when a karta is selling properties that all the major sons should join the sale, if the intending vendee does not object to the taking of a sale deed from him alone. The further fact that the deceased was investing some of the sale proceeds of the lands in the joint names of himself and one or other of his sons from time to time, would also indicate his intention to treat those properties as joint family properties.

14. We think there is ample material from which an inference can be drawn that the properties which were derived from the father of the deceased under the will had obtained the character of joint family properties of the deceased and his four sons on the date of the death of the deceased.

15. In this view, we find that the inclusion of these properties in the estate of the deceased as his individual property is not correct. Our answer to the question is, therefore, in the negative and in favour of the assesses. Let the reference be answered accordingly with costs. Advocate's fee Rs. 250.