

(1985) 12 MAD CK 0017

In the Madras High Court

Case No : Tax Case No"s. 408, 409 and 478 and 479 of 1977 (Reference No"s. 268, 269, 338 and 339 of 1977)

R. Janardhanan and Another

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 02-12-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1986) 56 CTR 97 : (1987) 165 ITR 144

Hon'ble Judges : V. Ramaswami, J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : V. Narayanamurthy, for the Appellant; Jayaraman, for the Respondent

Judgement

V. Ramaswami, J.—Under a partition deed dated December 31, 1951, the joint family immovable properties of one Bheema Naidu were

divided. The parties to the document were the said Bheema Naidu, his widowed daughter-in-law and four sons of his deceased son of whom two

were minors. The properties described in the B, C, D, E and F schedules to the document were allotted to the widow and her four sons,

respectively, to be enjoyed by them absolutely. The joint family owned a house in a large area of ground measuring 12 acres 86 cents. This is

stated to be the family house. In respect of this house, the disposition in the partition deed was as follows :

As regards the property in item No. 1 in Schedule A, party No. 1 shall have the right to enjoy the property till his lifetime without subjecting the

same to any encumbrances. After his lifetime, R. Ranganayaki, the daughter-in-law of party No 1 and party No. 2 mentioned above, shall enjoy

the property till her lifetime without subjecting the same to any encumbrance.

After the lifetime of both to them, parties Nos. 3, 4, 5 and 6 shall get the property in their absolute right. Since the above persons have to enjoy the property as co-owners, if any one of them wishes to sell his share, he will have to sell the same to all or any of the other three persons.

2. Two of the minor sons who became major later constituted a Hindu undivided family consisting of individuals, their wives and children. In

respect of the assessment years 1968-69 and 1969-70, each of them separately submitted the returns under the Wealth-tax Act and claimed

deduction in the returns of a sum of Rs. 1,00,000 u/s 5(1)(iv) of the Wealth-tax Act in respect of the house which is item No. 1 of schedule A to

the partition deed above stated. The Wealth-tax Officer rejected this claim on the ground that Ranganayaki Ammal, the assessee's mother, has a

life interest and ""she being a life tenant, the assessee could not use the bungalow for residential purposes and only the life tenant could use it for

residential purposes"". The Wealth-tax Officer was further of the view that during the lifetime of the mother, the assessee had only an interest in

expectancy in a fifth of the vested remainder and that they cannot be held to have owned the property and so notwithstanding the fact that the

entire family was residing in the building, the claim for exemption had to be rejected.

3. On appeal, the Appellate Assistant Commissioner allowed the claim. According to the Appellate Assistant Commissioner, the two conditions

for the application of section 5(1)(iv) are that the house should belong to the assessee and it should be used by him for residential purposes which

latter expression did not imply that he should have a legal right to do so. Even a de facto user would be sufficient.

4. On a further appeal by the Revenue, the Tribunal held that Ranganayaki Ammal was given a right of residence under the partition deed and that

no other person, so long as such a right of hers subsists, can be said to have a right to use the building for residential purposes. The Tribunal was

further of the view that only the assessee is the owner of the premises but they have no right to reside therein for the purpose of claiming the

relief u/s 5(1)(iv) of the Act. In that view, the appeals were allowed.

5. At the instance of the assessee, an identical question has been referred in respect of both the assessment years in the case of both the assesseees

and that reads as follows :

Whether, on the facts and in the circumstances of the case, the assessee was entitled to the relief u/s 5(1)(iv) of the Wealth-tax Act in respect of the residential house ?

6. When these tax cases came up for hearing before a Division Bench of this court on an earlier occasion, the Bench considered that in order to

determine as to what was the right actually granted to Ranganayaki Ammal, the widowed daughter-in-law of Bheema Naidu, under the partition

deed dated December 31, 1951, it was necessary that the partition deed dated December 31, 1951, should have been made part of the records

and in the absence of that document it is not possible to consider the rival claims of the parties. It appears that at that time, on behalf of the

assesseees, it seems to have been contended that the right given to her under the partition deed was only a right of residence. However, the

Revenue seems to have contended that what was given was a pure and simple life interest as known to law and that the assesseees cannot claim the

property as belonging to the joint family, though they are entitled to claim the same after the death of Ranganayaki Ammal. Accordingly, the Bench

had also directed the Tribunal to file a supplemental statement of the case after calling for the partition deed dated December 31, 1951, and after

giving a finding as to whether Ranganayaki Ammal was given a life interest or merely a right of residence in respect of the house with respect to the

applicability of section 5(1)(iv). In response to this order, the Tribunal has given a supplemental statement of the case in which, after extracting the

terms in the partition deed which we have quoted above, the Tribunal has simply stated that they find from the above partition deed that Smt.

Ranganayaki Ammal was given a ""life estate"" in the house in question.

7. Section 5(1)(iv) during the relevant assessment years read as follows :

5. (1) Subject to the provisions of sub-section 1(A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such

assets shall not be included in the net wealth of the assessee -

(iv) one house or part of a house belonging to the assessee exclusively used by him for residential purposes :

Provided that where the value of such house or part, situate in a place with a population exceeding ten thousand, exceeds one lakh of rupees, the

amount that shall not be included in the net wealth of an assessee under this section shall be one lakh of rupees.

8. In order to determine the applicability of this provision, we have to decide the nature of the interest given to Ranganayaki Ammal and her four

sons. As already stated, the house was a joint family house situate in a large site of 12 acres 86 cents. Ranganayaki Ammal and her four sons along

with her father-in-law were residing in the same house. Two of the sons were minors then. Whatever be the right that was given to Ranganayaki

Ammal, she had no right to encumber the same during her lifetime. If really a life interest of the usual type with a vested remainder on others in the

property was given to Ranganayaki Ammal, there could be no restriction on dealing with that right. This is because it will be inconsistent with the

right conferred on the lady. It may be that even in the case of a life interest, any encumbrance or dealing with the property would not ensure

beyond the lifetime of the lady. In the light of the restriction on the enjoyment of that right itself and in the context of the property being joint family

property and vested remaindermen are all being sons including minor sons who are all living together, we have no doubt that what was given to her

was only a right of residence in the house and not the usual right which in legal parlance is known as life interest. In this connection, we have also to

keep in view, and it is not disputed even by learned counsel for the Revenue, that the interest conveyed in respect of this house property in favour

of the four sons is what is known as vested remainder. Thus, there was a transfer of an interest in praesenti to the four sons, though that transfer was

not absolute in the sense that it was subjected to the right of the mother to reside in the house during her lifetime. Such an interest conveyed to the

sons is not known to law as in the case of every vested remainderman, the property conveyed to him was transferable and heritable. It is also seen

from the passage from the deed extracted above that even in respect of the interest conveyed to the sons, though absolute in sense, there is a

restriction on their right to transfer. The parties have intended that the house will have to be enjoyed by occupation by all the persons as co-owners

and in the light of that expectation to enjoy the property as co-owners, each of these sons also was restrained from alienating his rights in favour of

third parties and if he wanted to sell, he has to sell it to the other co-owners. Thus, though this vested remainder was vested in the sons, as held in

Budhiraju Seethayamma (deceased) and Others Vs. Vullipalam alias Putrevu Jagannadha Rao and Others, , it is property and it is immovable

property capable of being alienated by the holder of that interest or by anybody authorised by him to sell it to anybody as he feels and in view of

the restriction placed under the document, they also had to enjoy it as co-owners with the right of alienation restricted to sell the same to the other

co-owners. The purpose is achieved so far as the mother, Ranganayaki Ammal, is concerned by restricting her right to the residence alone and

without allowing her to encumber. In fact, even while referring to her interest, it is said she shall enjoy the property till her lifetime without subjecting

the same to any encumbrance. We have, therefore, no doubt that what was conveyed under the document to Ranganayaki Ammal was only a right

of residence.

9. The next point for consideration is whether this right of residence conveyed to her was an exclusive right so that it could be said that she had a

right to exclude the other vested remaindermen and whether the admitted factual residence of the sons in the premises could be stated to be by

sufferance or permission of the lady. We have already referred to the right conferred on Ranganayaki Ammal and her four sons under the

document. The use of the word ""co-owners"" and some of the sons being minors, in our opinion, clearly shows that Ranganayaki Ammal, though

had a right of residence, did not have an exclusive right and could not be interpreted as having any right to exclude her sons from residing in the

premises. It is a Hindu undivided family, the members of which were parties to the document and Ranganayaki Ammal was a widowed lady and a

right of residence given in such circumstances, in our view, cannot be held to have excluded the right of the other members of the family to reside in

this only family house. If each one of the sons and the widow had a right of residence in the property, since there is no doubt that what was

conveyed to the same was a present right in immovable property which is heritable and alienable, not only the sons are owners of a part of the

property but also they are residing in the house in their own right and their possession is neither permissive nor by sufferance.

10. Learned counsel for the assessee cited a decision of this court in Commissioner of Wealth-tax, Tamil Nadu-V Vs. K. Ramachandra Chettiar, .

Though that related to the assessment year 1973-74, when the provisions of section 5(1)(iv) were slightly different, which difference is also not of

much consequence, the passage relied on refers to the general law and is applicable to the facts here also. The learned judges dealt with the

expression ""assets"" and the scope of the words "life interest". The learned judges observed thus (p. 773) :

The expression "assets" is defined in the Wealth-tax Act as including property of every description, both movable and immovable. It is an axiom

of property law that property includes any interest in property. Property, in this sense, may be regarded as a bundle of proprietary interest or

rights. Any one of those interests will itself be property, and hence has to be included in the connotation of "assets". A life interest is a fractional

interest in property, falling short of the entire interest is a fractional interest in property, falling short of entire interest in it. It is a well-known species

of property under many systems of law, ancient and modern. The idea of a life interest perhaps emerged out of the recognition that property,

especially immovable property, tends to outlast the span of human life or lives. We have no doubt whatever that a life interest in house property is

an interest in the house. It follows that in a case where the house in question is lived in by the life-tenant, we do not see how exemption can be

withheld from him under s. 5(1)(iv).

11. It may be seen from this passage that even if we agree with the Tribunal that the interest conveyed to Ranganayaki Ammal was a life interest, it

would not make any difference. A life interest, as stated above, is a fractional interest in property and, therefore, it is an interest in the house itself.

12. Learned counsel for the Revenue, relying on certain observations of the Supreme Court in *The Commissioner of Wealth Tax, Andhra Pradesh,*

Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad, , contended that the vested right conferred on the sons cannot be equated to a

house property. The passage relied on and found at page 596 of the report reads as follows :

In fact, in most cases, if not all, the aggregate of the values of the life interest and the remaindermen's interest would be less than the value of the

total corpus of the trust property, since the value of the remaindermen's interest would be the present value of his right to receive the corpus of the

trust property at an uncertain future date and this would almost invariably be less than the value of the corpus of the trust property after deducting the value of the preceding life interest.

13. We are unable to see how this passage in any way helps the contention that the vested remainder in the house property cannot be treated as an

interest in the house property. We are not concerned with the quantification of that interest. However, we may state that in fact each of the sons"

interest was valued at Rs. 1,25,000 by the Wealth-tax Officer. The other decisions relied on by learned counsel for the Revenue are :

CWT v. Mrs. Avtar Mohan Singh [1972] 83 ITR 52 and Controller of Estate Duty Vs. K. Hilal, . In the former case, the house was owned by the

assessee. Her husband who was a director of a company showed this house as an official residence, received the rents from the company and was

passing on the rents to his wife, the assessee. On those facts, a Division Bench of the Delhi High Court held that the residence of a husband or

other members of the family of the assessee who had no legal right to share the use of the house by the assessee, does not come in the way of

exclusiveness of the use of the house by the assessee. On facts, on the basis of the rents paid by the husband, the Bench held that the assessee

cannot claim that the property was used by her exclusively for residential purpose. We are unable to see how this decision, in any way, could help

the Revenue in this case except to state that the assessee's possession must be in exercise of a legal right in order to claim the benefit u/s 5(1)(iv)

of the Act and if the possession was permissive, exemption could not be claimed. The decision in Controller of Estate Duty Vs. K. Hilal, , is only

relevant for the purpose of understanding the expression ""exclusively used by the deceased for his residence"". It was a case decided u/s 33(1)(n)

of the Estate Duty Act, 1953. It was held that the expression would postulate the existence of a right of user and not a mere permissive user or

user otherwise than under a right. We have already held on the terms of the document that the rights given to Ranganayaki Ammal as also the sons

were legal rights and one is not given any exclusive right to use to the exclusion of the others. In the circumstances, we have to answer the question

referred in the negative and in favour of the assessees. The assessee in T.C. Nos. 408 and 409 of 1977 will be entitled to his costs. Counsel's fee

Rs. 500 (one set). Similarly, the assessee in T.C. Nos. 478 and 479 of 1977 will be entitled to his costs. Counsel's fee Rs. 500, (one set).