

(1977) 03 MAD CK 0057

In the Madras High Court

Case No : Tax Case No. 47 of 1975 (Reference No. 47 of 1975)

R. Parthasarathy

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 30-03-1977

Acts Referred:

Estate Duty Act, 1953 — Section 34(3), 34(4), 9

Citation : (1980) 124 ITR 844

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : S. Padmanabhan, of Subharaya Ayyar, Padmanabhan and Ramamani, for the Appellant; J. Jayaraman and Nalini Chidambaram, for the Respondent

Judgement

Ismail, J.—One Ramabadra Iyer died on October 14, 1962, and the proceedings relate to the assessment to estate duty of his dutiable estate. He and his paternal cousin, Kasivisvanatha Iyer, originally constituted an HUF. There was a partition as between them on April 5, 1959. After such partition, the HUF of which the deceased was the karta, consisted of himself, his wife, Parasakthi Ammal, and his minor son, R. Parthasarathy. The deceased had two daughters, Rama Devi Ammal and Naga-veni Ammal, both of whom were married. On July 25, 1959, the deceased executed a registered settlement deed by and under which he settled upon his wife, Parasakthi Ammal, and his two married daughters referred to above, lands set out in the Schedules " A", " B" and "C", respectively, thereto to be taken by them absolutely. The schedules give various items of immovable properties and the value of the properties mentioned in each schedule is given as Rs. 10,000. Pattas for these lands were also got transferred in the name of the respective donees. On January 22, 1960, a registered partition deed was entered into by the deceased and his wife acting as the guardian of the minor son, Parthasarathy, by and under which the properties described in the "A" schedule thereto were allotted to the share of the deceased and the properties set out in "B" schedule thereto and valued at Rs. 17,350 were

allotted to the share of the minor. The properties set out in "A" schedule thereto included those which the deceased had already settled on his wife and two daughters under the settlement deed dated July 25, 1959. On his death on October 14, 1962, his widow filed an estate duty account in which the value of the properties settled by the deceased on her and the two daughters under the settlement deed dated July 25, 1959, was not included. It was contended before the Asst. CED that there was an oral partition between the deceased and his son by metes and bounds even prior to the settlement deed dated July 25, 1959, and the properties were settled only subsequently and those properties were allotted to the share of the deceased in the partition deed. The Asst. CED did not accept the contention of the accountable person that there was a partition between the father and son even before July 25, 1959, and, therefore, on the date of the settlement, the settled properties belonged not to the joint family, but to the deceased alone. He held that the deceased and his minor son became divided only under the partition deed dated January 22, 1960, and consequently the gifts made prior thereto on July 25, 1959, were void and since those properties have been allotted to the share of the deceased under the partition deed dated January 22, 1960, they passed on his death u/s 5. He, therefore, included Rs. 2,96,085 being the value of the said properties in the dutiable estate. He also estimated the income from such lands for the two years prior to the death of the deceased as Rs. 57,000 and included the same u/s 9 on the ground that the deceased must be deemed to have gifted the income therefrom to the donees, since he had allowed them to take the same in pursuance of void gifts.

2. Aggrieved by such assessment, the heirs preferred appeals to the Appellate CED. The Appellate Controller confirmed the assessment made by the Assistant Controller agreeing with his view that the gifts were void. The only addition he made in his order was that as far as the income of Rs. 57,000 was concerned, it was assessable even under Expln. 2 to Section 2(15) of the E.D. Act.

3. Thereupon, the son of the deceased, one of the accountable persons, preferred an appeal to the Tribunal reiterating the same contentions. It was contended before the Tribunal that there was severance in status between the father and the minor son even prior to July 25, 1959, that as a result thereof the deceased and his son were only tenants in common of the properties which till then belonged to the erstwhile HUF and that, therefore, the gifts made by the deceased to his wife and daughters were gifts of his own properties and consequently were valid and effective. In support of this contention, reliance was placed upon the recital in the preamble of the settlement deed dated July 25, 1959, wherein it was stated that the deceased had acquired right and title to the properties settled thereunder in a partition. The Tribunal did not accept this contention and held that the partition mentioned in the preamble to the settlement deed dated July 25, 1959, referred to the partition that took place between the deceased and his paternal cousin on April 5, 1959, and it did not refer to any partition between the deceased and his minor son. The Tribunal also noticed that there was no recital in the settlement deed that the deceased and

his son had become divided in status. It was further contended on behalf of the accountable person before the Tribunal that even at the time of the settlement, it had been proposed to divide the properties between the deceased and his minor son and that necessary arrangements thereof have been made, but the same could not be completed. In support of this contention reference was made to the recital in the partition deed dated January 22, 1960, that the properties allotted to the share of the deceased and set out in the " A " schedule thereto had already been agreed to be allotted to him in the said arrangement. The Tribunal held that this recital did not show that there was such a division in status and the Tribunal once again pointed out that if there had been a division in the status, that would have been mentioned in the settlement deed dated July 25, 1959. The further contention advanced before the Tribunal on behalf of the accountable person was that even assuming that there was no division in status, the gifts made by the deceased in favour of his wife and daughters were only voidable and not void. In support of this contention, reliance was placed upon the decision of the Andhra Pradesh High Court in Thamma Rattamma and Others Vs. Thamma Venkata Subbamma and Another, . The Tribunal did not accept the said contention. The Tribunal noticed that the Supreme Court had held in Ammathayee Ammal and Another Vs. Kumaresan and Others, , that a Hindu father had power to gift immovable properties of the joint family within reasonable limits for pious purposes only, that he had no power to gift immovable properties of the joint family to his wife and such a gift would be void ab initio. The Tribunal further noticed that in the settlement deed the value of the properties settled on the two daughters was given as Rs. 20,000 and the total value as Rs. 57,350 and, therefore, the conclusion of the Tribunal was that the gifts to the two daughters could not be considered to be reasonable and hence they were not valid. For the same reasons, the Tribunal upheld the inclusion of Rs. 57,000 being the estimated income from the gifted lands for the period of two years prior to the death of the deceased. With the result, the Tribunal confirmed the conclusion of the two lower authorities. It is the correctness of this conclusion of the Tribunal that is challenged in the form of the following two questions referred to this court by the Tribunal at the instance of the accountable person :

" 1. Whether, on the facts and in the circumstances of the case, the inclusion of Rs. 2,96,085 being the value of the lands gifted by the deceased to his wife and two daughters under the settlement deed dated July 25, 1959, in the estate duty assessment consequent on the death of the deceased is proper ?

2. Whether, on the facts and in the circumstances of the case, the inclusion of Rs. 57,000 representing the income relating to the donees from the lands gifted to them by the deceased during the period of two years prior to the death of the deceased is proper ? "

4. Admittedly, there is no partition deed between the deceased and his son prior to July 25, 1959. Equally admittedly there is no reference to any partition

between the deceased and his minor son in the settlement deed dated July 25, 1959. Before the Tribunal, as we pointed out already, an attempt was made to show that there was a partition prior to July 25, 1959. because reference was made to such a partition in the settlement deed dated July 25, 1959. Having gone through the settlement deed as well as the partition deed which are annexed to the statement of the case, we are clearly of the opinion that the partition referred to in the settlement deed dated July 25, 1959, did not refer to the partition between the deceased and his minor son, Parthasarathy, but it referred only to the partition between the deceased and his paternal cousin, Kasivisvanatha Iyer, on April 5, 1959, because the properties dealt with under the settlement deed were said to be properties obtained by the deceased in a partition.

5. We are also of the further opinion that neither the recitals in the settlement deed dated July 25, 1959, nor the recitals contained in the partition deed dated January 22, 1960, establish either a severance in status or a partition between the father and the minor son before July 25, 1959. The very laboured attempt made in the partition deed dated January 22, 1960, to make it appear as if a partition had already taken place will clearly establish the artificiality and unnaturalness of the attempt. Therefore, we have no hesitation in agreeing with the conclusion of the Tribunal that as on the date of the settlement deed dated July 25, 1959, there was no partition between the deceased and the minor son. In fact, having regard to the practically obvious position emanating from the two documents, the learned counsel for the accountable person did not lay much emphasis on the claim which he put forward before the lower authorities but on the other hand concentrated his arguments on three other propositions which he put forward to support the validity of the settlement deed dated July 25, 1959, to which we shall make reference immediately.

6. The first contention of the learned counsel for the accountable person is that though the authorities below rightly proceeded on the basis that the gift must be of a reasonable proportion to the value of the properties of the joint family, they went wrong in not taking into account the value of the movable properties of the joint family, but in taking into account the value of the immovable properties only. Before proceeding further, we shall immediately make one position clear, namely, irrespective of the reasonableness of the proportion or unreasonableness of the proportion, the learned counsel for the accountable person had to concede that the gift to the wife by the deceased certainly was not valid. Therefore, the reasonableness or otherwise of the proportion now relates only to the gifts in favour of the two daughters. We have already referred to the value of the properties gifted to the two daughters as mentioned in the settlement deed itself as Rs. 10,000 and Rs. 10,000, respectively, therefore, totalling to Rs. 20,000. Equally, the total value of the immovable properties valued under the partition deed between the father and the son dated January 22, 1960, is admittedly given as Rs. 57,350 of which the value of the immovable properties allotted to the minor son was Rs. 17,350. Therefore, there can be no doubt whatever that

the properties, the value of which was Rs. 20,000 out of the properties valued at Rs. 57,350, do not constitute a reasonable proportion at all. What the learned counsel for the accountable person contends is that we must add to the said sum of Rs. 57,350 the value of movable properties which were divided between the father and the son even before the execution of the partition deed dated January 22, 1960. We are unable to entertain any such contention in this reference. A perusal of the orders of the Asst. CED, the Appellate Controller and the Tribunal as well as the grounds of appeal preferred before the Appellate Controller and before the Tribunal show that no such contention was put forward before the authorities and no argument was advanced that the immovable properties, the value of which was Rs. 20,000 settled in favour of the two daughters, bore a reasonable proportion to the total assets of the joint family including the immovable properties the value of which was Rs. 57,350 and the movable properties. As a matter of fact, there is no reference to the value of any such movable property in the grounds of appeal before the two authorities below or in the arguments advanced before the authorities. Even the accountable person proceeded only on the basis that the reasonableness or otherwise of the proportion has to be tested only with reference to the total value of the immovable property of the family. In such a context, we cannot hold that any such argument now sought to be advanced before us arises out of the order of the Tribunal in order to enable us to countenance the same.

7. The second contention put forward by the learned counsel for the accountable person is that if the gifts in favour of the three persons were void, the result of that will be that the properties which are the subject-matter of the settlement deed reverted to the HUF and consequently what, passes on the death of the deceased is only his interest in the property and not the value of the entire properties. We are of the opinion that this argument is misconceived. We have already referred to the fact that in the partition deed dated January 22, 1960, the properties which are the subject-matter of the settlement deed dated July 25, 1959, were allotted to the share of the deceased. As we pointed out already, there were certain artificial and laboured recitals in the partition deed and one such recital being that such an arrangement was contemplated even at the time of the settlement deed. Whatever it may be there is no dispute that under the partition deed, the properties which are the subject-matter of the settlement deed were allotted to the share of the deceased. If so, with effect from January 22, 1960, there was no joint family in existence and the properties settled on July 25, 1959, belonged only to the deceased and since there was no joint family, it could not have belonged to a non-existent joint family. The learned counsel for the accountable person then contended that if we are acting on the recital contained in the partition deed that the settled properties were allotted to the share of the deceased, we must equally act on the recital contained in the partition deed that there was an earlier arrangement to allot these properties to the deceased. We are unable to accept this argument. The finding is that there was no partition prior to July 25, 1959. As a matter of fact, even the partition

deed dated January 22, 1960, does not state that there was an earlier partition and it merely evidenced that earlier partition. Under those circumstances, we are unable to hold that there is any substance in this contention.

8. The third and last of the contentions in this behalf advanced on behalf of the accountable person is that a perusal of the schedules contained in the settlement deed dated July 25, 1959, will show that several items of immovable properties were included in each of the schedules allotted to the two daughters and, therefore, to use the language of the learned counsel, we can "scissor" the schedules and arrive at the reasonable proportion of the joint family properties and uphold the validity of the gifts with regard to such proportion. The learned counsel himself admitted that he could not cite or rely upon any principle or authority in support of this contention except his own submission. We are of the opinion that there is no warrant for such a contention either on principle or on authority. It has been repeatedly held that where such a gift is not of a reasonable proportion and within the permissible limits recognised by the Hindu law, the gift is void ab initio and with reference to such a void gift, there is no question of performing any "scissoring" operation. As a matter of fact, the judgment of one of us in Second Appeal No. 1490 of 1970 (Chandrasekaran v. Valliammal) dated 10th August, 1973, after referring to the earlier authorities of this court, has held that such a transaction was void and a nullity and notwithstanding the admitted gift and notwithstanding the fact that the donees were in possession of the properties, the properties continued to vest in the joint family. In our opinion, that represents the correct position of law and in view of this there is no scope for acceding to the request of the learned counsel for the accountable person to split up or, to use his own words, "scissor" the schedules contained in the settlement deed dated July 25, 1959, and to uphold the validity of the gifts on the basis of what we arrive at now, namely, reasonableness of the proportion of the properties gifted as compared to the entire estate of the joint Hindu family. Here again, we may mention that no such case was put forward before the authorities below. Hence, having regard to all these circumstances, we answer the first question referred to this court in the affirmative and against the accountable person.

9. As far as the second question is concerned, one small fact has to be mentioned. As we pointed out already, the deceased died on October 14, 1962. The settlement deed is dated July 25, 1959. The sum of Rs. 57,000 mentioned in the second question is the estimated income from the properties dealt with under the settlement deed dated July 25, 1959, for the period of two years immediately preceding the death of the deceased, namely, from October 15, 1960, to October 14, 1962. In other words, the income from the date of the settlement till October 15, 1960, had not been sought to be included in the dutiable estate. The Asst. CED made it clear that he was doing the same only u/s 9. Even the Appellate Controller relied on Section 9 though, in addition, he relied on Explan. 2 to Section 2(15) of the Act. Though the Tribunal did not refer to any particular section, a reading of the order of the Tribunal makes it clear that the Tribunal also upheld

the addition only u/s 9. It is the common case of the parties that the reference to a period of two years prior to the date of death of the deceased will attract only Section 9 and no other section of the Act. Therefore, we have to proceed on the basis that the authorities below including the Tribunal sustained the addition of Rs. 57,000 which is the subject-matter of the second question only on the basis of Section 9 of the E.D. Act, 1953. Section 9(1), so far as relevant for the purpose of this case, is as follows :

" 9. (1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or more before the death of the deceased shall be deemed to pass on the death."

10. Consequently, for this section to apply, (1) there must be a disposition having taken place within two years before the death of the deceased; (2) the disposition shall not have been made bona fide ; and (3) the property under disposition must have been taken by the other party to the disposition. If only all these three conditions are cumulatively satisfied, Section 9(1) will apply. In this case, the property sought to be included in the dutiable estate is the income from the lands settled under the document dated July 25, 1959, for a period of two years referred to already, namely, October 15, 1960, to October 14, 1962. For attracting Section 9(1), this income should have been taken under a disposition made within two years prior to the date of the death of the deceased. Admittedly, apart from the settlement deed dated July 25, 1959, which again (is admittedly beyond two years prior to the date of death of the deceased there was no other disposition, either oral or in writing. The authorities below including the Tribunal have proceeded on the basis that since the gifts were void, the gifted properties must be taken to continue to belong to the joint family and in this case, after the partition, to the deceased and, consequently, the income also in law belonged to the deceased, notwithstanding the same having been appropriated by the settlees under the document. They did not advert to any question as to whether there being any disposition with regard to this income or not. In fact, there could not have been a disposition with regard to this income by the settlement deed dated July 25, 1959, at all, because the income with which we are concerned is the income which accrued or arose subsequent to July 25, 1959, and once the properties themselves have been settled, the settlor had no right to the future income and, therefore, there could not have been any disposition with reference thereto. The only argument that is advanced by the learned counsel for the revenue was that since the daughters enjoyed the income, they must be deemed to have been allowed to enjoy the income of the deceased and that act of the deceased in having allowed the donees to enjoy the income must be taken to be a disposition. In this case, having regard to the facts referred to above, we are unable to accept this contention. The very fact that the section is dealing with a disposition made within two years prior to the date of death of the deceased contemplates a particular time at which the disposition

was made. In this case, as we pointed out already, there was no case that at any particular point of time within two years prior to the death of the deceased, the deceased made any disposition. We cannot draw any inference of such a disposition simply because the donees were in enjoyment of the income from the properties on the basis of a gift which was not valid in law. Therefore, Section 9 can have no application whatever to the said income of Rs. 57,000 arising for the period from October 15, 1960, to October 14, 1962.

11. Realising this position, the learned counsel for the revenue sought to support the orders of the authorities below by relying on Section 34(4) of the Act. Section 34(4) of the Act merely says :

" 34. (4) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased."

12. Even though this section is in the form of a sub-section to Section 34, it is more or less in the nature of an independent provision providing that an estate will include all income accruing to the estate down to and outstanding on the date of death of the deceased. In this case if the income had accrued to the estate and was outstanding on the date of death of the deceased, there will be no difficulty in applying Section 34(4), even though the authorities below did not rest their conclusion on this statutory provision. Mr, J. Jayaraman, the learned counsel for the revenue, contended that there was no evidence to show that this income of Rs. 57,000 was not available on the date of death of the deceased but on the other hand the finding is that the deceased had not spent away this income and, therefore, the inclusion of that income in the dutiable estate was proper. We are unable to accept this argument. In para. 8 of its order, the Tribunal points out:

" It is true that if the properties in question are to be considered to have belonged to the deceased till his death (as we have held above), the income therefrom should also be considered to have belonged to him. Hence, even if such income had been realised by the donees they should be considered to have held the same in trust and for the benefit of the deceased. But nevertheless such income formed part of the estate of the deceased. There is no evidence that such income was spent by the deceased during his lifetime. On the other hand, the case of the accountable person was that such income was appropriated by the donees because according to him the properties from out of which they arise belonged to the donees only. If such income had really belonged to the deceased in law and the deceased had allowed the donees to appropriate the same for them, there was certainly a gift by the deceased of such income. In this view, the inclusion of the above sum is justified. "

13. We are of the opinion that from this statement of the Tribunal, no inference can be drawn that the income as such was available on the date of death of the deceased. As a matter of fact, the above extracted portion of the order of the

Tribunal would show that it has accepted the case of the accountable person that the income was appropriated by the donees, and still the Tribunal held that the income should be included in the dutiable estate, because in law it belonged to the deceased. Once it was found that the income was appropriated by the donees, there was no income which could be held to belong to the deceased on the date of death so as to be includible in the dutiable estate. Mr. J. Jayaraman contended that the word " appropriated " occurring in the above passage extracted from the order of the Tribunal did not indicate that the amount had been spent away by the donees ; it would merely show that the amount was held by the donees. We are unable to accept this argument, because it was at no stage the case of the department that the amount as such was available on the date of death of the deceased and the only claim was that the amount belonged in law to the deceased. We are of the opinion that simply because a particular income theoretically belonged to the deceased as on the date of death of the deceased, the said income cannot be included in the dutiable estate, even though the same had been enjoyed and spent away by somebody else. Section 34(4) will not apply to such a situation.

14. The learned counsel for the revenue drew our attention to a decision of the Kerala High Court in T. O. HYDROSE Vs. CONTROLLER OF ESTATE DUTY, ERNAKULAM., . In that case, one Kader Ooran gifted by way of settlement to his wife and eight children, one of whom was a minor, Rs. 40,000 worth of stock-in-trade, cash and cheques on March 31, 1960. On the next day, namely, April 1, 1960, he entered into a partnership with them, admitting the minor to the benefits of the partnership. Kader Ooran died on March 14, 1961. In the balance-sheet of the business for the year which was prepared on March 31, 1961, Rs. 31,069 was shown as the profit for the year that fell to the share of the wife and children. Since Kader Ooran died within two years from the date of the gift, the sum of Rs. 40,000 was deemed to pass to the donees only on the death of Kader Ooran u/s 9(1) of the E.D. Act. The Asst. CED included the sum of Rs. 31,069 also in the estate left by Kader Ooran. On appeal, the Appellate Controller excluded that amount from the estate of Kader Ooran. On further appeal, the Appellate Tribunal restored the order of the Assistant Controller. It was thereafter that the matter came to the High Court. The High Court held that the sum of Rs. 31,069 which represented the balance in the drawing account of the wife and children of the deceased inclusive of profits was includible in the dutiable estate by virtue of Section 34(4) of the Act. There was nothing to show in the judgment that the said sum was not available as on the date of death of the deceased. As a matter of fact, the judgment proceeds on the basis that it was shown as the share of the profits of the donees in the balance-sheet. If so, the money was available on the date of death of the deceased and since it legally belonged to him by virtue of the finding of the authorities that u/s 9(1) the gift could be ignored and the gifted property could be included in the dutiable estate, the income from the gifted property also was rightly included in the dutiable estate. But as we pointed out already, the position in the present case is different and,

therefore, the said decision has no application to the present case. For these reasons, we answer the second question in the negative and in favour of the accountable person. Since the parties have succeeded in part, there will be no order as to costs.