

(1971) 07 MAD CK 0018
In the Madras High Court
Case No : Writ Petition No. 11 of 1967

R. Venkatachala Thevar

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 19-07-1971

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 9(2)

Citation : (1972) 86 ITR 701

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : V.S. Ramakrishnan, for the Appellant; K. Venkataswami, First Asst. Govt. Pleader, for the Respondent

Judgement

Ramaprasada, J.—The writ petitioner is the father propositus. In 1954, he settled properties which belonged to him in favour of his minor

son and daughters, who were born by that time, and also in favour of his wife. In the process, he settled an extent of 50.05 1/2 acres in favour of

his wife, Padmavathi Ammal. This settlement was effected on August 6, 1954. After the execution of the settlement deed, two children were born

to the petitioner, one a male, on September 22, 1955, and another, a female, on December 4, 1959. After the birth of these two children,

Padmavathi Ammal, purporting to act in her own right, executed a deed of settlement in favour of her after-born children, Rajendran and Parvathi,

and under the settlement deed dated March 24, 1960, she gave away an extent of 42 acres in favour of both the children and reserved for herself

the balance of 8.05 1/2 acres. Till the assessment year 1961-62, the holding of the writ petitioner was reckoned ignoring the settlements made by

him on August 6, 1954, in favour of his wife and minor children and he was

assessed accordingly. In fact, these assessments were all under applications for composition made voluntarily by the writ petitioner for the purpose of ultimately reckoning the agricultural Income Tax payable by him. Somehow, it is not clear from the record, the income from the extent of the land settled by the writ petitioner on his only son on the date when the settlement deed was made in 1954, was excluded and was not clubbed in the agricultural income of the writ petitioner when he was ultimately assessed to tax in the above circumstances. It is not, however, in dispute that in the composition proceedings, the writ petitioner was assessed to tax on the basis that he was holding not only the extent of land retained by him under the settlement deed dated August 6, 1954, but also as if he held the lands settled by him in favour of his wife and two minor daughters. This was u/s 9(2)(a)(iv) of the Act.

2. For the assessment year 1961-62, when the petitioner filed a similar composition application he claimed that an extent of 42 acres should be omitted from his holding for the purpose of reckoning the tax, as the said extent has been settled by his wife, Padmavathi Ammal, in favour of his two after-born children in and by the settlement deed dated 24th March, 1960. Both the Agricultural Income Tax Officer and the Commissioner for Agricultural Income Tax, on revision, felt that Padmavathi Ammal did not have in praesenti a right to dispose of the lands in the manner she did so as to avoid the tax liabilities of the petitioner and that the extent of 42 acres, in the circumstances, should be deemed to be the holding of the writ petitioner and he be dealt with accordingly, and his composition application for the assessment year disposed of in that light. It is against this order the present writ petition has been filed.

3. The learned counsel for the petitioner urges that, as Padmavathi Ammal, the wife of the petitioner, secured an interest over the land specified and delimited in the settlement deed dated August 6, 1954, she had obtained an absolute interest therein and any disposition by way of settlement made by her thereafter should be deemed to be in exercise of a vested right in her, and thus understood, the settlement dated 24th March, 1960, should be fully given effect to, and the 42 acres so settled thereunder should not be taken into consideration for the purposes of determining the income of the petitioner. His contention is that this is not a case in which it could

be said that the transfer effected by Padmavathi Ammal should be deemed to be an indirect transfer made by the petitioner within the meaning of Section 9(2)(a)(iv) of the Madras Agricultural Income Tax Act.

4. Section 9(2) dealing with computation of the total agricultural income of any individual for the purpose of assessment provides for certain

deeming inclusions in such income, in stated circumstances enumerated therein. One such circumstance is that income from assets transferred

directly or indirectly, to the minor child not being a married daughter, by an individual, otherwise than for adequate consideration is liable to be

included in the total income of that individual. What are direct transfers are easily discernible, but what are indirect transfers equally easily evade

comprehension. But, to decipher whether an asset transferred by an individual would come within the mischief of that sub-clause, the facts and

circumstances of each case have to be gauged, as it would be impossible to lay down succinctly as to what ought to be and what would be an

indirect transfer coming within the meaning of the above sub-clause. There may be myriad circumstances in which an individual concerned may

attempt to make such indirect transfers by legitimate means, such as the execution of registered documents or the execution of settlement deeds for

love and affection, etc. But, such transactions have to be viewed with a lynx eye to find out whether it is a transaction which is attributable to the

individual, though not directly but indirectly.

5. In the facts and circumstances of this case, a husband settles properties not for valuable consideration but for love and affection, a larger extent

of land, in favour of his wife. He was also careful to settle his properties in favour of his children who were born by then. He, however, had two

more children after the settlement was effected. The wife, takes upon herself the responsibility of being the donor this time, and she settles in her

turn a portion of the properties settled on her in favour of the two after-born children. It should, however, be noted that her holding was always

treated as the holding of her husband for the purpose of reckoning the agricultural Income Tax under the Act, until the date when the second

settlement was made by the wife. By the mere fact that the wife resettles the properties in favour of her after-born children, could it be said that it

would not be a transaction which would come within the mischief of Section 9(2)

(a)(iv) of the Act ? Indirect transfers would certainly take in a settlement of the kind in question, because if that were to be accepted as an independent transaction, which has nothing to do with the earlier settlement made by the husband, then the law can easily be circumvented by such a person like the wife or the son or the daughter, by resettling the properties in favour of other relatives or strangers and escape the clutches of the law. The fact that there is a time lag between the first and the second settlement deeds would not matter, for this reason that the chain of causation continues and every deed of settlement or transaction or transfer effected by a settlee, coming within the meaning of the sub-clause, would be caught in the vortex, and should be characterised as an indirect transfer made by the husband or the individual concerned otherwise than for adequate consideration. Reliance was placed upon Commissioner of Income Tax, Madras Vs. C.M. Kothari, Madras (Dead), and after him his Legal Representative, . Far from assisting the petitioner in this contention raised, it appears to be against the principle urged by him. The Supreme Court said that it is impossible to state what sorts are covered by the word ""indirectly"" because such transfers may be made in different ways. One such way is afforded by the case before me. I am satisfied that the Commissioner of Income Tax has rightly held that the transfer in question is an indirect transfer made by the petitioner, and the composition application has been rightly dealt with by the Agricultural Income Tax Officer.

6. The second ground urged is that the properties in question were ancestral properties, or at any rate were merged with ancestral properties, and therefore, when the settlement was made by the wife, what was given to the male child on 22nd September, 1955, should be deemed to be in lieu of his share as a coparcener in a Mitakshara family. There is a fallacy in this argument. The settlement deed as such has been made by the wife and not the prepositus, which only can form the basis of such a contention. Even otherwise, this settlement deed in favour of the wife was acted upon for a period of six years and Padmavathi Ammal was holding the property as such settlee under the deed of settlement dated 6th August, 1954. It, therefore, follows that the property which she gave to her after-born son was not property which was dealt with as if it was coparcenary property

and all the more it cannot be said to be a disposition made by the karta of a family in favour of a sharer in the coparcenary, reflecting a partition

between the karta and the member. This is too farfetched. The complaint is that though this point was raised in the grounds of revision, it was not

considered by the Commissioner. In my view, this is not a relevant consideration in view of the facts on record. The second respondent had the

jurisdiction to pass the challenged order and there is no error apparent in the order impugned.

7. This writ petition fails and is dismissed. No costs.