
(1968) 12 AP CK 0005

In the Andhra Pradesh High Court

Case No : Case Referred No. 25 of 1965

Rajah Raghavaraju Subbarajugaru

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 12-12-1968

Acts Referred:

Estate Duty Act, 1953 — Section 10, 6, 9

Citation : (1970) 75 ITR 734

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

Bench : Division Bench

Advocate : K. Ranganathachari, for the Appellant; T. Ananta Babu, for the Respondent

Judgement

Jaganmohan Reddy, C.J.—The Tribunal has referred the case on the following questions of law :

" (1) Whether, on the facts and in the circumstances of the case, the value of the property settled in favour of the deceased's wife, three sons and two grandsons, by the deeds dated 29th May, 1955, and 30th May, 1955, was liable to inclusion in the estate of the deceased u/s 9 of the Estate Duty Act ?

(2) Whether, on the facts and in the circumstances of the case, and in: the absence of any registered deed of gift 136"82 acres of agricultural land valued at Rs. 37,336 were rightly held to be the property of the deceased on the date of death for the purpose of the Estate Duty Act ?

2. The deceased is one Raja Raghavaraju Ranga Raju who died on 7th April, 1956, leaving his two sons who are accountable persons in this case. These accountable persons furnished an account of the property passing on the death of the deceased in which 408 acres, 71 cents of agricultural land, which was the subject-matter of the settlement deeds executed on 29th May, 1955, and 30th May, 1955, in favour of his wife, three sons and two grandsons was claimed to be not the property of the deceased on the date of his death. The Assistant

Controller of Estate Duty, however", found that the right of possession and enjoyment of the said agricultural land was conferred on the wife, three sons and two grandsons in 1953. The deceased had delivered possession of another 136.82 acres of agricultural land to his first son in 1953, but had not executed any deed of settlement in respect of it. In respect of 408.71 acres of agricultural land, however, though the deeds of settlement were executed, as stated above, those deeds, it may be noticed, were within two years prior to the date of death of the deceased.. The value of 408.71 acres of land and of 136.82 acres of land were determined for/purposes of the estate duty assessment, at Rs. 1,22,605 and Rs. 37,366, respectively. Inasmuch as the Assistant Controller considered that the property, which was subject-matter of the settlement deeds, was includible in the estate of the deceased, he included the same. On appeal to the Central Board of Direct Taxes, the argument put forward by the accountable persons was that delivery of possession of the property gifted and the course of conduct between the deceased and the donees, viz., the enjoyment of the said properties was exclusively that of the donees, was sufficient and the land should be excluded from the estate of the deceased, inasmuch as this enjoyment had commenced even two years prior to the date of death of the deceased. This contention was rejected by the Board which held that the registered deeds in respect of the gifted lands should -have been executed two years or more from the date of death of the deceased.

3. Before us, Sri Ranganathachari contends that, u/s 9 of the Estate Duty Act, nothing is indicated to exclude a gift of immovable property effected by delivery of possession and denial of the enjoyment of the fruits thereof by the donor. By contract to Section 10, it is contended by the learned advocate that even where a gift is perfected, but the donor is in possession, the legislature has deemed that property to be the property of the deceased. Similarly, where possession is given and the donor has divested himself of the enjoyment thereof, notwithstanding the fact that legal title has not passed, he must be deemed to have gifted the property and that property ceases from the date of such relinquishment of possession to be the property of the deceased.

4. This argument, in our view, is not tenable because the Estate Duty Act has not provided for a contingency of the kind referred to by Sri Ranganathachari. A reading of Section 6 will show that the property which the deceased was at the time of his death competent to dispose of is deemed to have passed on his death. If the legal title in a property still vests in the deceased on the date of his death, it cannot be said that he was not competent to dispose of that property and, therefore, such a property would pass on his death. This being the principle of Section 6, reading Sections 9 and 10 would indicate the object with which the legislature enacted those sections. We give below the relevant provisions-- Sections 9 and 10 :

5. Section 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 :

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

(2) The provisions of Sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding rupees five thousand in the aggregate."

6. Section 10 :

"Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise :

Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death."

7. It will be noticed that the Estate Duty Act does not define the words "gift", "transfer", "declaration of trust" and "settlement" and, consequently, it is not difficult to hold that, in enacting the Estate Duty Act, the legislature imported the terminology, which is well understood in law and must, therefore, be deemed to prescribe the legal requirements, which are necessary to complete the dispositions mentioned in Section 9. When Section 9 refers to dispositions made by the deceased purporting to operate as an immediate gift inter vivos, it means and is deemed to mean that although a transaction may not in fact amount to a gift, it is purported to have been made as a gift; for instance, where a property is conveyed or transferred for consideration, nonetheless, if the deed states that it is a gift, the law requires for the purpose of Section 9 to treat it as a gift, but that is not to say, as contended by Sri Ranganathachari, that any imperfect gift will nonetheless be deemed to be a gift if some of the requirements only of that gift have taken place and not the complete transaction, which is necessary to effectuate in law a gift. In our view, as we said earlier, a gift, in order to be effective, must be a gift which under the law is an effective gift. A gift of movable property can be made by delivery or by a registered instrument, but where the delivery is not effected, the gift by a registered instrument of the movable property is nonetheless effective. Similarly, the gift of movable property on delivery of possession, without a registered instrument, is nonetheless an effective gift. The law recognises these dispositions as gifts. In the case of immovable property of the value of Rs. 100 or upwards, except in the case of

Muslim gifts and endowments to an idol, all other gifts should be made by registered instruments u/s 123 of the Transfer of Property Act. Immovable property can be divested in two ways : one by a conveyance under a registered instrument, if the value of the property, as we said, is more than Rs. 100 and the other by declaration of trust, whereby the owner declares himself to be the trustee. In both the cases, the requirement of law is that it must be effected by a registered instrument and, unless this is done, the title still vests in him and u/s 6 of the Estate Duty Act, he is in law deemed to have the disposing power of the property and therefore that property passes on his death. To our minds, these propositions admit of no doubt and are well established. Even where a gift or disposition of property has taken effect under law and the donor has divested himself of his ownership and title therein, the Estate Duty Act has considered even those properties to be part of the estate of the deceased, if it is established that he was still enjoying the benefit thereof on the date of his death, i.e., if it is shown that the donee was not bona fide completely in possession and enjoyment of the property taken under a gift, immediately after the gift was made, that property is deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise. This is an exception to Section 6, which provides that all property which the deceased at the time of his death was capable of disposing passes on his death. The learned advocate has relied greatly upon a decision of an English court in *Rose In re : Rose v. Inland Revenue Commissioners* 1952 Ch. 499 ; 1952 1 All E.R. 1217, 1226, where certain transfers of shares were effected by delivery of the transfer deed and the share certificates to the donee, but were not registered, and the registration of which was necessary to effectuate the transfer. Nonetheless, where the deceased died before the company registered the transfer, it was held that the property in those shares did not belong to the estate of the deceased. It may be stated that the transfer of those shares was made by the deceased on March 30, 1943, when he executed under seal the instruments of transfer purporting in each case to transfer 10,000 shares in the company. The instruments of transfer complied strictly with the company's articles of association, which states the manner in which the shares are to be transferred. Furthermore, before April 10, 1943, these transfers and the relative share certificates were duly delivered to the respective transferees or their agents, and in so far as the deceased was concerned, there was nothing more which he could have done to perfect the title of the transferees than by getting the company enter the name of the transferees in their books. Certain delay having taken place, the company registered these transfers subsequently. The completion of the transfer, it may be noticed, depended on the third party and not on the deceased. In these circumstances, it was held that the gift was completed and that the property in the goods having passed, they do not form part of the estate of the deceased. Jenkins L.J., at page 516, observed :

"To say that the gift was made on the date subsequent to April 10, 1943, when

the company's directors in fact registered the transfers, and was therefore dutiable, seems to me a quite untenable proposition, for the registration of the transfers was an act over the doing or refusing of which the deceased had no relevant control, and was moreover, an act the doing of which he could not, consistently with his own deeds, oppose."

8. In that case *Milroy v. Lord*, 4 De. G.F. & J. 264 was cited and it was sought to be contended that the registration was a necessary concomitant to the transfer of legal title, but their Lordships considered that case as not covering the question which they had to decide. The question posed was, after what the deceased did, what beneficial interest remained in him. " The answer ", Jenkins L.J., 1952 Ch. 499, observes at page 518 "can only be, in my view, that he had no beneficial interest left whatever; his only remaining interest consisted in the fact that his name still stood on the register as holder of the shares, but, having parted in fact with the whole of his beneficial interest, he could not, in my view, assert any beneficial title by virtue of his position as registered holder. In other words, in my view, the effect of these transactions, having regard to the form and the operation of the transfers, the nature of the property transferred, and the necessity for registration in order to perfect the legal title, coupled with the discretionary power on the part of the directors to withhold registration, must be that, pending registration, the deceased was in the position of a trustee of the legal title in the shares for the transferees". It must be noticed that the transfers were effected under seal, as formal documents. In English law documents executed under seal and ordinary documents have significance. We are, therefore, unable to apply the said principle to the facts of this case. In *Richards v. Delbridge* 1874 18 Eq. Cas. 11, 14, Sir Jessel M.R. laid down the principle under which a man can divest his title to the property. He says :

" A man may transfer his property, without valuable consideration in one of two ways : he may either do such acts as amount in law to a conveyance or assignment of the property, and thus completely divest himself of the legal ownership, in which case the person who by those acts . acquires the property takes it beneficially, or on trust, as the case may be ; or the legal owner of the property may, by one or other of the modes recognised as amounting to a valid declaration of trust, constitute himself a trustee, and, without an actual transfer of the legal title, may so deal with the property as to deprive himself of its beneficial ownership, and declare that he will hold it from that time forward on trust for the other person."

9. This view is consistent with the view we have already taken. Our own decisions lend support to the view we have taken, viz., *MOHAMMED BHAIR AND ANOTHER Vs. CONTROLLER OF ESTATE DUTY*, A.P., and the recent unreported decision in R.C. No. 10 of 1965, Since reported as *Suggala Veera Raghaviah v. Controller of Estate Duty*--See page 714 supra decided on November 26, 1958, to the first of which one of us was a party and the second of which was of this Bench. In the former case, we have stated that where the Muslim law permits

gifts to be effected without registered documents merely by delivery of possession, that will be sufficient for the purpose of the Estate Duty Act. In the second case, where under Hindu law, separate property was thrown into the hotchpot it was held that conversion into joint family property, it not being treated as transfer, was effectual without a registered instrument. An attempt to import the definition of " gift" under the Gift-tax Act was repelled and we observed :

" The decision rendered on the basis of the definitions contained in the Gift-tax Act cannot be made applicable to a case arising under the Estate Duty Act where there are no definitions of the expressions " gifts " "or transfer of property". The question whether the act of conversion of separate property into joint family property amounts to a transfer has to be determined only on the principles of Hindu law and the provisions of the Transfer of Property Act."

10. Similarly, in the case of DEOKINANDAN KHETAN Vs. CONTROLLER OF ESTATE DUTY., which related to an endowment of immovable property by a Hindu to a deity, it was held by the Allahabad High Court that no deed or instrument is necessary. Except some of those transfers and dispositions which are permitted under the personal laws, all other transfers and dispositions must take effect, in so far as the immovable property the value of which is Rs. 100 or more is concerned, only by a registered instrument.

11. In so far as the alleged gift of 136.82 acres, the subject matter of the second question is concerned, there is not even an instrument purporting to make a gift in favour of the donee. In so far as the first question is concerned, no doubt, a settlement deed was executed under a registered instrument and, in spite of the recitals that possession had been given earlier in 1953, the gift could only be deemed to have taken place on the date when the registered instrument was executed. In fact, the registered instrument recites that further action will be taken to have the mutation in the names of the donees after the deed was executed.

12. Having regard to what has been observed above, our answers to the first and second questions are in the affirmative and in favour of the department with costs. Advocate's fee Rs. 250.