
(1978) 02 MAD CK 0062

In the Madras High Court

Case No : Tax Case No. 404 of 1974 (Reference No. 217 of 1974)

S. Pappu Reddiar

APPELLANT

Vs

Commissioner of Gift Tax

RESPONDENT

Date of Decision : 07-02-1978

Acts Referred:

Gift Tax Act, 1958 — Section 3, 4

Citation : (1979) ILR (Mad) 271 : (1979) 116 ITR 773 : (1978) 91 LW 604 : (1977) 90 LW 604

Hon'ble Judges : P. Govindan Nair, C.J.; V. Ramaswami, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

P. Govindan Nair, C.J.—Two questions have been referred to us in relation to the assessment year 1966-67. We shall extract those questions :

"1. Whether, on the facts and in the circumstances of the case, the conclusion of the Appellate Tribunal that the deed of partition dated March 31, 1966, was a deed of settlement liable to gift-tax under the provisions of the Gift-tax Act is valid in law ?

2. Whether, on the facts and in the circumstances of the case, the finding of the Appellate Tribunal that the petitioner and the members of his family were not governed by Hindu law is valid in law ?"

2. One Muthu Reddiar, who was a Hindu, got converted to Christianity and married a Christian woman thereafter. Sanjeevi Reddiar was born to the couple as also other children. After the death of Muthu Reddiar, there was a deed of partition. The deed was executed between the heirs of Muthu Reddiar on August 29, 1935. The properties left by Muthu Reddiar were divided among the said heirs. The widow of Muthu Reddiar was also given a life estate under a portion of the estate of Muthu Reddiar. Thereafter, Sanjeevi Reddiar, who got a share under

the deed, improved the properties by his own efforts, and in the year 1966, there was a document styled as partition deed executed on March 31, 1966. In that document, there is no mention made to which religion the parties belong, though in the 1935 document the heirs of Muthu Reddiar were described as professing the Christian religion. However, in the 1966 document, the statement was made that the parties to that document were living together as a joint family and they were dividing the properties. These are the bare facts and these are the only essential facts on which we have to decide the case.

3. Normally, Christians are not governed by Hindu law. If a Hindu gets converted as a Christian, he automatically gets severed from the Hindu family. Conversion in religion as far as Hindu law is concerned not only affects his religion but also affects his civil rights. That has been the rigour of the Hindu law. Prima facie, therefore, after conversion, Muthu Reddiar will be governed not by Hindu law, but only by Christian law. This will govern his right to succession as well. There is nothing to indicate that it was not the Christian law of succession that was applied when the heirs of Muthu Reddiar divided the properties left by Muthu Reddiar by the document dated August 29, 1935. Counsel for the assessee pointedly drew our attention to the fact that a life estate was given to the widow and this is not an incident of Christian law. From the mere fact that the widow has been given a life estate it is not possible to say that the children of a Christian had adopted the Hindu law. The parties to the document describe themselves as Christians. There is no statement in the document that they are governed by Hindu law. So, at the time the document was executed it is impossible to say that the parties to that document were governed by Hindu law. Even when Sanjeevi Reddiar joined with his children and executed the document dated March 31, 1966, there is no clear statement made that the parties to the document are governed by Hindu law. All that is stated is that they were living as a family and they were having joint ownership of the properties. How it has happened and why it has happened is not at all clear. While it is true that in establishing a custom of a particular family, the degree of proof required is less than in the case where it is intended by persons residing in a territory that they had been governed by a particular custom, by a particular law or when very many families or group of persons living in a particular area contend that by reason of the custom or practice they are governed by any particular law. This principle has been noticed in the decision, relied by counsel for the assessee, of the Supreme Court in *Pushpavathi Vijayaram v. Visweswar* AIR 1964 SC 118. The passage relied on by counsel is helpful for understanding the position. We shall now extract that passage at pages 125 and 126:

"In dealing with a family custom, the same principle will have to be applied, though, of course, in the case of a family custom, instances in support of the custom may not be as many or as frequent as in the case of customs pertaining to a territory or to the community or to the character of any estate. In dealing with family customs, the consensus of opinion amongst the members of the family, the traditional belief entertained by them and acted upon by them, their

statements, and their conduct would all be relevant and it is only where the relevant evidence of such a character appears to the court to be sufficient that a specific family custom pleaded in a particular case would be held to be proved."

4. Reference was made by the Supreme Court to the decision of the Judicial Committee of the Privy Council in *Abdul Hussein Khan v. Bibi Sona*, AIR 1917 PC 181 ; 43 1C 306 [adopting an earlier view of the board in *Ramalakshmi Ammal v. Sivanatha Perumal Sethurayar* 14 MIA 570]. The normal rule is stated thus by the Judicial Committee :

" ".....It is of the essence of special usages modifying the ordinary law of succession that they should be ancient and invariable : and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the courts can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends." "

5. No decision has been brought to our notice where, on the basis of a single statement, it has been ruled that a custom applicable to the family has been established in order to change the normal rule of inheritance or to change the normal law that is applicable to the parties governed by a particular religion and make applicable a different law altogether. In the light of the above principles, we agree with the view taken by the Tribunal that there was no material produced by the assessee to prove that the parties who entered into the document dated March 31, 1966, were governed by the principles of Hindu law and the properties divided belong to a joint Hindu family, the parties having an interest in the properties before the partition deed was entered into, thus resulting merely in the transformation of joint properties into a separate property, resulting in no gift to attract gift-tax.

6. In the light of the view, we answer the two questions referred to us in the affirmative, that is in favour of the revenue and against the assessees. Counsel's fee Rs. 500.