
(1965) 09 MAD CK 0032

In the Madras High Court

Case No : T.C. No. 287 of 1962 (Ref. No. 152 of 1962)

S. Parthasarathi

APPELLANT

Vs

Commissioner of Income Tax, Madras

RESPONDENT

Date of Decision : 15-09-1965

Acts Referred:

Citation : AIR 1967 Mad 227 : (1966) ILR (Mad) 590

Hon'ble Judges : Venkatadri, J; Veeraswami, J

Bench : Division Bench

Judgement

Veeraswami, J.

(1) The question under reference pertains to the character of the rental income received by each of the assesseees for the assessment year 1960-61.

There is no dispute as to the quantum of rental income. The assesseees were each allotted a house by their father by a deed dated 12-7-1959. The

revenue has throughout taken the view that the rental income from these constituted the individual income of each of the assesseees and could not by

any means be regarded as income of each of the assesseees in the status of a Hindu undivided family. With this view of the terms of the said

document, the Tribunal agreed. It however felt that a question of law did arise and at the instance of the assesseees, it made a consolidated

reference to us of the following question:

Whether the property obtained and held by the sons by the deed of 12-7-1959 was individually and exclusively for themselves or as Karthas of

their Hindu individual families?

Though the question has been framed in that form, we have indicated the real point for decision, namely, as to whether the income of each of the

assesseees in question pertains to income of the Hindu undivided family or of each of them.

(2) The answer to the question turns entirely upon our construction of the terms of the deed. It is manifest from it that the two houses were the self-

acquisitions of the father of the assessee. It appears that out of his own funds he purchased a plot of land in Cathedral Road, Madras, on 7-11-

1913 and in the first instance, built 8 houses on a part of the site. He allotted two houses to each of his four daughters in 1944 under a settlement

deed. On the remaining extend he built there house bearing door Nos. 9, 10 and 11, of which under the deed of 1959 he reserved one house

exclusively for himself and allotted one house to each of his son. He provided in the deed that from the date of the document each son must take

the house, receive the income therefrom, pay the tax and thus enjoy the property. He further provided that in case any of his sons desired to

alienate his house, he should in the first instance offer to sell it to the other brother and only when the option is not exercised by the other brother,

should he be in a position to alienate his house to a stranger.

(3) It is contended for the assesseees that the terms of the deed show that the intention of the father was to give a house to each of his sons

representing his branch and as an ancestral property in his hands, and not as a gift to each of them exclusively with absolute rights. In support of his

contention reliance is placed upon the description of the deed as (xxx)* (partition deed) and the fact that each of the two sons has been allotted a

house of equal value and the father himself reserved for himself a house of similar value. It is also pointed out for the assesseees that it was in the

contemplation of the father that each son should get a house and enjoy the same separately, that is to say, on behalf of himself and his family. The

effect of these features, so it is argued, disclosed a scheme of partition and the allotment of a house to each of the sons was a part of such scheme.

We are not persuaded to accept this view of the document. The effect of a disposition under a document has to be ascertained primarily from the

intention evinced by the language employed in the particular deed under construction. There is no presumption that when a father allots his self-

acquired properties among his sons, the sons take their bounties or shares as ancestral property. In C.N. Arunachala Mudaliar Vs. C.A.

Muruganatha Mudaliar and Another, the Supreme Court held that there was no warrant for saying that according to the Mitakshara, an

affectionate gift by the father of his self-acquired property to his son constituted ipso facto ancestral property in the hands of the donee. The

court observed--

But when the father obtains the grandfather's property by way of gift, he receives it not because he is a son or has any legal right to such property

but because his father chose to bestow a favour on him which he could have bestowed on any other person as well. The interest which he takes in

such property must depend upon the will of the grantor. A good deal of confusion, we think, has arisen by not keeping this distinction in mind. To

find out whether a property is or is not ancestral in the hands of a particular person, not merely the relationship between the original and the present

holder but the mode of transmission also must be looked to; and the property can ordinarily be reckoned as ancestral only if the present holder has

got it by virtue of his being a son or descendant of the original owner. The Mitakshara, we think, is fairly clear on this point.

It is clear from the decision of the Supreme Court, that it is well accepted law that a Mitakshara father has complete powers of disposition over his

self-acquired property and that being the case, such a father is quite competent to provide expressly when he makes a gift either that the donee

would take it exclusively for himself or that the gift would be for the benefit of his branch of the family. As further observed by the Supreme Court--

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The material question which the court would have to decide in such cases is, whether taking the document and all the relevant facts into

consideration, it could be said that the donor intended to confer a bounty upon his son exclusively for his benefit and capable of being dealt with by

him at his pleasure or that the apparent gift was an integral part of a scheme for partition and what was given to the son was really the share of the

property which would normally be allotted to him and in this branch of the family on partition? In other words, the question would be whether the

grantor really wanted to make a gift of his properties or to partition the same? As it is open to the father to make a gift or partition of his properties

as he himself chooses, there is, strictly speaking, no presumption that he

intended either the one or the other.

It is open to a Mitakshara father, therefore, to treat his self-acquired property as ancestral property and then proceed to allot the same to his sons

as in a partition. Equally he can, treating his property as self-acquired and in the exercise of his power of disposition over it, make a gift of this or

that property of his own to each or some of his sons at his discretion and pleasure. The question in each case would therefore be one of intention

of the father, which, as we said, will have to be gathered from the terms of the language he has employed in expressing his wished as to the

disposition of the property. In ascertaining the intention, one must bear in mind that there should be no pre-conceived approach and the words will

have to be read and understood in their plain meaning without reference to any presumption of any kind.

(4) On a careful reading of the document before us, we feel that it is impossible to hold that the intention of the father was to divide the house as in

a partition and allow a house to each of his sons for himself and as representing his branch. We can find no words in the document to justify such a

construction. It is true the document has been described by the father as (x x x x)* but it is plain that the true nature, effect and character of the

transaction cannot be decided from merely the description of the document. We do not say that the description of the transaction in the document

should be ignored. But that cannot be decisive on the intention relating to the character of the transaction which has to be ascertained from the

document read as a hold. Throughout the document the father is conscious of the fact that the properties which he disposed of either by the

settlement or by the deed under construction were his self-acquired properties. Under the settlement of 1944, he made a gift of two houses to each

of his daughters. When it came to each of his daughters. When it came to his sons, he set apart a house for each of them and reserved one for his

own use. The words of allotment to his sons clearly point to an intention on the part of the father to make it absolute and exclusive to each of his

sons. He said that each son should take the property, receive the income and enjoy the property. There was no suggestion in the document that

anything but each of his sons was to have any interest in the house allotted to him. Further the provision for the right of pre-emption quite clearly

brings out the intention of the father and that each son must have a right of alienation over the house allotted to him, but subject only to the qualification that before he actually alienates, he must give an option to the other brother to purchase and only if the option is not exercised, would he be at liberty to alienate the property to a stranger. It is argued that this provision shows that the sons had only limited powers of alienation and that this would be consistent only with the character of the property taken by the sons being ancestral in their hand. We are unable to agree with this construction. Far from this provision relating to pre-emption being a restriction in that sense on the powers of alienation, it fully recognises that what was given to the sons was with powers of alienation. It is true that the houses allotted to each son as well as the father happened to be of equal value. But to our minds this is not indicative of the intention of the father that the property should be taken by the son as ancestral property. All that it shows is that the father wanted to do equal justice to his sons and also to himself. If the father's intention was that each son as representing his branch should get the property allotted to him, he should have clearly used words which would convey that meaning. But that is not the case. We are, therefore, of the view that the Tribunal came to the correct conclusion as to the scope and nature to the correct conclusion as to the scope and nature of the disposition under the document dated 12-7-1959, and as to the character of the rental income in the hands of the assessee.

(5) We answer the question referred to us against the assessee with costs, Counsel's fee Rs. 250.