

(1980) 09 GUJ CK 0007
In the Gujarat High Court
Case No : Estate Duty Reference No. 4 of 1975

Sarabhai Tribhovandas

APPELLANT

Vs

Controller of Estate Duty, Gujarat

RESPONDENT

Date of Decision : 30-09-1980

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 15, 16

Hindu Womens Right to Property Act, 1937 — Section 3(2), 3(3), 93

Citation : (1981) 130 ITR 326

Hon'ble Judges : S.B. Majmudar, J; B.J. Diwan, J

Bench : Division Bench

Advocate : K.C. Patel, for the Appellant; N.U. Raval, for the Respondent

Judgement

Majmudar, J.—At the instance of the accountable person, a question of law has been referred for our opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench "A", under s. 64(1) of the E. D. Act, 1953. The question reads as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that on the death of the deceased, Shrimati, Kevalbai Tribhovandas Shah, the 1/2 share of the Hindu undivided family property had passed under the appropriate provisions of the Estate Duty Act, 1953 ?"

2. The relevant facts leading to this reference may now be stated. Deceased, Smt. Kevalbai Tribhovandas Shah, was the widow of Tribhovandas Chhaganlal Shah, who died in 1940. Their only son, Dalsukhbhai, died in 1945. Dalsukhbhai had a son called Ajitkumar who survived Dalsukhbhai but thereafter died on June 15, 1953. The said Ajitkumar had a son called Kiritkumar who was the only living coparcener at the time of death of February 8, 1969. At the time of her death, the HUF consisted of the deceased and her great grandson, Kiritkumar, and Kiritkumar's mother, Bhanumati. The said Tribhovandas, the late husband of the deceased, was having joint family properties in his hands when he died in 1940.

3. The deceased, Smt. Kevalbai, left a will behind her dated October 19, 1953.

The estate duty account was filed by the present accountable person who was the executor of the will of the deceased. The accountable person's case before the Asst. Controller was that there being only one coparcener in the HUF, there was no question of partition of the joint Hindu family property and the deceased herself could not have demanded the partition of the HUF in her own right and, hence, the deceased was not entitled to any share in the HUF properties which could be considered to have passed on her death. The said plea did not find favour with the Asst. Controller who was of the view that on the coming into force of the Hindu Succession Act of 1956, the limited estate possessed by the deceased earlier became her absolute property by virtue of s. 14 of the said Act and, hence, there was passing of her half share in the joint family property on her death. Consequently, her one-half share in the HUF property was found to be part of the dutiable estate as per the order of the Asst. Controller dated June 30, 1971.

4. Being aggrieved by the above inclusion of one-half share in the dutiable estate, the accountable person preferred an appeal before the Appellate Controller, Western Zone, Bombay. The appellate authority by its order dated October 11, 1972, partially allowed the appeal rejecting the main contention of the appellant that one-half share in the joint family did not pass on the death of the deceased under any of the provisions of the E. D. Act, 1953.

5. The order of the appellate authority was subjected to a further appeal by the accountable person before the Income Tax Appellate Tribunal. The said appeal was dismissed by the Income Tax Appellate Tribunal, Ahmedabad Bench "A", by its order dated 8th April, 1974. The Tribunal rejected the contention raised on behalf of the accountable person to the effect that the interest of the deceased in the joint family property cannot pass under ss. 5, 6 or 7 of the E. D. Act and, consequently, the Tribunal confirmed the action of the revenue authorities of including one-half share of the deceased in the property of the HUF, in the dutiable estate.

6. Thereafter, the accountable person got a question of law referred to this court by the Tribunal in exercise of its power under s. 64(1) of the E. D. Act, 1953. The said question referred to us for our opinion is extracted by us above in the earlier part of this judgment.

7. In order to resolve the controversy which is posed for our consideration in the present proceedings it is necessary to keep in view certain important events which have been clearly established on the record of this case. The late husband of the deceased, namely, Tribhovandas, died in 1940 and he left behind him joint family property in which he had undivided interest. Now, at the time when he died, his son, Dalsukhbhai, was alive. Consequently, in the joint family property in which he had undivided interest. Now, at the time when he died, his son, Dalsukhbhai, was alive. Consequently, in the joint family property Tribhovandas had one-half undivided interest. By virtue of the provisions of s. 3 (2) of the Hindu Women's Rights to Property Act, 1937, the aforesaid one-half undivided

interest of Tribhovandas in the joint family property passed to his widow, Kevalbai, by way of widow's estate. The said s. 3 (2) of the Hindu Women's Rights to Property Act, 1937, read as under :

"When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had."

8. Sub-section (3) of section 3 provided as under :

"Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu women's estate, provided however that she shall have the same right of claiming partition as a male owner."

9. It is, therefore, clear that Tribhovandas' one-half undivided interest in the joint family property vested in his widow in 1940 by way of widow's estate on account of his death. At the relevant time, the provisions of ss. 3 (2) and 3 (3) of the Hindu Women's Rights to Property Act, 1937, squarely applied and, consequently, one-half undivided interest of the deceased, Tribhovandas, in the joint family property was possessed by his widow, Kevalbai, as limited owner. It is this limited ownership right of Kevalbai that became subject to the operation of s. 14 of the Hindu Succession Act, 1956, during the lifetime of Kevalbai. As we have already noted above, Kevalbai died on February 8, 1969, years after the Hindu Succession Act had come into force. Consequently, s. 14(1) of the Hindu Succession Act clearly applied in her case. Section 14(1) provides :

"Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner."

10. It is, therefore, clear that from 1956, onwards, one-half undivided interest which Kevalbai had in the joint family property and in which she had widow's estate on account of the operation of the provisions of ss. 3 (2) and 3 (3) of the Hindu Women's Rights to Property Act, 1937, matured into full ownership. Thus, from 1956 onwards, the deceased, Kevalbai, became the full owner of one-half undivided interest in the joint family property. This one-half undivided interest could have been disposed of by the deceased, Kevalbai, in whatever manner she liked. If she had died intestate, the said one-half interest would have been subject to the operation of s. 15 of the Hindu Succession Act and would have devolved according to the provisions of s. 16 of the Act. But in the present case, as she had left a will, her one-half undivided interest in the joint family property as full owner thereof would be required to be disposed of as per the direction in the will. Thus, in the light of these admitted facts as emerging on the record of the case, when viewed against the background of the statutory provisions as applicable to these facts, it appears clear that on the death of Kevalbai, there did exist one-half share in her favour so far as the HUF property was concerned and

the said interest could clearly pass under the appropriate provisions of the E. D. Act. The only contention raised on behalf of the accountable person by Mr. Patel, is to the effect that at the relevant time in 1969, when the deceased, Kevalbai, expired, there was only one surviving coparcener forming the HUF with Kevalbai and, consequently, Kevalbai could not herself have claimed partition and, hence, it was not possible to find out as to what definite share Kevalbai could have got on partition of the joint family property. The aforesaid difficulty envisaged by Mr. Patel is really no difficulty at all. In the present case, because of the operation of the provisions of the Hindu Women's Rights to Property Act and the Hindu Succession Act (s. 14) at appropriate times, the undivided interest of Kevalbai in the joint family property could be easily ascertained. There is no question of Kevalbai herself demanding partition by her own act or volition. In fact, ascertainment of her one-half share has to be done on account of the operation of the statutory provisions wherein the theory of notional partition can project itself. Thus, the inhibition against a Hindu women's right to a partition in her own right out of joint family property as known to the classical Hindu law cannot directly apply to such a situation. The only question which arises for consideration is as to whether at the time of death of Kevalbai, she had left any interest in the undivided Hindu joint family property and the answer to this question is obvious that she had one-half interest and that one-half interest had vested in her as full owner on account of the joint operation of ss. 3 (2) and 3 (3) of the Hindu Women's Rights to Property Act, 1937, read with s. 14 of the Hindu Succession Act.

11. In fact, the question which has been referred for our opinion in the present proceedings is squarely answered against the accountable person by two judgments of this court. The first judgment on the point is in *Suketu Jayantilal Shah v. CED* [1975] 100 ITR 439. A question similar to the one which has arisen before us came up for consideration in the said case. One Jayantilal Shah, who happened to be the father of the accountable person in that case, had died in jointness with his wife, Subhadra, two sons and an unmarried daughter in 1944. Under s. 3 (2) of the Hindu Women's Rights to Property Act, 1937, the mother of the accountable person who was the widow of Jayantilal was put in the place of her husband and her husband's interest in the joint family property, though indefinite, vested immediately upon his death in the widow. This interest was the widow's interest as known to lay at the relevant time when the Hindu Women's Rights to Property Act, 1937, operated. The said interest became enlarged by virtue of s. 14(1) of the Hindu Succession Act, 1956. Thereafter, she died on November 14, 1959. The question was when the widow of Jayantilal Shah, namely, Subhadra, died in 1959, did she leave any interest in the joint family property which was deemed to be property passing on her death under s. 6 of the E. D. Act ? The contention of the accountable person was that she had left no such interest. Thus, the contention was repelled by this court in the aforesaid decision. It was held (headnote) :

"Under section 3 (2) of the Hindu Women's Rights to Property Act, 1937, the

widow of a member of a Hindu joint family is put in place of her husband and the husband's interest in the joint family property, though indefinite, would vest immediately upon his death in the widow. The widow who acquired the interest of her deceased husband u/s 3 (2) of the Hindu Women's Rights to Property Act, 1937, and who was possessed of the said interest on the coming into force of the Hindu Succession Act, 1956, became the absolute owner of that estate by operation of section 14 of the said Act and thus she would have all the rights of a full owner to possess, manage, and enjoy exclusively and of disposal either by any act, inter vivos or by will the said estate. On her death intestate, her interest in the joint family properties would pass and devolve by succession on her heirs and to that extent it would be required to be included in the estate liable to pay duty under the Estate Duty Act.

12. In any case, the widow having become the absolute owner of the share which she inherited from her husband, would be competent to dispose it of, it being an incident of full ownership, and, therefore, her interest would be deemed to be property passing on her death u/s 6 of the Estate Duty Act."

13. This court, following the previous judgment of the Supreme Court on the point, took the view that if the widow having an interest of her deceased husband in the joint family property under s. 3 (2) of the Hindu Women's Rights to Property Act, 1937, becomes full and absolute owner by operation of the provisions of law contained in s. 14 of the Hindu Succession Act, it follows that she has, as absolute owner, certain rights over the property, namely, (1) right to its possession, (2) right to its management, (3) right to its exclusive enjoyment, (4) right of disposal by an act inter vivos or will, at pleasure, and (5) on death intestate the property should devolve by succession on her own heirs. Another contention was raised on behalf of the accountable person before this court in Suketu's case [1975] 100 ITR 439 , viz., that since the extent of her interest in the joint family was of a fluctuating nature there was no property in specie, the principal value of which could be ascertained under the E. D. Act. It was held that this contention was without any substance for the simple reason that it was easy to determine what would be her right or interest in the property if a suit for partition has been filed by her heirs and that interest or share in the joint family properties would be the property passing on her death which the heirs would be entitled to claim in a partition suit. It was further observed (p. 446) :

"The indefinite interest of the widow of a coparcenary in the joint family properties would be crystallised on her death and would pass to that extent to her heirs u/s 15 of the Hindu Succession Act. The learned advocate for the accountable person, therefore, attempted to persuade us that without any level fiction being incorporated in the Estate Duty Act or for that matter under the Hindu Succession Act, it cannot be said that the right or share which Hindu widow has in the joint family properties would be crystallised as on her death.

We are unable to agree with this contention urged on behalf of the accountable person for the simple reason that though her interest under the Hindu Women's Rights to Property Act, 1937, was a fluctuating interest in the sense that it would increase by the death in the family and would decrease by birth in the same, it, none the less, on the ripening into full ownership u/s 14 of the Hindu Succession Act, would crystallise on her demise which u/s 15 of the Hindu Succession Act being her interest in the joint family properties as on her death, would pass as property to her heirs."

14. The aforesaid decision of this court squarely answers the question raised in the present proceedings for our opinion. There is a later judgment of this court also taking the same view, viz., in *Goswami Vrajraji Ranchhodlalji Maharaj Vs. Controller of Estate Duty, Gujarat-I*, . It has been held therein on similar facts that the deceased widow was the absolute owner of one-half of the HUF property at the time when she died. The facts in the aforesaid case were that one Vraj Priya Bahuji Maharaj who had died on August 30, 1962, was the widow of one Ranchhodlalji, who had died in 1961. Ranchhodlalji was the son of Madhusudanlalji, who died some time in 1920. Madhusudanlalji had left behind him his wife, Tati, who was alive at the time of Vraj Priya's death and who was alive even at the time of the hearing of the reference by the High Court. At the time of Vraj Priya's death, Ranchhodlalji's son, Vrajraji, was alive and he was the accountable person in that case. Vrajraji's son, Lalan, who was born on November 12, 1959, was also alive at the time of Vraj Priya's death. Thus, it is obvious that at the time of his death, Ranchhodlalji was the karta of the HUG of which the members were his son, Vrajraji, and his wife, Vraj Priya. Prior to her death, Vraj Priya had not asked for any partition though she was entitled to do so by virtue of the right conferred upon her by the Hindu Women's Rights to Property Act, 1937, and the Hindu Succession Act. The question was as to what was the quantum of her share in the joint family properties. The Asst. Controller computed the dutiable estate of the deceased by including one-half of the property owned by the family at the time of her death. Against the decision of the Asst. Controller, the accountable person carried the matter unsuccessfully before the Appellate Controller as well as the Tribunal. The Tribunal held that Vraj Priya had one-half share in the joint and undivided Hindu family properties and not either one-third or one-fifth as was contended for on behalf of the accountable person. Thereafter, the accountable person came behalf of the accountable person. Thereafter, the accountable person came to this court by way of a reference. Answering the reference against the accountable person, this court held (headnote) :

"The widow of a member of a Hindu joint family is put in the place of her husband and the husband's interest in the joint family property, though indefinite, would vest immediately upon his death in his widow. The widow who acquired the interest of her deceased husband u/s 3 (2) of the Hindu Women's Rights to Property Act, 1937 (the 1937 Act), and who was possessed of the said interest on the coming into force of the Hindu Succession Act, 1956 (the 1956

Act), became the absolute owner of that estate by operation of section 14 of the later Act and thus she would have all the rights of a full owner and would be competent to dispose of it which is an incident of full ownership."

15. It was, therefore, held that Vraj Priya had one-half interest in the joint family property and her interest would be deemed to be property passing on her death under s. 5 or s. 6 of the E. D. Act. It was further laid down that the right which has been given to a Hindu Women under the 1937 Act is also in lieu of partition. Therefore, if a notional partition were to take place shortly before Vraj Priya's death, she would not be allowed any share twice over, namely, one under ordinary Hindu law and again under the 1937 Act. Therefore, at the time of the notional partition before Vraj Priya's death, she would not be entitled to any share except that which she got under the 1937 Act, subject to the provision of an amount of Rs. 25,000 for the right of maintenance of Ranchhodlalji's right of maintenance as her husband, Madhusudanlalji, had died years back in 1920, when the Hindu Women's Rights to Property Act, 1937, was not operative.

16. The aforesaid two decisions of this court squarely apply to the facts of the present case. In these circumstances, the question referred to us for our opinion has to be answered against the accountable person.

17. But Mr. K. C. Patel, learned advocate for the accountable person, submitted that there is a judgment of this court in *Income Tax OFFICER, SHILLONG, AND OTHER Vs. HUBERT OSRICK UNGER.*, , which has taken the view that there cannot be a partition between a Hindu woman and sole surviving coparcener and applying the ratio of the said decision to the facts of this case, it would be clear that at the time when Kevalbai died in 1969, she was a member of an HUF with sole surviving coparcener, Kiritkumar, and, in the circumstances, there was no question of any partition being effected and, hence, it was not possible to work out the exact proprietary right of Kevalbai in the joint family property. In order to appreciate the aforesaid contention of Mr. Patel, it is necessary to glance through certain relevant facts against the background of which this court was required to consider the question that arose for its decision in *Income Tax OFFICER, SHILLONG, AND OTHER Vs. HUBERT OSRICK UNGER.*, . In the aforesaid decision, the question for consideration was - "Whether on the facts and in the circumstances of the case, by release see dated September 11, 1961, a valid partition between the mother and the minor son was effected ?" Thus, it was a case in which the mother and the minor son who were members of the joint Hindu family sought to effect actual partition. There was no question of any notional partition on account of operation of any statutory provisions like ss. 3 (2) and 3 (3) of the Hindu Women's Rights to Property Act, 1937, or s. 14 of the Hindu Succession Act, 1956, as has arisen in the present case. In *Income Tax OFFICER, SHILLONG, AND OTHER Vs. HUBERT OSRICK UNGER.*, , the facts were that one Shantikumar had two sons, Gautamkumar and Bhadrakumar. Gautamkumar attained majority prior to 1956 and Bhadrakumar was a minor even at the time of the relevant previous years pertaining to the concerned two

assessment years. One Kalavati was the wife of Shantikumar Jagabhai. Prior to November 10, 1956, Shantikumar Jagabhai, his two sons, Gautamkumar, Bhadrakumar and his wife, Kalavati, were members of a joint Hindu family. This family owned various properties and it was also running a business. By a deed called a "release deed" on November 10, 1956, Gautamkumar relinquished his interest in only one of the joint family assets, the joint family business run by the family. Shantikumar died on September 1, 1961. But, prior to his death, Shantikumar had executed a will dated February 22, 1960, and by this will, he bequeathed his share in the HUF property including his share in the business and the bequest was in favour of his wife and his two sons, Gautamkumar and Bhadrakumar, and all the legatees were entitled to share in the bequest equally. On September 11, 1961, a document was executed. The said document was the subject-matter of controversy between the parties in the said case. By that document, Gautamkumar released his right, title and interest in the business in favour of the other two legatees, namely, Kalavati and Bhadrakumar. By the very document, partial partition was effected of the business which was till then carried on as a joint family business and after that partition between Kalavati on the one hand and Bhadrakumar on the other, these two had become partners in the firm of Bipinchandra Gautamkumar in their separate capacities. Thus, the document of September 11, 1961, was both a release deed so far as Gautamkumar was concerned in connection with the share which he got as a legatee under the will of Shantikumar and a record of a partition arrived at between Kalavati and Bhadrakumar of the particular asset which they were holding jointly, i.e., the joint family business. The question was, whether by the document dated 11th September, 1961, any valid partition could be affected between Kalavati on the one hand and Bhadrakumar on the other. While answering this question against the assessee, this court held (headnote) :

"As a result of the release deed dated November 10, 1956, executed by the major son, G, the business thereafter belonged to the joint family of which the members were S, K and B. As S had left a will, by virtue of the proviso to section 6 of the Hindu Succession Act, a notional partition took place as at the time of his death and the one-third share of S in the family business devolved under his will equally on the three legatees, K, G, and B, who thus became entitled to one-ninth share each in the business as tenants-in-common."

18. It was further held (headnote) :

"As a result of the will and by virtue of the release deed executed by G on September 11, 1961, as regards G's one-third share in the business, K and B each became entitled to one-sixth share in his or her own individual separate right and not as a member of the Hindu undivided family and they must be assessed as such in their separate individual capacity regarding their one-sixth share of income from that business."

As regards the two-thirds share in the family business belonging to the joint family of K and B after the death of S, unless a partition takes place, among the

coparceners of a family, a female member of a joint family cannot get a share equivalent to that of a son in the family properties; the female member has no right to demand a partition or to get a share in her own right. It follows that K herself had no right to demand a partition or to get a share on partition equivalent to that of a son when a partition was purported to be effected between herself and B, recorded in the document of September 11, 1961. It was not open to K in her capacity as guardian of B to effect a partition between herself and B. Since there was no other coparcener in this Hindu undivided family, there was no question of a partition by metes and bounds being affected and least of all could K get a share on such a partition. Therefore, the partition effected by the document of September 11, 1961, was not effective in law. After that date, the Hindu undivided family consisting of K and B continued to have two-thirds interest in the joint family business....."

19. The aforesaid observations of this court are based on the peculiar facts which arose for consideration of this court in *Income Tax OFFICER, SHILLONG, AND OTHER Vs. HUBERT OSRICK UNGER.*, . It is pertinent to note that by a document dated September 11, 1961, Kalavati purported to effect partition of her joint family properties and the said partition was sought to be effected between Kalavati and her son, Bhadrakumar, who was the sole male coparcener. By her own violation, Kalavati could not have effected such partition as per the settled legal position. But such is not the case in the present proceedings. In the present proceedings, the deceased, Kevalbai, had not purported to effect any partition during her lifetime vis-a-vis Kiritkumar, the sole surviving coparcener. Here, we are concerned with an entirely different situation wherein by operation of the statutory provision, we are required to find out the share which the deceased, Kevalbai, had in the joint family properties, firstly, on account of her husband's death who had left joint family property and which vested in Kevalbai as limited estate by virtue of ss. 3 (2) and 3 (3) of the Hindu Women's Rights to Property Act, 1937, and, secondly, when this limited interest got enlarged in 1956, by operation of s. 14 of the Hindu Succession Act. To work out the exact extent of the undivided interest of Kevalbai in the joint family property, the question of effecting notional partition would assume importance and in considering such a question, inhibition against Hindu female herself demanding partition vis-a-vis the surviving coparcener can never be pressed into service. In fact, this is entirely a different situation wherein notional partition has to be effected as per the statutory requirements of the relevant provisions of the aforesaid Acts. It is further interesting to note that even in *Income Tax OFFICER, SHILLONG, AND OTHER Vs. HUBERT OSRICK UNGER.*, itself, the theory of notional partition had to be pressed into service while ascertaining the shares of different heirs, Kalavati, Gautamkumar and Bhadrakumar vis-a-vis Shantikumar at the time when Shantikumar died and for that purpose, the provisions of s. 6 of the Hindu Succession Act were required to be resorted to.

20. Under these circumstances, it is not possible to accept the contention of Mr. Patel that the ratio of the decision of this court in *Income Tax OFFICER,*

SHILLONG, AND OTHER Vs. HUBERT OSRICK UNGER., would apply to the present case. In fact, the decisions of this court in Suketu Jayantilal Shah [1975] 100 ITR 439 as well as Goswami Vrajraji Ranchhodlalji Maharaj Vs. Controller of Estate Duty, Gujarat-I, squarely apply to the facts of the present case and the decision of this court in Shantikumar's case, which was rendered in the context of an entirely different set of facts, cannot be pressed into service on behalf of the accountable person.

21. As a result of the aforesaid discussion, the conclusion is inevitable that Smt. Kevalbai Tribhovandas Shah had left one-half undivided share in the joint family property at the time of her death and the said share was liable to pass under the appropriate provisions of the E. D. Act and, hence, the question referred to us for our consideration has to be answered in the affirmative, that is, against the accountable person and in favour of the revenue. The accountable person shall pay the costs of this reference to the Controller. Orders accordingly.

22. Mr. Patel, learned advocate appearing for the accountable person, at this stage applies orally, under s. 65 of the E. D. Act, for a certificate for leave to appeal to the Supreme Court. While deciding the present case, we have relied upon the earlier decisions of this court in Suketu Jayantilal's case [1975] 100 ITR 439 as well as Goswami Vrajraji Ranchhodlalji Maharaj Vs. Controller of Estate Duty, Gujarat-I, . In both these decisions, we have granted leave to appeal to the Supreme Court to the concerned accountable persons. As the question involved in this case is also a substantial question of law, we grant such a certificate and certify that this is a fit case for appeal to the Supreme Court.