

(1981) 04 MAD CK 0044

In the Madras High Court

Case No : Tax Case No"s. 823 and 824 of 1976 (Reference No"s. 687 and 688 of 1976)

Satyendra Kumar

APPELLANT

Vs

Commissioner of Income Tax, Madras

RESPONDENT

Date of Decision : 01-04-1981

Acts Referred:

Citation : (1981) 24 CTR 28 : (1983) 140 ITR 840

Hon'ble Judges : V. Ramaswami, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K. Ramgopal, for the Appellant; J. Jayaraman, for the Respondent

Judgement

Balasubrahmanyam, J.—The assessee in theses Income Tax references is one Satyendra Kumar, son of Appa Rao. Shyamalambal is the mother of Appa Rao and the paternal grandmother of the assessee. This lady had funds of her own. She gave these funds to Appa Rao with the intention that they should be used for the benefit of the entire family. With the funds thus entered into various other transactions. In course of time, Appa Rao acquired properties in his name as well as in the names of others, utilising the money derived from the business and from properties acquired therefrom. After some time, disputes arose in the family as to these properties and businesses. The disputes were referred to the arbitration of two members of the Madras bar named as joint arbitrators. The arbitrators gave their award on June 9, 1955. The award was filed in this court and a decree in terms of the award was passed by Balakrishna Iyer J., by his order dated December 19, 1956, in O.P.No. 202 of 1956. Under the terms of the award as entered in the decree, the properties which were acquired with the funds provided by Shyamalambal to Appa Rao were divided by metes and bounds and allotted to all the individual members of the family. Under the scheme of division the assessee got as and for his share 60 acres of land in Kollur Village, Ponneri Taluk, and a plot of vacant land in the City of Madras at Vepery. The assessee is married and has got children.

2. On the facts aforesaid, the question arose in the assessments of the assessee for 1968-69 and 1969-70 whether the assessee had to be dealt with as an individual or as the karta of an HUF in respect of the income from his properties and business. The ITO took the view that although the assessee got a share of properties on a partition effected by arbitrators under an award which was made into a decree of court, the properties divided and allotted under that award could not be held to be joint family properties. The officer was prepared to concede to some extent, that the properties were jointly acquired by Appa Rao, the assessee and Appa Rao's other sons, but, in his opinion, that would only make them joint properties and not joint family properties, so that on partition what the assessee got for his share was only his own separate property. The ITO accordingly assessed the assessee in the status of an individual.

3. On appeal by the assessee, the AAC posed the question whether the funds emanating from a female member could, in law, form the nucleus of joint family property, and answered the point against the assessee. He regarded the partition of the properties under the arbitration award in this case as a disposition of the properties of Appa Rao to the other members of his family who had no inherent right of partition over those properties.

4. On further appeal, the Appellate Tribunal agreed with the view that a property which belongs to a female member cannot be considered as capable of providing any nucleus for properties to become properties of an HUF. The Tribunal, accordingly, held that what Appa Rao got from his mother was his self-acquisition and since he did not at any time make any declaration to treat as joint family property either the funds given by his mother or the properties acquired therefrom, those properties cannot be held to be the properties of the joint family of Appa Rao and his sons. In this view, the Tribunal held that the division of the properties under the arbitrators' award cannot be regarded as a partition of the joint family properties. On the basis of these reasoning, the Tribunal declined to treat the assessee as an HUF for purposes of assessment.

5. In this reference made by the Tribunal, at the assessee's instance, the point in controversy is focussed in the following question:

"Whether, on the facts and in the circumstances of the case, the status of the assessee was rightly determined as individual for the assessment year 1968-69 and 1969-70 ?"

6. The question, in our judgment, is easily answered once the character of the funds given by Shyamalambal to Appa Rao gets correctly determined. On this aspect of the case bearing on the original source of properties, we must straightway reject the notion which the AAC and the Tribunal had entertained, that property proceeding from a female can never form the nucleus of joint family property under the law of Mitakshara. To hold that view would be to hold that ancestral property alone can be joint family property. The position under the Mitakshara is, however, not so, for, property can be joint family property in other

ways too, such instance, as when it is acquired by joint labour of the family members or where it comes as a gift too the family as a whole. It is now well settled that there can be a gift or settlement of property for the benefit of a joint family as such. When this is the position, it matters not whether the giver is a male or a female, whether he or she is a member of the family or an outsider. What matters is the intention of the donor that the perty given is for the benefit of the family as a whole. It is, therefore, a mistake to suppose that property given by a female cannot be the nucleus of a joint family property.

7. The legal position is summed up in the following passage in Mayne's Hindu Law, 11th Edn., as follows:

"Property may be joint property without having been ancestral. Where the members of a joint family acquire property by or with the assistance of joint funds or by their joint labour or in their joint business or by a gift or a grant made to them as a joint family, such property is the coparcenary property of the persons who have acquired it, whether it is an increment to ancestral property, or whether it has arisen without any nucleus of ancestral property, or whether it has arisen without any nucleus of ancestral property. And it makes no difference that the form of the conveyance to them would make them tenants-in- common and not joint tenants. For the formation of a coparcenary under Hindu law, a nucleus of property which has come down to the father from his father, grandfather or great grandfather is not necessary, provided the persons constituting stand i the relation of father and son or any other relationship requisite for a coparcenary."

8. In another passage in Mayne's Hindu Law, this point is discussed from another angle as under:

"The principle of joint tenancy is unknown to Hindu law except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law. The question, therefore, whether members of a joint family hold property comprised in a gift or bequest to them as tenants-in-common or as members of a joint family depends on the intention of the donor or the testator as expressed in the grant or the will."

9. The question in this case, therefore, is to be decided by getting at the intention of Shyamalambal when she made a gift of funds to Appa Rao, the assessee's father. The ITO and the AAC had not adverted to this aspect of intention in their discussions of this question. The Tribunal referred to the award of the arbitrators and other related facts, but misconstrued the intention when they observed that "everyone understood it to be individual property".

10. The order passed by Balakrishna Iyer J., in O.P.No. 202 of 1956, A. Appa Rao v. K. Satyanarayan, under which the arbitrators' award was passed into a decree, is exhibited as part of the case stated. The order contains the following brief narration of the findings of the arbitrators:

"There is clear evidence that Srimathi K. Syamalambal, wife of K. Satyanarayan, had funds of her own and with the clear intention of benefiting the family as a whole she provided funds to K. Appa Rao and with the assistance of the money also advanced and keeping the said moneys a nucleus. K. Appa Rao did business and also entered into various transactions as a result of which various properties came to be acquired by him either in his name or in the names of others... At no time K. Appa Rao intended to hold the property as his own self-acquired property but acting always under the guidance and help of the senior most member of the family, K. Satyanarayana, he did various transactions which were clearly intended for the benefit of the entire family."

11. The arbitrators awarded partition of the properties only on the basis aforesaid, and it was on that basis, their award was passed by this court into a decree. In the face of the clear finding in the award that Shyamalambal gave the funds to Appa Rao, not for his individual use or appropriation, but for the benefit of the family as a whole, there can be no mistaking the real character of the funds in the hands of Appa Rao. That Appa Rao accepted the funds on those terms and on no other, is also clear from the fact that right from the beginning, he had been disclaiming any separate dominion, not only over the funds provided by his mother but also from the other acquisitions he made by exploiting those funds. The Tribunal had expressed the view in one part of their order that Appa Rao's attitude in disclaiming any separate interest in the properties, was only a "negative" virtue. May be it was, but that is sufficient for the purposes of the law. Even for throwing a coparcener's separate property into the joint family hotchpot, no positive declaration from that member disclaims his separate dominion over his self-acquired property. No doubt, the present case is not one where what was initially the separate property of a member subsequently got clothed with the character of joint family property either by a declaration or by appropriate conduct on the member's part. For, here is a case where ab initio, at the very moment the property was acquired, it was so acquired as joint family property. Appa Rao was merely the hand which received the funds, but Shyamalambal who provided the funds made it perfectly clear that those funds were to be utilised only for the benefit of the family. It is, in this context, that Appa Rao disclaimed all exclusive title to the funds. His disclaimer, although negative in form, must be regarded as positive in content.

12. We have referred earlier to the view expressed by the ITO, in some fashion, that the properties partitioned under the award may be joint properties of the parties to the arbitration, but they cannot be joint family properties. We hold that there is no scope for the concept of joint property in this case. The Gift of funds by Shyamalambal was by no means a gift to the joint donees. It was, in form, a gift to Appa Rao alone. What made it a gift to the joint family as such was the intention with which the gift was surcharged. When once this intention is conceded, as it must be, the presence of a basic nucleus of joint family property is thereby established. It is common ground that the other properties which were subjected to division under the arbitrators' award only grew out of the initial

nucleus provided by Shyamalambal's transfer of funds in the name of Appa Rao. This is also made clear by the findings of the arbitrators, as summarised in the order of this court in O.P.No. 202 of 1956.

13. Mrs. Nalini Chidambaram, learned junior standing counsel for the I.T. Dept., however, submitted that the provision of funds by Shyamalambal to the joint family can by no means be regarded as equivalent to the act of throwing into the hotchpot of the separate property of a coparcener. Learned counsel submitted that the process of conversion of separate property into joint family property by this means, is only available to a coparcener in a Mitakshara Joint family, and not to a female member, who is not strictly a coparcener. She, accordingly, submitted that the initial transfer of funds by Shyamalambal cannot had the effect of rendering the funds transferred to be the nucleus of joint family property to which the subsequent acquisitions could be traced so as to make them all a joint family estate. Learned counsel relied on Commissioner of Income Tax, Mysore Vs. Sita Bhateja, . In that case the Mysore High court expressed the view that the right to throw self-acquired property into the family hotchpot was available only to a coparcener, and not to a female member of a joint family. The assessee, in the case before that court, was a female member of a joint family. On a question which arose in connection with her assessment, the court held that she cannot ask the I.T. authorities to treat her own separate property as joint family property merely because she had purported to throw that property in the joint family hotchpot.

14. In so far as the Mysore High Court held that a female member of a Mitakshara family cannot purport to throw her own separate property into the joint family hotchpot as a means of converting her own separate property into the property of the joint family property, the decision is unexceptionable, for, such a process is available only to coparceners. However, the particular conclusion which the Mysore High Court derived from this proposition of Hindu law in deciding that case does not seem to be in accord with a subsequent decision of the supreme court in Pushpa Devi Vs. Commissioner of Income Tax, New Delhi, . In the case before the Supreme Court, a female member of a HUF was a partner in a partnership firm. She made a sworn declaration declaring her intention to treat both her capital and her share in partnership which were her absolute property, as joint family property of the HUF. The question was whether subsequent to her declaration the share of profits from the firm was her individual income or income of HUF. On a reference of this question, the High Court held that the share income from the firm continued to be the income of this lady, since the right of blending of separate property with family property could only be exercised by a coparcener, and the assessee in that case, although a member of the joint family, was not a coparcener and, hence, she could not throw her separate property into the joint family hotchpot. The Supreme Court, however disagreed with the conclusion of the High Court, after calling for a supplementary statement of the case. They held that although the right to blend separate property with the joint family property was granted by the law only to

coparceners, and female members of joint families could not blend their separate property in this fashion, yet, the declaration made by the assessee in that case must be taken to be gift of the properties mentioned in that declaration in favour of the HUF. What failed as blending might yet take effect as a gift. In that view, the Supreme Court held that the share in the partnership must be assessed, subsequent to the gift, as that of the joint family.

15. As we indicated earlier, the Supreme Court's decision may be regarded as impliedly overruling the basis of the conclusion of the Mysore High Court in Commissioner of Income Tax, Mysore Vs. Sita Bhateja, . But the decision of the Supreme court is also an illustration of the position under the Hindu law that there can very well be a gift of property in favour of an HUF as such, and a female member of a family is not disentitled from making such a gift beneficial to the family in its entirety, merely because she happens to be a member thereof. In such a case, if the intention were clear, the gift would be regarded as a gift to the joint family as such and not merely to the collection of individuals, who happen to make up the joint family at the moment of the gift. If the property thus becomes the property of the joint family, it is susceptible to all the incidents of coparcenary property thereafter, including such incidents as right by birth, right to partition, the amenability of the property to constitute itself as a nucleus for further acquisitions to the joint family estate and the like.

16. Having regard to the legal position, which we have summarized above, and on a plain reading of the order of this court in O.P.No. 202 of 1956, we are satisfied that the funds which Shyamalambal gave to Appa Rao was joint family property even at its inception. It follows that the other properties which Appa Rao acquired with those funds also partook of the character of the properties belonging to the joint family. The partition under the arbitrators' award was thus a partition of joint family properties.

17. That any property allotted in a Mitakshara partition to a divided member of the family is joint family property in his hands can admit of no doubt whatever. Hence, in so far as the assessee was holding the properties allotted to him under the partition award of the arbitrators, he must accordingly be held to be holding those properties as the karta of an undivided family consisting of himself, his wife and his children. We, therefore, answer the question of law in this reference in the negative and in favour of the assessee. The result is that the assessee must be assessed only in the status of an HUF.

18. We must, however, utter a note of caution that our answer to the question of law would not have the effect of burking further investigation into the real character of the properties and businesses held by the assessee, item by item, with a view to see what they really are, whether they are joint family properties or separate properties. But so far as the question in this reference is concerned, addressing ourselves only to those properties which were allotted to the assessee under the arbitration award and to those acquired with the aid of, or to the detriment of, those properties, the assessee can be assessed to Income Tax only

in the status of an HUF.

19. The result is that this reference is answered in the assessee's favour. The assessee in these tax cases will be entitled to his costs. Counsel fee, Rs. 500 (one set).