
(1998) 02 MAD CK 0181
In the Madras High Court
Case No : Tax Case No. 429 of 1984

SMT. K.N. SITA

APPELLANT

Vs

CONTROLLER OF ESTATE DUTY

RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Citation : (1999) 153 CTR 494

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Full Bench

Advocate : R. Meenakshisundaramfor Mahalingam and Rebello, Ralan, C. V, for the appearing parties;

Judgement

R. JAYASHWHA BABU, J.

The question of law referred to us at the instance of the Revenue under the ED Act in respect of the estate of late P.S.K. Moorthy, who died on 7th Aug., 1976 leaving behind him his widow Smt. K.N. Sita, and an unmarried daughter, Miss Saroja, is "Whether the Tribunal was right in law in confirming the rejection of the appellant's claim for deduction of a sum of Rs. 1,00,000 being the charge of the maintenance of wife and daughter and the provision for marriage expenses of the unmarried daughter in computing the value of estate for the purpose of Estate Duty ?

2. The Asstt. CED (I) had rejected this claim by the accountable person on the ground that the same has not been provided for under the ED Act. That rejection was confirmed by the ACED, who during the course of his order referred to the Hindu Succession Act and the decision of the Andhra Pradesh High Court in the case of Controller of Estate Duty Vs. Smt. P. Leelavathamma, . It was held by the ACED that the wife and the daughter can have such a right only after initiating proper proceedings and obtaining a decree and the claim for maintenance is not a charge or encumbrance on the assets of the deceased. The" Tribunal upheld the view of the Asstt. CED and ACED. The Tribunal has considered the authorities

on which the assessee has relied before us. The Tribunal referred to the decision of this Court in the case of Karuppana Gounder & Anr. vs. Chinna Nachammal & Ors. AIR 1974 Mad 329 wherein it was held that the unmarried daughter is not entitled to any separate claim for marriage expenses as she has received her share in the family property.

3. Learned counsel for the accountable person, however, placed reliance on the decision of this Court in the case of Controller of Estate Duty, Madras Vs. B. Kamalamma, and in support of his contention that even if no amount can be claimed as deduction for maintenance of the widow, the marriage expenses of the daughter can be claimed. In that case of CED vs. Dr. B. Kamalanuna (supra) this Court observed as under:-

"The Hindu Adoptions and Maintenance Act, 1956, provides, inter alia, for the obligation of a Hindu father to perform, and spend for, the marriage of his unmarried daughter. The liability, however, is not declared by the Act to be an automatic charge on the father's property in every case. The relevant provision in s. 27 of the Act lays down that the liability can be enforced against the father's estate after his death only if a specific charge in that regard has been created either under his will, or under an agreement binding on him, or under a Court decree. These statutory provisions, however, do not affect the daughter's independent right under her personal law to render ancestral property liable for her maintenance and marriage".

4. That decision was considered by another Division Bench of this Court which included one of the learned judges who decided that case, in the case of G. Shenbagammal vs. CED (1986) 55 CTR (Mad) 368. (1987) 162 ITR 445. Dealing with the earlier decision, the Court observed as under:

"We are of the view that the obligation of the father to perform and spend for the marriage of his unmarried daughter and his obligation to maintain his wife, now statutorily provided for under s. 19(1) of the Act and other provisions, cannot be viewed on the same footing. The decision relied on was rendered on the basis that the provision for the marriage of a daughter of the deceased can be allowed as a deduction in the computation of the principal value of the estate of the deceased, as it is a debt for which the law imposes a liability on the ancestral properties, which the deceased died possessed of. A claim for deduction from the dutiable estate of the right of maintenance, as we have in this case, governed by the statutory provisions, referred to earlier, was not considered there. Besides, in that decision, the liability to provide for the marriage expenses of an unmarried daughter was characterised as one referable to an imposition in that regard by the Hindu law. However, under s. 2(1)(v) of the Act, an unmarried daughter, so long as she remains unmarried, would be a dependant and the expression "maintenance" with reference to her would include reasonable expenses of and incidental to her marriage, by reason of s. 3(b)(ii) of the Act, and if she had obtained a share in the estate of her father under s. 8 of the Hindu Succession Act, 1956, the operation of s. 22(2) of the Act cannot be excluded. We find that

this aspect has not been adverted to".

The decision in Controller of Estate Duty, Madras Vs. B. Kamalamma, cannot be of any assistance to the applicant, as that decision, as pointed out by the later Division Bench, was rendered without adverting to all the relevant statutory provisions, and the right of a daughter to claim maintenance which is a statutory right would include the right of reasonable marriage expenses and such a claim under the Act can be enforced and it is only after a charge is created by the award of maintenance that the estate can be said to be encumbered. The view of the later Division Bench is amply supported by another decision of this Court in the case of Karuppana Gounder & Anr. vs. Chinna Nachammal & Ors. (supra) wherein it was specifically held that the claim for maintenance would take in the reasonable expense for the marriage of the unmarried daughter, and such a claim has to be worked out in terms of the Act. The Division Bench held that the textual Hindu Law cannot be invoked at all. That judgment apparently had not been brought to the notice of the Court which decided the case of CED vs. Dr. B. Kamalamma (supra).

5. In so far as the claim of the widow and of the unmarried daughter of the deceased for maintenance is concerned, such a claim normally cannot be regarded as encumbrance. The Supreme Court in the case of P. Leelavathamma (Smt) Vs. Controller of Estate Duty, Andhra Pradesh, Hyderabad, has held that the amount attributable to the value of the maintenance to the wife was not deductible in computing the net principal value of the estate passing on the death of the deceased, in the absence of any evidence to show that the estate of the deceased was burdened with any debt or encumbrance by reason of the failure of the deceased to act up to his statutory obligation. What was said about the widow" applies with equal force to the claim of the daughter for maintenance. Admittedly no charge had been created on the assets of the deceased. The answer to the question of law that has been referred to us, therefore, is that the Tribunal was right in law in confirming the rejection of the appellant's claim for deduction of a sum of Rs. 1,00,000 as charge of maintenance of wife and unmarried daughter and the provision for marriage expenses of the unmarried daughter in computing the value of estate for the purpose of Estate Duty. The Revenue is entitled to costs in the sum of Rs. 500.