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(1998) 02 MAD CK 0162

In the Madras High Court

Case No : Tax Case No. 429 of 1984 (Reference No. 378 of 1984)

Smt. K.N. Sita APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Estate Duty Act, 1953 — Section 19(1), 21, 22(2), 27, 3
Hindu Succession Act, 1956 — Section 8

Citation : (1999) 239 ITR 108

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

Bench : Division Bench

Advocate : R. Meenakshisundaram, for Mahalingam and Rabello, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question of law referred to us at the instance of the Revenue under the Estate Duty Act, in respect of the estate

of the late P.S.K. Moorthy, who died on August 7, 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 applicant''s claim for deduction of a sum of Rs. 1,00,000 being the charge

of the maintenance of wife and daughters and the provision for marriage expenses of the unmarried daughters in computing the value of estate for

the purpose of the estate duty ?

2. The Assistant Controller of Estate Duty (I) had rejected this claim by the accountable person on the ground that the same has not been provided

for under the Estate Duty Act, That rejection was confirmed by the Appellate Controller of Estate Duty, who during the course of his order

referred to the Hindu Succession Act, and the decision of the Andhra Pradesh

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High Court in the case of Controller of Estate Duty Vs. Smt. P.

Leelavathamma, . It was held by the Appellate Controller 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 Assistant and Appellate Controller. 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 and Another Vs. Chinna Nachammal and Others, , 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 the case of Controller of Estate Duty, Madras Vs. B. Kamalamma, , this court observed

as under (page 437) :

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 Section 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. Controller of Estate Duty, . Dealing with the earlier decision, the court observed as under (page 450) :

We are of the view that the obligation of the father to perform and spend for the

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marriage of his unmarried daughter and his obligation to maintain

his wife, now statutorily provided for u/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, u/s 21(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 Section 3(b)(ii) of the Act, and if she had obtained a share in the estate of her

father u/s 8 of the Hindu Succession Act, 1956, the operation of Section 22(2) of the Act cannot be excluded. We find that this aspect has not

been adverted to"".

5. 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 and Another Vs. Chinna Nachammal and Others, ,

wherein it was specifically held that the claim for maintenance would take in the reason able expenses 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

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decided the case of Controller of Estate Duty, Madras Vs. B.

Kamalamma, .

6. 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 an 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 of 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 incumbrance 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 applicant''s claim

for deduction of a sum of Rs. 1,00,000 as charge for maintenance of wife and unmarried daughter and the provision for marriage expenses of the

unmarried daughter in computing the value of the estate for the purpose of the estate duty. The Revenue is entitled to costs in the sum of Rs. 500.

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