

(1969) 03 MAD CK 0026

In the Madras High Court

Case No : Tax Case No. 215 of 1965 (Refd. No. 109)

Smt. Parvathi Ammal

APPELLANT

Vs

Controller of Estate Duty, Madras

RESPONDENT

Date of Decision : 04-03-1969

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : AIR 1970 Mad 117 : (1969) 74 ITR 200

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : S. Swaminathan and K. Ramagopal, for the Appellant; V. Balasubramaniam and J. Jayaraman, for the Respondent

Judgement

1. A property known as Mayavaram Lodge in Thiruchirapalli was included by the Revenue in the principal value of $\frac{1}{2}$ the estate, passing on the death of one R. Venkateswara Iyer on 6-4-1957. His widow, as the accountable person, excluded the property from the return, in view of the fact that by a deed dated 11-3-1955, the deceased had allotted the Mayavaram Lodge to his five sons in equal shares, retaining for himself the other house and certain agricultural lands. On 26-6-1955, the deceased entered into an agreement with his sons by which they leased to their father the Mayavaram Lodge, where, as before, he continued to carry on his boarding and lodging business, with only this difference, that the value of this property was written off from the account of the lodging and boarding business and the deceased started paying a rent of Rs. 15,000, per annum to his sons. The deed of 11-3-1955, ex facie, purported to be one of partition but the Revenue at all stages, being of the view that the Mayavaram Lodge was the self-acquisition of the deceased, took it to be a settlement and a

gift of the property to his sons. On the ground that the deceased was not excluded from possession and enjoyment of the property which was the subject-matter of the gift, the property was made liable to estate duty.

2. Another point which the revenue did not accept was that the partition did not amount to a gift. The question referred to us at the instance of the accountable person, is:

Whether on the facts and in the circumstances of the case, the entire value of the property known as "Mayavaram Lodge" or any portion of its

value is liable to be included in the principal value of the estate of the deceased as property deemed to have passed on his death?

Before us, an attempt has been made on behalf of the accountable person to show, but unsuccessfully, that, assuming the transaction amounted to

a gift, the subject-matter of it was exclusive of the deceased's right to continue in possession and enjoyment of the Mayavaram Lodge for the

purpose of running his business of lodging and boarding. In support of this view, Mr. Swaminathan has in his own way marshalled and looked at

the effect of the facts existing as on the date of the partition and immediately thereafter. He urges that having regard to them, the intention of the

deceased could not have been to denude himself of Mayavaram Lodge absolutely without excluding from it his right to be in possession and

enjoyment of it and run his business as long as he wanted. Counsel has also presented his point from another angle, namely, that in view of the

tenancy laws in force, the deceased had a right to continue in possession of the property as a tenant. What apparently is suggested by the tenancy

is the statutory protection afforded by such laws to tenants from eviction. The Central Board of Revenue in its stated case has made reference to

the partition deed of 11-3-1955 and we have ourselves looked into its terms. We are of the view that the subject-matter of allotment to the sons

by the partition deed was the entirety of Mayavaram Lodge with all the rights that could possibly go into it. Nowhere is there any stipulation in the

deed excluding from the scope of the allotment any aspect of any claim or right in or to the property. Great stress is laid by Mr. Swaminathan on

the fact the deceased never parted with possession except notionally of the property and that indicated the intention on his part to exclude his right

to continue in possession and enjoyment for the purpose of running the business from the scope of the allotment of the property to the sons. In fact,

the Central Board in its order has observed that the deceased continued to be in undisputed possession of the premises even after 11-3-1955. But

there is sufficient indication in the deed of that date, and the recital to that effect is clear evidence of the fact that the sons had assumed possession

and enjoyment of the entirety of the house. They should, thereafter, have allowed the father to continue in the premises and run his business. That

would also meet the contention that there was statutory protection any longer available to the deceased, once the sons were allowed to assume

possession of the property. Also, statutory protection can only be based on an antecedent tenancy which originally never existed.

3. We, however, agree with Mr. Swami-nathan that the applicability of Section 10 would necessarily depend on what is the subject-matter of the

gift. The operation of the section, as we understand it, is confined to the subject-matter of a gift and not extended to what is excluded from the

scope of the gift. But since we are of the view that the subject-matter of the allotment by the deceased was of the entirety of the property to his

sons, including the right to immediate possession and enjoyment, Section 10 is attracted. So then, the next step is to find whether by reason of non-

exclusion to any extent of the deceased from the property or reservation or accrual of benefit to him by contract or otherwise, there is pro tanto

passing on his death of the property. Mr. Swaminathan does not at this stage dispute that the deceased's sons assumed exclusive possession and

enjoyment of the property. But he says that at best for the Revenue it could only be stated that there was subsequent non-retention by the donees

and that by way non-exclusion of the deceased from possession and enjoyment of the property and passing on account of it should be limited to

that extent and it could go no further. Mr. Balasubramaniam has joined issue with it and contended for the Revenue that since the non-exclusion of

the deceased is total because he was allowed to continue in possession and enjoyment of the entire property, the whole of it would pass on his

death. The effect of this argument for the Revenue is to ignore the words ""to the extent"" in Section 10. The Revenue would say that these words do

not mean the quantum of interest that passes but only have the effect of ""if"" or ""where"". The precise argument was addressed to this Court in V.S.

Mani Vs. Controller of Estate Duty, Madras, , to which one of us was a party, but was repelled. It was there held-

We are of the view that the word "entirety" in the context refers only to the fractional part, the possession of which has not been taken or assumed

by the donee and retained to the exclusion of the donor. In the same case there was this earlier observation:

To the extent to which the donor retains an interest in the entirety of the property given away by him as gift, there will be pro tanto liability to estate

duty". Since we are accepting this view, there is no need to reiterate the reasoning set out in V.S. Mani Vs. Controller of Estate Duty, Madras, It

seems to us that Section 10 will have no application to the entire range of the subject-matter of a gift, for otherwise, as we think, it will not be a

case of a real gift at all. The subject-matter of a gift would invariably constitute a bundle of rights. If any one or more of the constituent rights come

within the mischief of the non-exclusion clause or there was a benefit to the donor in respect of it by contract or otherwise, such right or rights

alone pass and will attract duty. That we think is the effect of the words "to the extent" followed by the non-exclusion and benefit clauses. On this

view, we do not think it necessary to refer to the other cases cited before us on either side of the Bar,

4. Mayavaram Lodge was certainly a bundle of rights of which possession and enjoyment formed a part which, as we have observed, were not

subsequently to their assumption retained by the sons of the deceased. To that extent, there was non-exclusion of the deceased, So far as the

ownership of the property is concerned, there can be no question that the donees exclusively retained it. It follows that it is only the value of the

right to possession and enjoyment in the hands of the deceased as a lessee that would pass on his death and would attract duty. For the Revenue it

is urged that the entire premises being in the occupation and enjoyment of the deceased until his death, its entire value would pass. We are unable

to accede to this view, because it does not take note of the value of the other rights of the donees including the ownership of the property, which

they retained to the exclusion of the deceased. Since we have held that only to the extent of the non-exclusion mentioned, the proportionate

property referable to it would pass, it would be necessary for the Revenue to apportion its value taking all the facts into account and revise the

assessment.

5. That is sufficient to dispose of the reference. In view of this, we do not think it necessary to deal with the other point as to whether the

transaction of 11-3-1955, amounted to a gift. We have proceeded on the basis that it was a gift.

6. The question is answered partly in favour of the Revenue and partly in favour of the assessee. This is because, on the view we have expressed,

the Revenue cannot charge estate duty on the entire value of the property, while at the same time the accountable person cannot escape duty to the

extent of the non-exclusion we have indicated. There will be no order as to costs.

We have no doubt that before the Board of Revenue fixing the value of the interest covered by the non-exclusion clause, the accountable person

will be given an opportunity of putting forward her case.