
(1967) 08 CAL CK 0028
In the Calcutta High Court
Case No : Estate Duty Matter No. 375 of 1962

Smt. Radha Devi Saraogi

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 01-08-1967

Acts Referred:

Estate Duty Act, 1953 — Section 14(1), 39, 64(1)
Insurance Act, 1938 — Section 38(5)

Citation : (1968) 38 CompCas 314 : 72 CWN 696 : (1969) 2 ILR (Cal) 70 :
(1968) 68 ITR 521

Hon'ble Judges : K.L. Roy, J; Banerjee, J

Bench : Division Bench

Advocate : D. Pal and chhaochharia, for the Appellant; B.L. Pal and D. Gupta,
for the Respondent

Judgement

Banerjee, J.—This reference, u/s 64(1) of the Estate Duty Act, 1953, has been made in the circumstances hereinafter stated.

2. One Ramjiwan Saraogi died on July 13, 1955. He was, at all material times, the karta of Hindu undivided family consisting of himself, his wife and two minor sons. The share of the deceased, in the undivided family, was, as such, only one-fourth. During the lifetime of the deceased, he effected a number of insurances on his own life. All the policies were, it is said, assigned by the deceased in favour of his wife. The total amount receivable under the said policies was Rs. 2,01,036.

3. In computing the principal value of the estate, for the purpose of assessment of estate duty, the question arose whether the insurance money, amounting to Rs. 2,01,036, should be treated as the absolute property of the deceased or the property of the Hindu undivided family, of which the deceased was the karta. The widow of the deceased, Sm. Radha Debi Saraogi, who is the accountable person, contended that the said sum of Rs. 2,01,036 should be treated as the property of the Hindu undivided family and the one-fourth share of the deceased therein

should only be included in the principal value of the estate. The Assistant Controller of Estate Duty, Jamshedpur, who was the assessing authority in this case, rejected the contention put forward by the accountable person, held that the money receivable under the insurances was the individual property of the deceased and assessed the same to duty. The reasons which weighed with the Assistant Controller were :

" It is not disputed that the premium was paid out of the books of account of the Hindu undivided family. The Hindu undivided family used to debit these payments to its profit and loss account. It is obvious that the Hindu undivided family treated these payments as gift to Shri Saraogi for his personal benefit and use. He did not treat these payments as spent for acquiring an asset for the Hindu undivided family ; otherwise it would have found place in the balance-sheet and not written off every year.

Insurance policies are altogether on different footing than other assets. If assets are acquired in the name of a member of the Hindu undivided family, out of the funds belonging to the Hindu undivided family, then generally these assets will form part of the estate of the Hindu undivided family to which the particular individual belongs. Moneys realised on account of insurance policies, however, will in no circumstances, form part of the estate of the Hindu undivided family. They are entirely connected and dependent upon the life of the individual.....This is the basic difference.

The individual is the absolute owner of the policies. Insurance companies recognise him as such. He can nominate anybody he likes. The nominee can even be an outsider. He can even change the former nomination. He can raise loans on those policies. The policies are thus his absolute property and can be disposed of by him in any manner he likes.....

The accountable person's contention that the policies were irrevocably assigned has not been found to be correct. References were made to the various companies and it was ascertained that Smt. Radha Devi, wife of the deceased, was merely a beneficiary and the deceased had full control over the policies till the date of his death.

One point is also to be noted in this connection. The way in which the deceased has nominated his wife clearly shows that he treated those policies as his personal property. The deceased had two sons who were coparceners in the Hindu undivided family with him. They were not made nominees nor was the lady made nominee as their guardian."

4. Dissatisfied with the order, the accountable person preferred an appeal before the Central Board of Revenue, to which the appeal lay under the law as it then stood. The Board of Revenue upheld the order of the Assistant Controller with the following observations :

" It is admitted that the deceased was a karta of a joint Hindu family and the

policies were all taken in the name of the deceased. It is also admitted that the premia in respect of the policies were paid from the moneys which belonged to the Hindu undivided family business and that rebate u/s 15 of the Income Tax Act was allowed thereon in the Income Tax assessments of the Hindu undivided family. All the policies were assigned to Smt. Radha Devi, the appellant. It has been stated by the appellant that the life insurance premia were shown in the balance-sheet of the Hindu undivided family as an asset recoverable by the family. It is therefore contended that the deceased policy-holder was merely a trustee for the joint family. On going through the records. I find that the statement that the insurance premia were shown in the balance-sheet of the Hindu undivided family as an asset is not correct. The Income Tax assessment order for the assessment year 1953-54 shows that life insurance premia of 10, 180 had been debited to the expenses account and the amount was added back by the Income Tax Officer. The assessment order for the year 1954-55 similarly shows that a sum of Rs. 9, 182 on account of life insurance premia had been debited to the expense account. However, this does not affect the main contention of the appellant that the insurance policies were financed out of the funds which belong to the Hindu undivided family.

The general principle of Hindu law is that asset which has been acquired out of the funds of a joint family belong to the joint family. However, this position does not hold good in the case of moneys received under the insurance policies on the life of a member of the family."

5. In support of the above proposition the Board relied upon the decision of the Madras High Court in *Mattupalli Venkata Subbarao and Others Vs. Mattupalli Lakshminarasamma alias Hanumayamma and Others*, and an earlier decision of the Nagpur High Court in *Sugandhabai v. Kesarbhai* [1933] 3 Comp. Cas. 5 Ins. ; AIR 1932 Nag. 162. The Board further observed :

" Here in this case there is no positive evidence that the policies were taken for the benefit of the joint family. On the other hand the available evidence shows that it was otherwise. This view is borne out by the fact that the deceased had assigned all the insurance policies to his wife and there was no assignment in favour of the two minor sons. In the circumstances, it is clear that proceeds of the policies should be treated as the personal property of the deceased and not that of the Hindu undivided family."

6. In the above view, the Central Board of Revenue dismissed the appeal and affirmed the order of the Assistant Controller. Thereafter, on the prayer of the accountable person, the Board referred the following two questions of law, arising out of the order, to this court :

" (1) Whether, on the facts and in the circumstances of the case, the sum of Rs. 2,01,030 being the proceeds of insurance policies on the life of the deceased was rightly included in his estate as property deemed to pass on his death u/s 14 of the Estate Duty Act, 1953 ?

(2) If the answer to question No. (1) is in the negative, whether the said amount of Rs, 2,01,036 formed part of the assets of the Hindu joint family wherein the deceased had 1/4th interest as a coparcener which is liable to duty as property deemed to pass u/s 7 ? "

7. Before we proceed to consider the arguments of Dr. Pal, learned counsel for the accountable person, we need make one position clear. Under the Insurance Act, 1938, assignment of a policy stands on a footing different from nomination, by a policy-holder, of a person to whom the money secured by the policy should be paid in the event of the death of the policy-holder. Assignment is transfer of a policy. The consequences which follow, on assignment of are policy, a to be found in Sub-section (5) of Section 38 of the Insurance Act, which is set out below :

" Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in Sub-section (2), recognise the "transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings."

8. Nomination by a policy-holder is governed by the provisions of Section 39 of the Insurance Act. The nomination effects no transfer or assignment of the policy. It has merely the effect of nominating the person or persons to whom the money, secured by the policy, shall be paid in the event of the death of the policy-holder.

9. In the instant case, it was the contention of the accountable person that the policy had been " irrevocably assigned " to her by her deceased husband, the policy-holder. This contention was found to be factually incorrect by the Assistant Controller, who ascertained from evidence that the accountable person was merely the " beneficiary " and the deceased had full control over the policies till the date of his death. The effect of the finding of the Assistant Controller was that the accountable person was not an assignee but was merely a beneficiary (possibly meaning nominee of the deceased). The Board of Revenue, however, ignored that definite finding of the Assistant Controller and proceeded on the basis that all the policies had been assigned to the accountable person, by the deceased policy-holder, in the statement of case made to this court. It was stated as a fact that all the insurance policies had been assigned by the deceased in favour of his wife the accountable person. Now, but for the provisions of Sub-section (1) of Section 14 of the Estate Duty Act, a property which had been assigned would not pass on death. Sub-section (1) of Section 14, however, provides :

" Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether

nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured. "

10. The expression " keeping up a policy " connotes payment of the premium, which is the normal method of keeping up a policy. This involves generally periodical payments, and, though a single premium policy is not unknown, that would have the effect not so much as keeping up a policy as establishing its operation once for all (vide *Barclays Bank Ltd. v. Attorney-General* [1944] A.C. 372 ; [1942] 2 All E.R. 208; 2 E.D.C. 820 LW.

11. Therefore, proceeding on the basis that the policies had been assigned to the accountable person, as found by the Central Board of Revenue, and not on the basis of the contrary finding of the Assistant Controller that the accountable person had merely been made the " beneficiary ", we have merely to see how the policies had been " kept up ", that is to say, whether the policies had been kept up by the deceased for the benefit of the accountable person. If the policies had been kept up by the deceased," then whether the accountable person was an assignee or a nominee, in either event the surrender value of the policies would pass, on the death of the deceased, within the meaning of the Estate Duty Act.

12. We now turn to consider the arguments advanced by Dr. Pal in support of the reference. He submitted that property acquired out of the nucleus of joint family fund must be treated as part of the joint family property. Since all insurance premiums were paid out of the joint family fund, he submitted, the money receivable under the policies must be treated as joint family property and therein the deceased must be deemed to have had only an one-fourth share. He further submitted that the contrary view expressed by Rajamannar C.J. in *Venkatasubba Rao*'s case was either wrong or distinguishable on facts.

13. It is necessary for us, therefore, to examine the view expressed by Rajamannar C.J. in the case of *Venkatasubba Rao* in some detail. The facts of that case were that one Venkataratnam died on May 1, 1938. The plaintiff, as his widow, claimed a fourth share of the joint family properties, of which Venkataratnam was a member, under the Hindu Women's Right to Property Act. The properties in which she claimed a share included agricultural land, houses, movable properties and assets of family businesses. We need not refer to the disputes concerning the immovable properties. There was a preliminary decree passed in favour of the widow and also a decree for accounts, in her favour. As against the final decree for accounts, there was an appeal taken to the High Court and the dispute centered round certain items referred to in the judgment of the trial court as items of surcharge. One such surcharge was in respect of insurance policies taken in the names of certain members of the family including the deceased. In that context Rajamannar C.J. observed :

" From the evidence it is clear that the premia in respect of these policies were paid from and out of the joint family funds. But it is also clear that the joint

family accounts specify definitely the amount of the premia as relating to the policy effected by this or that coparcener. There seems to have been a separate Khata in which the amounts paid towards the premia for the several policies were separately entered. The first question which falls for decision as regards the amounts of these policies is : are the amounts of the policies joint property or do they form the separate property of the individual co-parcener concerned. There appears to be little direct authority on the question. From a common sense point of view, it is obvious that when one of the co-parceners insures his life he intends the benefit of the policy for his heirs and not for the other coparceners. The presumption, therefore, would be that the profits, if any, made by means of the policy would not be a joint family asset. The utmost that the other coparceners in equity can claim is that the assured should be debited with the premia which have been paid from joint family funds. "

14. His Lordship then discussed the case laws on the point, including the decision of the Nagpur High Court in *Sugandhabai v. Kesharbai*, and further observed :

"In our opinion, having regard to modern social conditions and the growth of individual consciousness in marked contrast to the more corporate outlook of an earlier day, the general presumption must be that when one of the members of a joint family insures his life, the amount of the policy belongs to the assured as his separate property and does not become a joint family asset. No doubt, if there is clear indication that the member did not intend to treat it as his separate asset, the position would be different. In a case where each of the several members of the family has taken a policy in his name, the presumption becomes stronger that the policies were not part of the joint family assets. The premia must be treated as amounts drawn by the individual members and they must be debited with those amounts."

15. In the view expressed, His Lordship decreed that the respective amounts of policies should be treated as the separate property of the respective assured and also held that they would be debited with the amount of premia paid towards their respective policies. Dr. Pal submitted that the proposition laid down by Rajamannar C.J. in *Venkatasubba Rao's* case was much too broad for acceptance as a legal proposition. In this context he relied upon a decision of the Supreme Court in *Smt. Parbati Kuer Vs. Sarangdhar Sinha and Others*, . What happened in that case was that one Ram Ran Vijay Sinha was a member of a Hindu coparcenary which owned extensive properties. While living in jointness Ram Ran Vijay Sinha took out three policies on his own life, each for 17,000, and also procured two policies, one each on the life of his two step brothers, with whom he lived in jointness, each for Rs. 25,000. There was no dispute that the premia of all the policies used to be paid out of the joint family funds but there was no material to show whether the amounts were treated as spent for the family or on account of the individual members in whose names the policies stood. On the death of Ram Ran Vijay Sinha, in 1936, one of his widows took out succession certificate, inter alia, in respect of the three insurance policies on the life of the

deceased, as if the same were the personal property of the deceased, but could not act on the grant on account of her inability to furnish security. Thereafter, the two step brothers of Ram Ran Vijay Sinha filed a suit against the widow and the daughters of the deceased, inter alia for a declaration that they were entitled to the monies., due under the insurance policies. The suit was opposed by the defendant. The trial judge decreed the other claim made by the plaintiffs but held that the insurance policies were the private property of Ram Ran Vijay Sinha and that his widow was entitled to succeed. Both the plaintiffs and the defendant appealed to the High Court. The High Court decided the entire suit in favour of the plaintiffs and held that the insurance policies also formed assets of the coparcenary to which the plaintiffs were entitled as survivors. Hence the defendant appealed to the Supreme Court and disputed the correctness of the judgment of the High Court only in respect of the insurance policies. Before the Supreme Court it was argued, as a matter of law, that the insurance policies must be placed in a separate category by themselves and that the proceeds from them must be treated as the individual property of those members on whose lives insurance policies were taken. In the context of that argument, the Supreme Court examined the observations of Rajamannar C.J. in Venkatasubba Rao's case to the effect that having regard to the modern social conditions and growth of individual consciousness the general presumption must be that when one of the members of a joint family insured his life the amount of the policy belonged to the assured as his separate property and observed :

"We need not decide whether such a broad proposition should be accepted as being in consonance with the rules of Hindu law... ".

16. Although of that view, the Supreme Court expressed the clear opinion :

"...that there is no presumption of law by which insurance policies must be regarded as the separate property of the coparceners on whose lives the insurance is affected by a coparcenary."

17. In the facts of that case the Supreme Court found that there were clear indications that none of the brothers intended to treat, as separate assets, the income from the insurance policies and on that finding dismissed the appeal.

18. Also in this context, Dr. Pal invited our attention to two further decisions of the Madras High Court, subsequent to the decision of that court in Venkatasubba Rao's case. In the first of the two cases, namely, in Karuppa Gounder and Others Vs. Palaniammal and Others, Srinivasan and Jagadisan JJ. observed :

" But where a coparcener has effected insurance upon his own life, though he might have received (paid ?) the premia from out of the funds which he might have received from the joint family, it does not follow that the joint family insured the life of the member or paid the premia in relation thereto. It is undeniable that a member of a coparcenary may with the moneys which he might receive from the coparcenary effect an insurance upon his own life for the benefit of the members of his immediate family. His intention to do so and to

keep the property as his separate property would be manifested if he makes a nomination in favour of his wife or children as the case may be. It would therefore appear that no general proposition can be advanced in the matter of insurance policy of a member of a coparcenary and that each case must be dealt with in accordance with the circumstances surrounding it."

19. The second case, on which Dr. Pal relied, was the case of Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras, in which Veeraswami and Kailasam JJ. considered the earlier decisions by the Madras High Court, in the light of the decision by the Supreme Court in Parbati Kuar's case and observed :

""The presumption based on the personal contractual relationship and the modern concept of society and economy and individual rights may not help where life insurance policies are taken out on the lives of the members of a coparcenary and are kept up, that is to say, the premiums therefore were paid out of joint family funds or to the detriment of the joint family assets. In such a case, the principles of Hindu law will have application with the result that whatever is acquired out of coparcenary property or to the detriment of the joint family assets will belong to the coparcenary or joint family. It is true that up to the year 1948, the deceased was the only surviving coparcener of his branch of the family after the partition from his brother in August, 1935, and his minor sons were born subsequent to 1948. But this can make no difference to the fact that the policies were kept up by payment out of joint family funds. The principle of Hindu law as stated by Mayne in his Treatise on Hindu Law and Usage (eleventh edition) is :

"All savings made out of ancestral property, and all purchases or profits made from the income or sale of ancestral property, would form part of the ancestral or coparcenary property, whether such savings or acquisitions were made before or after the birth of a son."

In our opinion, therefore, the life insurance policies are the property of the joint Hindu family consisting of the deceased and his two sons. "

20. On the authorities of the above decisions, Dr. Pal submitted that we should not follow the decision of the Madras High Court in Venkatasubba Rao's case or the decision of the Nagpur High Court in Sugandkabal's case namely, the two decisions relied on by the Central Board of Revenue, either because they should be treated as wrongly decided in the light of the decision of the Supreme Court in Parbati Kuar's case or because the type of the evidence on which the Madras High Court proceeded was absent in the instant case. We need not go so far as to hold that Venkatasubba Rao's case or Sugandhabai's case were wrongly decided. Even the Supreme Court, in Parbati Kuar's case, merely doubted the extreme proposition of Rajamannar C.J. that there was general presumption in the perspective of modern social conditions, that when one of the members of the joint family insured his life, the amount of the policy belonged to the assured as his separate property and did not form part of the joint family asset. The

Supreme Court held that there was no such presumption. Presumption being thus out of the way, it is to be established by evidence whether the insurance policies were taken out in the interest of the joint family or as separate asset of the assured member of the joint family. One of the tests, laid down by the Supreme Court, is to quote the language of the Supreme Court :

".....not whether Ram Ran Vijaya Sinha took out the policies for the benefit of his own family but whether he did so without detriment to the joint family funds. If it was the latter, then anything obtained with the joint family funds would belong to the joint family. "

21. The following facts appear from the judgment of the Central Board of Revenue.

(a) The deceased was the karta of the joint Hindu family consisting of himself, his wife and his two sons and the policies were all taken in the name of the deceased.

(b) Premia in respect of the policies were paid from the moneys which belonged to the joint family businesses.

(c) Rebate on premia was allowed, u/s 15 of the Income Tax Act, in the Income Tax assessment of the Hindu undivided family.

(d) It was not correct, as contended for by the accountable person, that the insurance premia were shown in the balance-sheet of the Hindu undivided family as an asset recoverable by the family and the deceased policy-holder was thus a trustee for the joint family, because the Income Tax assessment orders showed that the insurance premia had been debited to the expense account and the amount was added back by the Income Tax Officer.

(e) The insurance policies were assigned by the deceased to his widow, the accountable person.

22. Thus, there is evidence of payment of the premia for the insurance policies, by the deceased out of the joint family funds. There is no evidence that this payment was made to the deceased for his separate use out of the joint family funds. The entire evidence goes to show that the policies were taken in the name of the deceased to the detriment of the joint family funds and with the object of providing for the widow of the deceased, at the expense of the joint family. Income Tax rebate for the premia paid were claimed and obtained by the joint family. Thus the policies should be taken to belong to the joint family in which the deceased had only an one-fourth share.

23. We now turn to the effect of the assignment of the policies by the deceased to Radha Devi Saraogi, the accountable person. The Assistant Controller made enquiries from the insurance companies and found that the version of "irrevocable assignment" was a story and that Smt. Radha Devi Saraogi was merely a beneficiary and the deceased had full control over the policies till his

death. This categoric finding was ignored by the Central Board of Revenue but no reasons were assigned therefore.

24. Assuming, however, that there was an assignment, the policies were not kept up, within the meaning of Section 14(1) of the Estate Duty Act, by the deceased as an individual but, as the evidence shows, by the karta of a joint family, out of the joint family funds. Since the policies were not kept up by the deceased as an individual but as karta of a Hindu undivided family, Section 14(1) does not come into play and the amounts due under the policies were not properties that passed on his death excepting to the extent of his one-fourth share therein.

25. In the view that we take, we answer question No. 1 in the negative and in favour of the assessee. We answer question No. 2 in the affirmative and in the favour assessee.

26. The assessee is entitled to costs of this reference from the respondent.

K.L. Roy, J.

I agree.