

(1968) 11 AP CK 0014

In the Andhra Pradesh High Court

Case No : Case Referred No. 10 of 1965

Suggala Veera Raghaviah and Others

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 26-11-1968

Acts Referred:

Estate Duty Act, 1953 — Section 10, 9

Citation : (1969) 2 APLJ 312 : (1970) 75 ITR 714

Hon'ble Judges : P. Jaganmohan Reddy, C.J; Ramachandra Rao, J

Bench : Division Bench

Advocate : P. Ramachandra Reddy, for D.V. Sastry, for the Appellant; T. Ananta Babu, for the Respondent

Judgement

Ramachandra Rao, J.—Two questions have been referred by the Central Board of Direct Taxes for the decision of this court and the said questions are as follows :

"Whether, on the facts and in the circumstances of the case, the value of the properties mentioned in the deed dated July 15, 1951, had been correctly included in the estate of the deceased u/s 10 of the Estate Duty Act (hereinafter referred to as "the Act") ?

and

(2) Whether the value of the money lending business was rightly charged to estate duty u/s 9 of the Act? "

2. The brief facts relevant for the purpose of this case are as follows ;

3. The estate duty pertains to the estate of late Suggala Ramakrishniah, who died on 11th December, 1957. The three sons of the deceased are the accountable persons. The deceased started his life with a small property which was bequeathed to him under a will by his maternal uncle. The deceased subsequently acquired all the properties and money-lending business by his personal exertions. On the 15th July, 1951, a deed styled as a partition deed was

executed between the deceased and his three sons, dividing the agricultural holdings of the deceased into four portions, allotting one to himself and one share each to his three sons. Subsequently, a separate account was opened in the books of the money-lending business for each of the three sons and the income derived from the agricultural lands was being credited to their respective accounts. The money-lending business was also divided between the deceased and his three sons on October 4, 1957, and a document was drawn up for the said purpose. On November 10, 1957, the deceased executed a will whereby he bequeathed the property possessed by him to his three sons. A contention was raised before the Assistant Controller that the properties acquired by the deceased by his self exertions were impressed with the character of the joint family properties and the same were partitioned between himself and his three sons under the partition deed dated July 15, 1951. This contention was rejected by the Assistant Controller, who took the view that the said partition amounted to a gift. He also took the view that the income from these lands was credited to the individual account of the sons in the books of the money-lending business and that the same was available for use by the deceased and therefore, the provisions of Section 10 of the Act were attracted. With regard to the money-lending business the Assistant Controller held that the income from the money-lending business was shown as the individual income of the deceased till the time of his death and that the value of the money-lending business was chargeable to the estate duty u/s 9 of the Act. The accountable persons appealed to the Central Board of Direct Taxes, but the Board upheld the view taken by the Assistant Controller and held that both the lands and the money-lending business were correctly included in the estate under the provisions of Sections 10 and 9 of the Act, respectively.

4. Sri P. Ramachandra Reddy, learned counsel for the applicants, contends that both the authorities erred in holding the entire agricultural lands covered by the deed dated July 15, 1951, as forming part of the estate of the deceased. He submits that the partition itself took place on July 15, 1951, long before the Estate Duty Act came into force, that the said partition was acted upon and implemented by the parties thereto, that both the estate duty authorities did not refer to relevant and material documents, viz., the exchange deed dated May 13, 1955, and sale deed dated November 19, 1956, which have a bearing on the question for decision. He further submits that the recitals in the partition deed were not properly construed. Another submission made by him is that though originally the properties were acquired by the deceased by his own exertions, subsequently the said properties were thrown into the joint family hotchpot and became impressed with the character of the joint family property and that no particular formalities are required for conversion of self-acquired property into joint family property or for throwing the same into the hotchpot and that there is no transfer, of property involved in such conversion. He alternatively contends that, even assuming that the partition of the property amounted to a gift, it was not shown that the deceased retained any possession or enjoyment or derived

any benefit from the properties so gifted and that Section 10 of the Act was not attracted.

5. Sri T. Ananta Babu, the learned counsel for the revenue, on the other hand, contends that there was no positive declaration of intention by the deceased to convert his self-acquired property into joint family property and that even from the recitals of the partition deed, no such declaration could be gathered, but on the other hand the recitals go to show that the deceased treated the property only as his separate property, that his subsequent conduct disclosed that the deceased retained complete control over the entire property though the income was being credited to the sons which was being utilised by him, that the recitals in the Will also disclose that the deceased treated the property as his separate property and that there was sufficient material for the estate duty authorities coming to the finding that the shares given to the sons under the partition deed could only be by way of a gift. Sri Ananta Babu further contends that the act of conversion of separate property into joint family property or the act of throwing the separate property into the common hotchpot itself constitutes a gift as it involves a transfer of property and that the donor (the deceased) was not entirely excluded from the benefit of possession and enjoyment of the said properties.

6. The first question that arises for consideration, therefore, is, whether the lands which were the subject-matter of the partition deed dated July 15, 1951, were the self-acquired properties of the deceased, or whether they constituted joint family properties of the deceased and his sons.

7. This question depends mainly on the interpretation of the partition deed and the subsequent conduct of the parties in relation to the said properties. This partition deed was executed between the deceased and his three sons, the third son being a minor represented by the father as guardian. The relevant portion of the partition deed runs as follows:

"Amongst us party No. 1, Ramakrishniah, is the father of the rest of us. All our family property was the self-acquisition of party No. 1 amongst us. As Ramakrishniah, party No. 1 amongst us, has not been keeping good health for some time, and so according to his intention and wish, ail of us having wholeheartedly consented to this partition, we divided the property of the total value of Rs. 31,626-9-0 and allotted "A" scheduled property of the value of Rs. 6,367-3-0 to Ramakrishniah, party No. 1 amongst us, " B" scheduled property of the value of Rs. 10,734-6-0 to Subba Rao, party No. 2 amongst us, "C" scheduled property of the value of Rs. 3,653-0-0 to Veera Raghaviah, party No. 3 amongst us, and "D" scheduled property of the value of Rs. 10,871-14-0 to Lakshminarayana, party No. 4 amongst us, and we have already taken possession of the lands that have fallen to our respective shares. Hereafter, we shall enjoy the lands that have fallen to our respective shares absolutely for ever from son to grandson with full powers of gift, transfer sale etc. paying land revenue and other taxes due to the Government in respect of lands that have

fallen to our share separately."

8. The recital that " all our family property was the self-acquisition of party No. 1 amongst us " shows that deceased intended that the property previously acquired by him personally, should be treated as the property of the family. Otherwise he would not have described the property as family property and would have mentioned it as his self-acquired property only. The recital in Telugu, extracted below, brings out the intention of the testator more clearly.

9. The testator in this sentence was merely describing the character of the property at its inception and the subsequent treatment of the same by him as the family property. The further recital that the partition was effected with the consent of all the members is also indicative that at some time anterior to the execution of the deed of partition dated July 15, 1951, the father (the deceased) had expressed an unequivocal intention to treat his self-acquired property as the joint family property of himself and his sons. It is now well established that under Hindu law, a person might impress self-acquired property or separate property with joint family character. This may be achieved by throwing it into the hotchpot or blending it with the joint family property or by a mere declaration of an unequivocal intention to convert the separate or self-acquired property into joint family property and for such conversion no formalities whatsoever are required (vide Commissioner of Income Tax, Madras Vs. M.K. Stremann, Madras, and Sadasiva Vittal v. Rattalu 1957 2 An. W.R. 16 ; AIR 1958 A.P. 145).

10. Sri Ananta Babu, on the other hand, contends that the recital in the will shows that the testator intended to treat the property only as a separate property and that his subsequent conduct shows that he retained control over the properties and its income and that even in the will executed by the deceased on November 10, 1957, he referred to the property as having been given by him to his sons. We are not inclined to agree with the aforesaid submissions. As already mentioned, the language of the partition deed clearly shows an intention to treat his self-acquired property as joint family property. The subsequent conduct, far from showing any retention of control over the lands, shows that the parties implemented the partition in all its terms. Admittedly separate accounts were opened in the money-lending business for each of the three sons and the income received from their respective shares of the agricultural lands was being credited to their account, though the father was utilising the income for his money-lending business.

11. In this context Sri Ramachandra Reddi, the learned counsel for the applicants, contends that the Assistant Controller and the Central Board did not refer to certain crucial documents which were on record and which were brought to their notice. In the objects filed on January 21, 1960, by the applicants before the Assistant Controller, it was stated that in the year 1952, Suggala Veera Raghaviah, the second son of the deceased, exchanged some of his properties with V. Narayya and Venkata Pattabhi Rama Rao of Sonapalli, and that subsequently a deed was executed on May 30, 1955, and registered on

September 26, 1955, and a copy of the deed was also enclosed with the statement of objections. This exchange deed was also mentioned in the reference application dated January 29, 1963, filed by the applicants before the Board and the applicants prayed that this document also should be forwarded to the High Court. This reference application is marked as annexure "D" to the statement of the case submitted by the Board. In view of the fact that the exchange deed was filed before the Assistant Controller at the earliest point of time and that the same was also referred to in the reference application, the same can be treated as part of the record and the learned counsel for the revenue could not seriously object to the same. A copy of the exchange deed has been furnished to us. In this deed, there is a clear recital to the following effect :

"These lands were obtained by S. Veera Raghaviah at the time of partition with his brothers on July 15, 1951, and which is in his exclusive possession and enjoyment,"

12. From this document it could be inferred that subsequent to the partition deed dated July 15, 1951, each son was in separate possession and enjoyment of his share of the properties. It cannot, therefore, be said that the father retained complete control over the properties in spite of the partition.

13. Sri Ramachandra Reddy further sought to rely upon a sale deed dated November 19, 1956, executed by the second son, S. Veera Raghaviah, in favour of one V. Ramchandru, wherein he sold certain wet land which he got under the partition deed dated July 15, 1951. But this document does not appear to have been brought to the notice of the Assistant Controller or the Central Board at the time of making the assessment or hearing of the appeal. A reference is made to the document only in the reference application filed on January 29, 1963, subsequent to the disposal of the appeal by the Board. Hence the said document cannot be said to form part of the record and the same cannot, therefore, be considered at this stage. Even if this document is eschewed from consideration, we are satisfied that the recitals in the partition deed and the subsequent conduct evidenced by the exchange deed coupled with the fact that the monies realised from the agricultural lands were being credited to the separate accounts of the sons, sufficiently indicate that the property became the joint family property which was later on partitioned, and that the partition was fully implemented.

14. The submission of Sri T. Ananta Babu that the recitals in the will dated November 10, 1957, convey an impression that the father intended to give the properties only as a gift, cannot be accepted as, even in the will, the deceased clearly stated that all my family property was my self-acquisition". This recital is similar to the recital made in the partition deed itself. We cannot, therefore, cull out any intention from the recital in the will that the deceased intended to give his self-acquired properties only as a gift to his sons. In view of the aforesaid circumstances, it follows that the properties covered by the partition deed dated July 15, 1951, became impressed with the character of joint family property and

the sons got the properties as members of joint family and that the partition of the said properties would not constitute a gift. It is now well settled that a partition of joint family property does not constitute a transfer of property (see Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel,). Sri Ananta Babu, the learned counsel for the revenue, contends that, even though partition of joint family property may not amount to transfer, the very act of conversion of separate property into joint family property involves a transfer and constitutes a gift. In support of this proposition he relies upon a decision of a Division Bench of this court, consisting of Seshachalapati and Sambasiva Rao JJ. in G. V. Krishna Rao v. First Addl. Gift-tax Officer, Since reported in G. Krishna Rao and Others Vs. The First Additional Gift Tax Officer, Guntur, (unreported decision in W. P. No. 26/63 dated February 26, 1968). There, the Bench was mainly concerned with a case arising under the Gift-tax Act, and it was held that the expression "transfer of property" as defined in Clause (d) of Section 2(xxiv) of the Gift-tax Act was comprehensive enough to take in even a conversion of self-acquired property into joint family property. The decision rendered on the basis of the definitions contained in the Gift-tax Act cannot be made applicable to a case arising under the Estate Duty Act, where there are no definitions of the expressions "gift" or "transfer of property". The question whether the act of conversion of separate property into joint family property amounts to a transfer, has to be determined only on the principles of Hindu law and the provisions of the Transfer of Property Act.

15. In Sadasiva Vittal v. Rattalu 1957 2 A.W.R. 16 ; AIR 1958 A.P. 145 a Bench of this court held that no formalities are required for conversion of separate property into joint family property. The Madras High Court took the view in M.K. Stremann v. Commissioner of Income Tax 1961] 43 ITR 297 that impressing a separate property with the character of a joint family property, does not involve a transfer. This decision was taken in appeal to the Supreme Court in Commissioner of Income Tax, Madras Vs. M.K. Stremann, Madras, . Though this question was not decided by their Lordships of the Supreme Court there is no disapproval of the aforesaid proposition and their Lordships on the other hand proceeded on the footing that an unequivocal declaration was sufficient to constitute the separate property into joint family property. If a mere declaration is sufficient to convert separate property into joint family property, it does not involve a transfer within the meaning of the Transfer of Property Act.

16. Similar view was taken by a decision of the Kerala High Court in Controller of Estate Duty Vs. Arunachalam Chettiar,

17. However, it is unnecessary to express a final opinion on this question, as we are satisfied that even assuming that there was a transfer involved, the deceased did not retain possession or enjoyment of or derive any benefit from the properties partitioned so as to attract the provisions of Section 10 of the Act. The fact that the lands themselves were partitioned into separate shares and that the partition deed was fully implemented and each of the sons was dealing with the

properties separately and that the income was being credited to their separate accounts shows that the donor was completely excluded from possession or enjoyment of the said property. The fact that the monies were being utilised by the father for his money-lending business does not establish that the bona fide possession and enjoyment of the properties were not immediately assumed by the sons and retained to the entire exclusion of the donor. Therefore, the provisions of Section 10 of the Act are not applicable to the properties which had fallen to the shares of the applicants under the partition deed dated July 15, 1951. For the foregoing reasons, the answer to the first question is that the values of the properties which had fallen to the shares of the three sons (the applicants herein) under the partition deed dated July 15, 1951, were not includible in the estate of the deceased u/s 10 of the Act.

18. The second question referred relates to the money-lending business. It is admitted that the money-lending business was carried on by the deceased and that it was his individual business and the income was being utilised by the deceased himself. It was only on October 4, 1957, that the money-lending business was divided between the deceased and his three sons. Even in the Income Tax returns the deceased showed the income from his money-lending business as his individual income till the time of his death.

19. There is no material on record to establish that prior to October 4, 1957, the money-lending business was treated as joint family property. There is also no unequivocal declaration by the deceased impressing the said business with joint family character. In the document dated October 4, 1957, wherein the money-lending business was divided, the deceased described the property as his self-acquired property. It is only as self-acquired property that he purported to divide the said asset between himself and his sons. If so, the said division constitutes a gift of a share to each of his three sons. It is found by the Assistant Controller and the Board on the material on record that the income from the money-lending business was being utilised by the deceased himself. As the shares in the business asset were gifted to the sons within less than two years prior to the death of the deceased, the provisions of Section 9 of the Act are clearly applicable, and the said properties shall be deemed to pass on the death of the deceased and are liable to be included in the estate of the deceased. For the foregoing reasons the question No. 2 has to be answered in the affirmative and against the assessee, and it is answered accordingly.

20. In the circumstances of the case, we make no order as to costs.