(1974) 10 GUJ CK 0004

In the Gujarat High Court

Case No : Estate Duty Reference No. 2 of 1973

Suketu Jayantilal Shah APPELLANT

Vs

Controller of Estate Duty, Gujarat RESPONDENT

Date of Decision : 10-10-1974

Acts Referred:

Excise Duty Act, 1953 — Section 5, 6
Hindu Succession Act, 1956 — Section 14

Citation : (1975) 100 ITR 439

Hon'ble Judges : B.K. Mehta, J;B.J. Divan, J

Bench : Division Bench

Advocate : K.C. Patel, for the Appellant; K.H. Kaji, adv, for the Respondent

Judgement

B.K. Mehta, J.—One JAYANTILAL Shah, who happened to be the father of the accountable person herein, expired in 1944. He died in jointness with his wife, Subhadra, two sons and an unmarried daughter. The said joint family owned certain shares, loans, jewellery and immovable properties including agricultural lands. u/s 3(2) of the Hindu Women"s Rights to Property Act, 1937, on the demise of the said Jayantilal Shah, his widow, Subhadra, acquired the same interest in the joint family properties which her husband had at the time of his demise. After the death of Jayantilal Shah, his widow, Subhadra, and their two sons and one unmarried daughter continued in jointness. The widow, Subhadra, died on November 14, 1959, leaving behind her, her two sons and one unmarried daughter who along with her constituted a joint Hindu family as stated above. It is common grounds that Subhadra has not claimed partition of the joint family properties before her death not there was any partition of the joint family properties before her death not there was any partition effected amongst the said members. On her demise, the Assistant Controller of Estate Duty, Ahmedabad, called upon the applicant herein who was the elder son and also the karta of the joint Hindu family to file return under the Estate Duty Act in respect of the property of the deceased, Subhadra. The return was made on September 3, 1960. One of the contentions on behalf of the accountable person before the

Assistant Controller was that the individual property of the deceased, Subhadra, was liable to estate duty and her share in the joint Hindu family properties did not pass on her death since it merged with the interest of the other members of the said family. The Assistant Controller rejected this contention urged on behalf of the accountable person as in his opinion the undivided interest of Jayantilal Shah in the joint family properties which devolved on Bai Subhadra, u/s 3 (2) of the Hindu Women''s Rights to Property Act, 1937, became her absolute estate and of full ownership u/s 14 of the Hindu Succession Act, which, therefore, passed on her demise to her heirs u/s 15 of the said Act. The Assistant Controller, therefore, held that 1/3rd share which the deceased, Subhadra, had in the joint family properties was dutiable u/s 5 of the Estate Duty Act. The accountable person, therefore, carried the matter in appeal before the Appellate Controller of Estate Duty. A preliminary contention was raised on behalf of the applicant herein before the Appellate Controller of Estate Duty that he was not an accountable person. The said contention was rejected by the Appellate Controller who upheld the view of the Assistant Controller the interest which the deceased, Subhadra, had in the joint family properties became absolute under the provisions of the Hindu Succession Act, which the deceased could have disposed of by a will and, therefore, her share was liable to be included in her property liable to duty u/s 6 of the Estate Duty Act. The Appellate Controller in the alternative held that the provision of section 7 was also attracted. In that view of the matter, the Appellate Controller confirmed the decision of the Assistant Controller. The accountable person being aggrieved by the decision of the Appellate Controller carried the matter in appeal before the Tribunal. It was, inter alia, contended on behalf of the accountable person that the interest which the deceased, Subhadra, had in the joint family properties would not pass u/s 5, 6 or 7 of the Estate Duty Act, as her interest in the joint family properties was inchoate or indefinite since she had not demanded any partition of the joint family properties and possession of her share by metes and bounds. It was, therefore, contended that she could not be said to be possessed of the "property" within the meaning of section 14 of the Hindu Succession Act which was one of the conditions precedent for converting the limited estate into absolute estate under the said section. Since no partition was claimed nor effected between the members of the side joint family, the position available before the Hindu Succession Act, 1956, came into force, prevailed, and on her death her interest in the joint family properties would merge with the interests of the other members of the family and, therefore, there would be no property passing on the death u/s 5 or for that matter u/s 6 or 7 of the Estate Duty Act. None of these contentions found favour with the Tribunal, which held that the interest of the deceased, Subhadra, in the joint family property became her absolute property u/s 14 of the Hindu Succession Act, 1956, which devolved in terms of section 15 of the said Act. It, therefore, concluded that the property in question passed on u/s 5 of the Estate Duty Act, The tribunal did not uphold the opinion of the Appellate Controller that the provision of section 7 would also be attracted in the facts of the present case. In that view of the matter, the Tribunal held that the interest of deceased, Subhadra, in the joint family properties was liable to be included in the property which should be subjected to duty u/s 5 or section 6 of the accountable person. At his instance, therefore, the following question have been referred to us for our opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest which the deceased, Subhadra, widow of Jayantilal Shah, had acquired in the joint family property was property in her possession within the meaning of section 14 of the Hindu Succession Act, 1956, and that it became absolute under the provisions of the said section ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest of the deceased in the joint family property devolved on her heirs u/s 15 of the Hindu Succession Act ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest of the deceased in the joint family property is ''property'' u/s 2(15) of the Estate Duty Act, 1953, and passed u/s 5 or 6 of the said Act ?

(4) Whether, on the facts and in the circumstances of the case, the said interest of the deceased in the joint family property is liable to estate duty under the Estate Duty Act, 1953 ?

(5) Whether, on the facts and in the circumstances of the case, the applicant is ''accountable person'' in respect of the interest of the deceased in the joint family property u/s 53 read with section 2(12) of the Estate Duty Act ?"

2. At the time of hearing of this reference, the learned advocate, appearing on behalf of the assessee, did not press question No. 5. The pertinent point which is required to be determined in this reference is whether the deceased, Subhadra, was the absolute owner of the interest of her deceased husband which devolved on her in the joint family properties in 1944, and, consequently, whether she was competent to dispose of the said interest which passed on her death in 1959. The following three contentions have been raised on behalf of the accountable person :

1. The interest of the deceased, Subhadra, which devolved on her on the demise of her husband, Jayantilal Shah, in 1944 under the Hindu Women''s Rights to Property Act, 1937, was not converted and did not ripen into an absolute estate u/s 14 since no partition was claimed or effected.

2. If that was so, the right of the other coparceners to succeed to the said interest by survivorship, which was suspended during the lifetime of the deceased, Subhadra, would be revived on her demise and the interest which had devolved on her as a result of the demise of her husband, Jayantilal Shah, would merge the interest of the other coparceners, in which case there would be no property passing on the death either u/s 5 or section 6 of the Estate Duty Act.

3. In any case since the extent of the interest in the joint family properties of the deceased, Bai Subhadra, could not be ascertained, as it was of a fluctuating nature, there was no property in specie, the principal value of which can be ascertained under the Estate Duty Act.

3. All the three contentions stated above deserve to be rejected for the reasons stated hereunder :

It should be recalled that Jayantilal Shah, the father of the Accountable person, died in jointness in 1944. u/s 3 (2) of the Hindu Women''s Rights to Property Act, 1937, the widow of member of the joint family is put in place of her husband and the husband''s interest in the joint family property, though indefinite, would vest immediately upon his death in the widow. It would not pass by survivorship to other coparceners. It is no doubt true that acquisition by a widow of her husband''s interest in the joint family property would not per se amount to severance in the status and disrupt to family. It is also true, as has been observed in Hindu Law by Mulla, 14th edition, at page 95, that though her position in the joint family may in many respects to analogous to that of any undivided male coparcener in the joint family, it would be a misnomer to call her a coparceners. But it is equally true, as has been observed by the said learned author, at page 95, that it would not be correct to describe her interest as inchoate or imperfect till she claims partition. A widow acquiring interest of her deceased husband u/s 3 (2) of the Hindu Women''s Rights to Property Act, 1937, may not claim a partition with the result that the joint family may continue as before and all the incidents of the coparcenary may continue to be operative and apply to all the incidents of the coparcenary may continue to be operative and apply to all the members including the widow subject to the rule of survivorship being suspended during her existence. The consequence of the above position under the aforesaid Hindu Women''s Rights to Property Act is that if no partition has been asked for by the widow during her lifetime bad there was no severance, the interest which she acquired on the demise of her husband would devolve by survivorship to the other members of the joint family. As far as this position of the widow is concerned, under the Hindu Women''s Rights to property Act, 1937, there cannot be any dispute. However, all the contentions urged on behalf of the accountable person on the bossy of this position as available under the aforesaid Act are not well founded in view of the provisions contained in section 14 of the Hindu Succession Act, 1956, which by section 31 thereof repeals the Hindu Women''s Rights to Property Act, 1937. The first contention urged on behalf of the accountable person that since no partition was claimed or effected, the interest of the deceased, Subhadra, which devolved on her on the demise of her husband, Jayantilal Shah, under the Hindu Women''s Rights to Property Act, 1937, was not enlarged and did not ripen into an absolute estate is not well founded. In our opinion, while advancing this contention, the learned advocate for the accountable person has lost sight of the meaning ascribed to the word, "possessed" u/s 14 of the Hindu Succession Act. The Supreme Court in Kotturuswami v. Veeravva pointed out that the word "possessed" is used in the said section 14 in a broad sense and in its widest connotation it means "the state of going or having in one''s in hand or power". It need not be actual physical possession or personal occupation of the property by the female, but may be possession in law; and that it may either be actual or constructive or in any form recognized by law. To urge, therefore, that till partition is effected the limited estate of a widow under the Hindu Women''s Rights to Property Act, 1937, would not ripen into an absolute ownership, is in our opinion, misconceived.

4. In Mangal Singh v. Smt. Rattno, the Supreme Court again pointed out that section 14 covers all cases of property owned by a female Hindu although she may not be in actual, constructive or physical possession of that property, provided of course that she has not parted with her rights and is capable of obtaining possession of the property. In Munnalal v. Rajkumar it has been held that where, at the time of her death, the widow was in possession of the share of her property to which she became entitled under the Hindu Women''s Rights to Property Act, 1937, that share or that property would devolve upon her heirs and the latter would be entitled to prosecute a suit for partition filed by the widow. In Badri Pershad v. Smt. Kanso Devi it has been held that the same principle would be applicable where a widow has acquired an interest in any property by virtue of the operation of the Act of 1937 and this irrespective of any actual partition having been effected or not. In Sukh Ram v. Gaurishankar 4 the Supreme Court was concerned with a case of a joint Hindu Family comprising of two brothers, H and S, and a son, C, of the second brother, S, which was governed by the Mitakshara law of the Benaras School. H died in 1952 leaving him surviving his widow, K. In December, 1956, after the Hindu Succession Act came into force, K sold a half share in a house and a shop belonging to the joint family. In a suit by S and C challenging the sale, it was held that K having become full owner of her husband''s interest was competent to effect the sale. It is, thereof, clear to us that the entire reasoning adopted on behalf of the accountable person for purposes of advancing this contention is to say the least fallacious. If the interest of the widow which she has acquired on the demise of her husband in the undivided Hindu family is not an imperfect or inchoate right and she is a limited owner of that interest during her lifetime, the effect of section 14 is to enlarge that limited ownership into absolute ownership irrespective of the fact whether partition is effected or not. The first contention urged on behalf of the accountable person, therefore, deserves to be rejected.

5. If the widow having an interest of her deceased husband in the joint family property u/s 3 (2) of the Hindu Women''s Rights to Property Act l973, becomes full and absolute owner by operation of the provisions of law contained in section 14 of the Hindu Succession Act, it follows that she has, as absolute owner, certain qualified rights over the property, namely : (1) right to its possession (2) right to its management (3) right to its exclusive enjoyment, (4) right of disposal by an inter vivos or will at pleasure, and (5) on death intestate the property should devolve by succession on the owner''s own heirs. Our attention has been drawn in this connection on behalf of the revenue to page 520 of the Hindu Law

of Succession by S. V. Gupte, 2nd edition, which notes as under :

"The object of this section is, therefore, two-fold : firstly, to remove the disability of a Hindu Woman to acquire (as a rule) property which she would deal with as an absolute owner, and, secondly, to convert any estate held by her at the date of the commencement of the Act, as a limited owner into an absolute estate notwithstanding any rule of Hindu law to the contrary. Section 14 extinguishes the estate called the ''limited estate'' or ''widow''s estate'' and the incidents attached to it, and makes a woman, who under the old law would have been by any rule of law only a limited owner, a full owner with all powers of disposition which any other owner would enjoy and make the estate heritable by her own heirs and not revertible to the heirs of the last owner."

6. The second contention urged on behalf of the accountable person proceeds on the assumption that the first contention which we have rejected is the correct proposition of law. As held by us above, the first contention is not at all well-founded and it should be rejected. The result is that the second contention also must, therefore, fail. If Bai Subhadra who acquired the interest of her deceased husband undue section 3 (2) of the Hindu Women''s Rights to Property Act, 1937, an who was possessed of the said interest on the coming into force of the Hindu Succession Act, 1956, she became absolute owner of the estate by operation of law u/s 14 of the said Act and, therefore, if cannot be gainsaid that she would have all the rights as a full owner to posses, manage, enjoy exclusively and of disposal either by any act inter vivos or by will the said estate. The result would necessarily be that, on her death intestate, her interest in the joint family properties would pass and devolve by succession on her heirs. The mode of succession on the death in the estate of a Hindu female having a limited interest acquired by her on the demise of her husband in the joint family which becomes absolute u/s 14 is as provide u/s 15 of the Hindu Succession Act. If this is the position of law, and we are of the opinion that it is, we cannot avoid the conclusion that the interest which Bai Subhadra had in the joint family properties would pass on her death intestate and to that extent it would be required to be included in the estate liable to pay duty under the Estate Duty Act. It was, therefore, urged on behalf of the accountable person that since the extent of her interest in the joint family was of a fluctuating nature there was no property in specie, the principal value of which could be ascertained under the Estate Duty Act. Though the contention appears to be attractive, on a close scrutiny it does not seem to be correct. The answer to this contention is simple that what would be her right or interest in the property if a suit for partition has been filed by her heirs and that interest or share in the joint family properties would be the property passing on her death which the heirs would be entitled to claim in a partition suit. The indefinite interest of the widow of a coparcenary in the joint family properties would be crystallised on her death and would pass to that extent to her heirs u/s 15 of the Hindu Succession Act. The learned advocate of the accountable person, therefore, attempted to persuade as that without any legal fiction being incorporated in the Estate Duty Act or for that matter under

the Hindu Succession Act, it cannot be said that the right or share which a Hindu widow has in the joint family properties would be crystallised as on her death. We are unable to agree with this contention urged on behalf of the accountable person for the simple reason that though her interest under the Hindu Women''s Right to Property Act, 1937, was a fluctuating interest in the sense that it would increase by the death in the family and would decrease by birth in the same, it none the less, on the ripening into full ownership u/s 14 of the Hindu Succession Act, would crystallise on her demise which u/s 15 of the Hindu Succession Act being her interest in the joint family properties as on her death, would pass as property to her heirs. The expression "property" in section 15 includes all properties which were held and possessed by her on the date of commencement of the Act and were declared to be of her full ownership by section 14 of the Act. In that view of the matter, therefore, the third contention urged on behalf of the accountable person must also be rejected.

7. The result is that the interest of Bai Subhadra in the joint family properties on her demise would be property passing on her death and liable to estate duty u/s 5 of the Estate Duty Act. In any case Bai Subhadra being the full and absolute owner of the right which she had acquired on the demise of her husband and of which she was possessed on the coming into force of the Hindu Succession Act, would be property which she would be competent to dispose of, it being incident of full ownership as she would have a right of disposal by act inter vivos or by will at her pleasure and, therefore, would be deemed to be property passing on her death u/s 6 of the Estate Duty Act. In that view of the matter, therefore, we answer questions Nos. 1, 2, and 3, in the affirmative and in favour of the revenue and against the assessee. Question No. 4 is a general question and is answered in the affirmative and against the assessee and in favour of the revenue. Question No. 5, as stated, was not passed by the learned advocate of the accountable person. The accountable person shall pay costs of this reference to the revenue.