(1996) 11 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1466 of 1981

Teja Singh APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Estate Duty Act, 1953 — Section 53, 59

Citation : (1997) 227 ITR 311 : (1997) 116 PLR 185 : (1997) 2 RCR(Civil) 417 : (2001) 114 TAXMAN 176

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : M.S. Ratta, for the Appellant; R.P. Sahwney, Senior Advocate and Mahavir Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—The petitioner has filed this writ petition challenging the orders of respondent No. 3 and the Appellate Assistant Commissioner of Income Tax, Jalandhar Range, Jalandhar, as confirmed by the Income Tax Appellate Tribunal, vide annexures P-2 to P 5.

2. The facts leading to the filing of the present writ petition are as follows :

The father of the petitioner, Kapur Singh, died on December 30, 1968, leaving behind three sons Dalip Singh, Mohan Singh and the petitioner, Teja Singh. The authorities under the Estate Duty Act issued notice to Dalip Singh and Mohan Singh u/s 59 of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), on February 25/27, 1973, calling upon them to submit an account of the property left by the deceased as required u/s 53 of the said Act. Accordingly, Dalip Singh and Mohan Singh filed the return. On the basis of the said return, the assessment proceedings were finalised on August 2, 1974. Against the said assessment, Dalip Singh and Mohan Singh filed an appeal before the Appellate Assistant Commissioner, Jalandhar, who by his order dated March 19, 1975, set aside the assessment on the ground that there was failure of giving a reasonable opportunity of hearing and remanded the matter to the Assistant Controller of Estate Duty, Jalandhar, for fresh assessment. After remand, the Assistant Controller of Estate Duty, Jalandhar, passed his order on June 21, 1976, assessing the value of the property at Rs. 3,83,425 and levied estate duty of Rs. 43,808. Against the said orders, Dalip Singh and Mohan Singh filed another appeal before the Appellate Controller of the Estate Duty, Jalandhar, who reduced the net value assessed and determined it at Rs. 3,15,075. Further appeal before the Income Tax Appellate Tribunal by both the brothers, Dalip Singh and Mohan Singh was unsuccessful. Both the brothers filed an application for referring the matter to the High Court. The said application was rejected by the Income Tax Appellate Tribunal by its order dated December 31, 1980. Thereafter, a notice was issued for recovering the estate duty to Dalip Singh and Mohan Singh in October 1980. According to the petitioner, his brothers, Dalip Singh, demanded from the petitioner in the month of February 1981, contribute his share of the estate duty. According to the petitioner, after the demand for contribution was made, he made enquiries and came to know about the proceedings under the Act and thereafter he filed this writ petition contending, inter alia, that he had no notice of the proceedings before the Assistant Controller of Estate Duty, Jalandhar, and the property owned by his father belonged to the Hindu undivided family and, therefore, his father, the deceased, had only a 1/4th interest in the property at the time of his death and even otherwise during his lifetime his father partitioned the property and the said partition had been reflected in the khasra girdawri of 1967-68 which was prepared prior to the death of his father and, therefore, no estate duty is leviable and as no notice was given to him, the entire proceedings are void ab initio and, therefore, the assessment orders passed on the basis of return filed by his brothers, Dalip Singh and Mohan Singh, are liable to be set aside and he cannot be made liable to pay any estate duty or contribute anything to his brothers even if they pay or are made liable to pay the estate duty on the return submitted by them.

3. The first contention of learned counsel is that the property belonged to the Hindu undivided family and, therefore, his father, Kapur Singh, the deceased had only a 1/4th share in the property. This plea was taken by his brothers, Dalip Singh and Mohan Singh before the authorities under the Act. The record shows that ample opportunity was given to both the brothers to produce evidence that the property belonged to the Hindu undivided family and that their father had only a 1/4th share in the said property but both of them failed to produce any evidence to show that the property belonged to the Hindu undivided family. Therefore, the authorities under the Act concluded that it was the separate property of Kapur Singh which devolved on his death upon his sons and, therefore, the entire property was liable to estate duty. Even in this writ petition, the petitioner has not filed any evidence to show that the property owned by Kapur Singh was allotted to him by the Government in lieu of the property left by Kapur Singh in Pakistan while leaving Pakistan after partition of the country.

Therefore, the contention of learned counsel that the property belonged to the Hindu undivided family cannot be accepted for lack of evidence.

4. Learned counsel contended that he has alleged in his writ petition that the property belonged to the Hindu undivided family and that it was not controverted by the Department in the written statement and, therefore, this contention made in the writ petition has to be accepted by this court. I am unable to agree with the same. It is the case of the Department throughout the proceedings before the authorities that the property does not belong to the Hindu undivided family and that the assessment was made on the basis that the property was the separate property of the deceased Kapur Singh and it devolved on his death upon his sons. In such a situation, there is no need to specifically controvert the allegation made, in the written statement as the same has already been controverted in the proceedings taken against Dalip Singh and Mohan Singh.

5. It is next contended by learned counsel for the petitioner that his father, Kapur Singh, partitioned the property between himself and his three sons and exhibit P-1 khasra girdawri shows that the land to the extent of 300 kanals was mutated in the name of Dalip Singh, Mohan Singh and Teja Singh, the petitioner, and from annexure P-l it can be inferred that there was a partition. Even according to the writ petition, Kapur Singh kept some property for himself at the time of the alleged partition but the. petitioner has not filed any document to show the property which was kept by Kapur Singh for himself at the time of the alleged partition. Learned counsel pointed out that the authorities-took the entire property of 341 kanals, 15 marlas as owned by Kapur Singh and annexure P-l covers about 300 kanals. So, if 300 kanals was subtracted from 341 kanals, the balance of 41 kanals was kept by Kapur Singh for himself at the time of the alleged partition but it is pertinent to note that in none of the orders khasra numbers were given. The khasra girdawri only reflects the position of the property and the person who cultivated the property, The presumption under the Land Revenue Act is only in regard to the correction of the entry but the presumption will not extend to confer title on the persons shown in the khasra girdawri. It is useful to refer to the decision of the Privy Council in Nirman Singh (Thakur) v. Lal Rudra Partab Narain Singh (Thakur) AIR 1926 PC 100. It has been held therein as follows (headnote) :

" It is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are nothing of the kind, as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining- which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid.

Orders in mutation proceedings are not evidence that the successful applicant was in possession as the sole legal owner in a proprietary sense, to the exclusion, for example, of all claims of the other members of the family as co-owners or for maintenance or otherwise, as revenue authorities have no jurisdiction to pronounce upon the validity of such a claim."

6. Thus, it is clear that the presumption as to the correctness of the entries in the khasra girdawris will extend only to show the persons named therein are in possession of the property and are cultivating the same. The presumption does not extend to confer any title on the persons named therein. Therefore, the khasra girdawri filed as annexure P-l relating to the year 1967-68 does not evidence the alleged partition which was said to have taken place during the lifetime of Kapur Singh. There was no partition deed produced. There was no documentary evidence, as already stated as to how much property Kapur Singh kept for himself at the alleged partition. Therefore, in my view, the authorities rightly took the view that the entire property that stood in the name of Kapur Singh belonged to him at the time of his death and on his death, it devolved on his sons. Both Dalip Singh and Mohan Singh who filed the return before the authorities under the Act, failed in their attempt to show that the property belonged to the Hindu undivided family and they never took the plea in those proceedings that there was a partition effected by their father, Kapur Singh, during his life time. When there was no averment by the two brothers in regard to the alleged partition, no credence can be given to the contents of the present petition with regard to the same. Therefore, the contention of learned counsel that the orders are void ab ; initio qua Dalip Singh and Mohan Singh does not hold any water and cannot be accepted.

7. The petitioner never approached the authorities under the Act. He filed this petition straightaway. It is an admitted case that no notice was given to the petitioner calling upon him to pay the estate duty. The orders were passed against Dalip Singh and Mohan Singh and these orders are binding on them and they are liable to pay the estate duty. Having failed in their attempt up to the Income Tax Appellate Tribunal to avoid the payment of estate duty, it is clear that the brothers of the petitioner set up the petitioner to file this writ petition taking the pleas which were already taken by them before the authorities. If really the petitioner was able to prove that the property belonged to the Hindu undivided family or that there was any partition, he should have certainly approached the authorities by filing the return as envisaged u/s 55 of the Act. Having failed to take any steps under the Act, it is not open to the petitioner to take the same before this court in writ proceedings. Writ proceedings are not intended to decide the questions of fact and when no notice was given to the petitioner by the Department to pay any tax.

8. He has also no cause of action if the Department collects the amount from Dalip Singh and Mohan Singh and if they claim any contribution from the petitioner it is a matter inter se the brothers and it is always open to the petitioner to take a stand that his brothers were not diligent in prosecuting the proceedings before the authorities under the Act and, therefore, he is not Liable

to contribute anything if any payment is made by his brothers towards the estate duly, under the orders passed against them in proceedings before the authorities under the Act. In this writ petition, it is not open to the petitioner to challenge the orders which have been validly passed against his brothers. Further, as already indicated, the duty has been cast on the petitioner to file a return after the death of his father and the petitioner failed in filing the return. On this ground also, the writ petition is liable to be dismissed.

9. Having considered all the facts and circumstances of the case, I do not find any merit in this writ petition and it is, therefore, dismissed. However, there will be no order as to costs.