
(1971) 07 AHC CK 0009

In the Allahabad High Court

Case No : Estate Duty Reference No. 97 of 1966

Vithal Das

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 15-07-1971

Acts Referred:

Transfer of Property Act, 1882 — Section 130

Citation : (1972) 85 ITR 432

Hon'ble Judges : R.S. Pathak, J;H.N. Seth, J

Bench : Division Bench

Advocate : P.N. Pachauri and N.N. Pachauri, for the Appellant; B.L. Gupta and R.R. Misra, for the Respondent

Judgement

H.N. Seth, J.—The Central Board of Direct Taxes had made this reference u/s 64(1) of the Estate Duty Act, 1953, at the instance of Sri Vithal Das, the accountable person. It has referred the following questions for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, only half share of the properties included in the estate duty assessment of the deceased should have been included as property passing or deemed to pass on his death u/s 7 of the Act ?

(2) Whether, on the facts and in the circumstances of the case, the amount of Rs. 80,000 standing in the names of the grand-children of the deceased was correctly included in his estate ?"

2. This reference arises out of proceedings in connection with the estate duty assessment in respect of the estate of late L. Kedar Nath, who died on the 8th of September 1955. Sri Vithal Das, the eldest son of the deceased, filed the estate duty return in respect of the properties left by Kedar Nath, as accountable person under the Act. He showed the value of the estate left by the deceased as Rs. 1,57,764. The Assistant Controller of Estate Duty, however, computed the value

of the estate as Rs. 3,09,972 and levied the estate duty accordingly.

3. During the assessment proceedings, it was claimed that the deceased had only half share in certain properties. The other half share in those properties belonged to his wife, Smt. Godawari Devi. According to the accountable person, these properties originally belonged to a joint Hindu family having five branches. The deceased was the head of one of the branches, which consisted of himself, his wife and two sons. A partition in the family took place in the year 1936. At that time, the deceased and his two sons also separated. As a result of that partition the deceased and his two sons got 1/3rd of 1/5th share each in the entire joint Hindu family property. The wife of the deceased neither claimed, nor was she allotted, any share in the joint family property. The accountable person, therefore, claimed that the share allotted to the deceased included the share of the wife as well. In the circumstances, the deceased was the owner of only half of the property which came to him as a result of the partition in the year 1936, and that share alone passed on his death. The other half share continued to belong to Smt. Godawari Devi, wife of the deceased and it did not pass to any one on the death of the deceased. The Assistant Controller repelled the claim made by the accountable person and held that the circumstances of the case indicated that the wife and other ladies of the family renounced their claim to the joint family property. In any event, Smt. Godawari Devi acquiesced in the partition for more than 12 years and, therefore, she could not enforce her right to the share acquired in the family property as a result of the partition which took place in the year 1936. In the circumstances, the share allotted to the deceased became his separate property and the whole of it had to be included in the estate duty assessment.

4. The Assistant Controller also discovered certain deposits amounting to Rs. 80,000 in the names of five grandsons and one grand-daughter of the deceased (Rs. 15,000 each in the names of the grandsons and Rs. 5,000 in the name of grand-daughter). It was claimed that these amounts had been gifted by the deceased to his grand-children on 9th May, 1952, more than two years before his death. It was found that a debit entry of Rs. 80,000 was made in deceased's account with Messrs. Girdhari Lal Kedar Nath of Tanda. There were corresponding credit entries in the newly opened accounts in the names of the deceased's grandsons and granddaughter. The Assistant Controller found that the cash balance in the firm account on the date on which the above entry was made was Rs. 7,745 only. According to him there was neither a registered instrument of transfer, nor delivery of possession of the property alleged to have been gifted by the deceased, and that the essentials of a valid and completed gift were absent in the present case. The assessee brought to the notice of the Assistant Controller that the aforesaid gifts were made by the book entries and were accepted on behalf of the minors by their respective fathers. These sums were later on withdrawn from the books of Messrs. Girdhari Lal Kedar Nath of Tanda and got credited in the books of Bhawani Prasad Girdhari Lal Hatia, Kanpur, where the deceased was not a partner. The latter firm paid interest to the minors

on the amount standing in their names. The Assistant Controller found that the transfer of accounts from the books of Girdhari Lal Kedar Nath, Tanda, to the books of Messrs. Bhawani Prasad Girdhari Lal, Kanpur, took place on 3rd November, 1953. At that time the amount was transferred only by making book entries and no cash passed from the Tanda firm to the Kanpur firm. It was only on 4th of August, 1955, that for the first time an amount of Rs. 6,000 was remitted from Tanda to Kanpur. This was followed by remittances amounting to Rs. 20,000, Rs. 12,000 and Rs. 25,000 made on 16th of August, 1955, 5th September, 1955, and 6th September, 1955, respectively. According to the Assistant Controller, neither the transfer entries made in the books of the two firms, nor the remittances of cash had the effect of validating the gift alleged to have been made on 9th of May, 1952. In any case as these remittances were made within two years of the death of the deceased, the amount gifted was liable to be included in the estate of the deceased u/s 10 of the Act. In the result he included the sum of Rs. 80,000 also in the value of the estate which according to him passed on the death of the deceased.

5. The accountable person preferred an appeal to the Board against the order of the Assistant Controller of Estate Duty, inter alia, on the ground that the Assistant Controller was not justified in including the entire value of the property standing in the name of the deceased and the sum of Rs. 80,000 in the estate of the deceased. The Board found that although the partition in the family had taken place as far back as the year 1936 without any share being allotted to the wife, the lady neither contested the partition nor claimed any share in the property. In these circumstances, it could be presumed that she relinquished her interest in the coparcenary property in favour of her husband and sons. It held that the deceased was the owner of the entire property which he received as a result of family partition, and the whole of it passed on his death. Entire value of those properties was, therefore, rightly included in the value of the estate of the deceased passing on his death liable for payment of estate duty.

6. So far as the question, regarding including the sum of Rs. 80,000 said to have been gifted by the deceased on 9th May, 1952, to his grand-children was concerned, it was claimed that the amount was gifted on 9th May, 1952, by debiting the account of the deceased in the books of the firm, Girdhari Lal Kedar Nath, and opening corresponding accounts in the names of the grand-children. The debit entry indicates that it was being made under instructions from Sri Kedar Nath. It bore the signature of the deceased. The credit entries in the names of the grand-children were signed by their respective guardians. These, accounts were later on squared up on 3rd November, 1953, by transferring the amount to the credit of the grand-children in the firm, Messrs. Bhawani Prasad Girdhari Lal of Kanpur. The Board, however, found that no cash passed from Tanda firm to the Kanpur firm till 4th August, 1955, when a sum of Rs. 6,000 was remitted. Subsequently, some more money amounting to Rs. 52,000 was remitted by the Tanda firm to the Kanpur firm up to the date of the death of the deceased. The Board concluded that the signatures underneath the debit and the

credit entries in the books of the Tanda firm were appended afterwards so as to create evidence indicating acceptance of the gift. In the circumstances, even if the deceased wanted to make a gift of the money to his grand-children on 9th of May, 1952, the gift was incomplete and invalid and, therefore, the money credited to the account of the grandchildren must be taken to belong to the deceased and deemed to pass on his death on 8th of September, 1955. The Assistant Controller was, therefore, justified in including this amount in the value of the asset of the deceased liable for payment of estate duty.

7. The accountable person then moved an application to the Board for stating the case in respect of five questions and eventually the Board referred the two questions mentioned above for the opinion of this court.

8. Our answer to the first question will depend upon the fact whether as a result of the partition effected in the family of Sri Kedar Nath in the year 1936, his wife became the owner of any share in the ancestral property which was allotted to the branch of L. Kedar Nath. It will also have to be seen whether the share of the wife was included in the share allotted to her husband, L. Kedar Nath, and she thus became owner of half of that property.

9. Learned counsel for the accountable pension argued that under the Hindu law, on a partition being effected between father and his sons, the mother also becomes entitled to a share equal to that of a son in the joint family property. Even if she is not allotted any share in the property at the time of partition, she continues to be the owner of her share and acquires a right to get the partition reopened and to claim the share in the property to which she is entitled. Merely because she did not claim any share in the property in the year 1936, when it was divided between Kedar Nath and his sons, it does not mean that she surrendered her rights to a share in the properties and thereby lost her ownership of that share. In this connection he relied upon the case *Mst. Radha Bai v. Pandhari Nath Bapu* AIR 1941 Nag. 135. In this case it was held that in a case where there has been a partition in the family and the wife has not been assigned any share in the family property and if she has not assented or waived her rights or acquiesced in the partition, she can bring a suit for her share in the family property. In this connection the learned judges further held that in a case where none of the parties to the partition knew that the wife had any right to a share in the property and, therefore, no provision was made for her, it could not be said that the wife had waived her right to a share in the property and that her right to reopen partition was not barred by any principle of acquiescence.

10. In the case of *Ganesh Dutt Thakur v. Jewach Thakoorain* ILR [1903] Cal. 262 (P.C.) their Lordships of the Privy Council held that in a case where a partition was made between four sons forming a joint family governed by Mitakshara law without allotting any share to their mother, it was not binding on the mother unless it could be shown that the mother consented to or relinquished her share or acquiesced in the partition.

11. In the case of Ram Dass and Another Vs. Secretary of State and Another, , a Division Bench of this court held that when there is a partition between a Hindu father and his sons, the wife of the Hindu father has a right to a share equal to that of the father or the sons. According to this decision, the proposition that the Hindu mother is entitled to a share on partition was not well-known, and, therefore, non-assertion of her right by the mother during the previous partition did not amount to acquiescence or relinquishment of any right.

12. Relying on the aforesaid authorities, learned counsel for the accountable person argued that when the deceased, Kedar Nath, and his two sons divided the family property in the year 1936, Smt. Godawari Devi, wife of L. Kedar Nath, became the owner of the joint family property to the extent of the share equal to that of a son. Even though she did not claim a share in the property at that time it did not mean that she acquiesced in the partition or gave up her rights. She continued to own that share and could enforce it by getting the partition reopened. In the circumstances, the properties allotted to L. Kedar Nath also included the property belonging to Smt. Godawari Devi and to that extent the property did not pass to any one as a result of Sri Kedar Nath's death. Another controversy raised in this connection was about the extent of share which Smt. Godawari Devi had in the property which was allotted to L. Kedar Nath. According to the accountable person, Smt Godawari Devi owned half share in the property and in case it is held that her share had been appropriated equally by her husband and two sons, she was entitled to claim one-fourth share in the property given to each of them.

13. The question regarding the nature of interest that a Hindu mother or a wife possesses in the joint family property, at the time of its partition, has come up for discussion in a number of cases. In the case of Beli Kunwar v. Janki Kunwar I.L.R.[1910] All. 118, it was held by a Division Bench of this court that it is only when the sons actually divide and effect a complete partition that the mother can get a share. There is nothing in the Mitakshara law from which it could be inferred that upon a mere severance of the joint status of a Hindu family a mother can claim a share.

14. Aforesaid view of the Allahabad High Court was approved by the Privy Council in the case of AIR 1936 20 (Privy Council) . Their Lordships of the Privy Council observed as follows :

"In their Lordships" opinion the above mentioned decisions correctly represent the Mitakshara law on the matter now under consideration, for it is not suggested that there is any difference in this respect between the rights of a wife and those of a mother or grandmother.

The result of the above mentioned conclusion is that inasmuch as the preliminary decree in the partition suit was not carried out and no actual division of the joint family property was made, Dhanbati Devi did not become the owner of the share mentioned therein."

15. In the case of Mt. Parbati Devi Vs. Bansi Dhar and Others, , a Division Bench of this court pointed out that in a Hindu family a mother is entitled to maintenance so long as the family remains joint. If the sons effect a partition between themselves, the mother also becomes entitled to a share equal to the share of the sons and this she receives in lieu of maintenance. It also held that at the time of partition and" determining the share of property to be allotted to her in lieu of her maintenance, any property which she might already have received from her husband as her stridhan will have to be accounted for.

16. In the case of Sri Gopal and Others Vs. Mt. Janak Dulari, , a Full Bench of this court took the view that even though a mother is entitled to a share on partition, no right to such share is conferred upon her by a mere severance of the joint status of the family. She becomes entitled to a share only when the members of a joint family divide the family asset between themselves by metes and bounds.

17. A provision Bench of the Nagpur High Court had an occasion to consider this question in the case of Mst. Bhiwura v. Mst. Renuka A I.R. 1952 Nag 215. While dealing with this question, the learned judges observed as follows ;

"According to their Lordships of the Privy Council the "share" which is allotted to the mother on partition is not a "share" in the true sense but only a provision for maintenance. (See Debi Mangal Prasad v. Mahadeo Prasad I.L.R.[1912] All. 234 (P.C.)). Accordingly, she gets no "ownership in it till it is actually handed over to her and she is placed in a position to maintain herself out of it, and then her ownership is limited ownership of a Hindu female holding for maintenance : see Pratapmull v. Dhanbati Bibi. Therefore, she cannot question dealings with the estate till she receives actual possession.

In our opinion that means that she does not get a true share. It follows that the " shares " of the male members of the family are neither diminished nor enlarged by the existence or non-existence of these particular females. Their true share is the one they would have obtained if there had been no females to consider. It is true their enjoyment of this share to the full extent is postponed so long as the ladies are entitled to maintenance, but the property set apart for this purpose falls for division among the family as it existed on the date of the severance as soon as the females pass out of the picture for this reason or that. When that occurs this portion of the property is re-divided and the plaintiff then gets the full extent of the share he would have obtained if there had been no ladies to consider,"

18. Afore-mentioned decision clearly shows that the view taken by various courts has been that so long as the wife or the mother is not actually allotted a share in the property on partition, she does not become the owner of any share in the family property in any sense. Even when a share is allotted to her, she becomes merely a limited owner of the property, entitled to enjoy its usufruct for the purposes of maintaining her. Merely because she has a right to get the partition

reopened it does not mean that even before some property is actually allotted to her she becomes owner of any share in the family property. Right to get a partition reopened merely means that she can ignore the partition already effected and can get the property partitioned. It does not mean that she has acquired some title which she did not possess before the partition. In this view of the matter, it is not necessary to go into the question whether she acquiesced in the partition which took place in the year 1936 or not. It is also not necessary to go into the question whether, her right to claim partition is barred by time as held by the Board. If she did not acquiesce, subject to the plea of limitation, she still has the right to get the partition reopened and to get a share allotted to her. She would become the owner of the share allotted when possession over it is given to her. If, on the other hand, she acquiesced to the partition which took place in the year 1936, she lost all interest in the property. In either event it cannot be said that on the date when L. Kedar Nath died she was owner of any share in the property which L. Kedar Nath received as a result of partition in the year 1936. We are, therefore, of opinion that the entire property which stood in the name of L. Kedar Nath at the time of his death, passed on his death u/s 7 of the Act.

19. So far as the second question is concerned, the case of the accountable person is that the gift of Rs. 80,000 was effected by debiting the account of the deceased in the firm of Girdhari Lal Kedar Nath, opening accounts in the names of grand-children in the books of the firm and crediting them with the sum gifted. This was done under instructions from the deceased. The entry in the account book itself states that it was being made under instructions from the deceased as gift to the grand-children. The debit entry has been signed by the deceased. The amount said to have been gifted to the grand-children was subsequently transferred from the firm, Girdhari Lal Kedar Nath, to the firm, Bhawani Prasad Girdhari Lal of Kanpur. This transfer was also effected by making corresponding credit and debit entries in the books of the two firms. The Appellate Tribunal came to the conclusion that the signature underneath the debit entries in the account of the deceased as also those of the guardians of the minors underneath the account of the minors were made subsequently in order to create evidence for showing the acceptance of the gift. There can be no doubt that the signatures underneath the entries were affixed in order to show that a gift had been made by the deceased to the minors. It, however, does not mean that the signatures are fraudulent. There is nothing on the record to show that the donor and the donee did not append their signatures in the account books soon after the entries were made or that the signatures were forged. In the normal course, the signatures underneath the accounts would be made subsequently and for the purposes of showing that the transaction in question has been entered into with the consent, of the donor and the donee. No inference that the entries did not represent the correct state of affairs or that the transaction had not been entered into with the consent of the donor and the donee can be drawn from the fact that the signatures appear to have been appended some time subsequent to the

making of the entries.

20. In the case of Gopal Raj Swarup Vs. Commissioner of Wealth Tax, it has been held that in a case where sufficient amount stands in the personal account of the donor in a firm, a valid gift can be made by making entries in the books of the firm at the instance of the donor. In the circumstances, we see no difficulty in accepting the contention raised on behalf of the accountable person that an amount of Rs. 80,000 standing in the names of the grand-children stood gifted to them.

21. Learned counsel for the department then argued that the true nature of the amount standing to the credit of the deceased represented an actionable claim which the deceased had against the firm. The gift in this case in fact resulted in the transfer of the actionable claim by the deceased to his grand-children. Such an actionable claim could be transferred only by means of an instrument in writing which must also be registered. As the transfer of actionable claim is not supported by any registered instrument, the amount, does not stand gifted.

22. Section 130 of the Transfer of Property Act provides that the transfer of an actionable claim, whether with or without consideration, shall be effected only by executing an instrument, in writing, signed by the transferor or his duly authorised agent. Learned counsel for the revenue failed to bring to our notice any provision of law under which it is necessary to execute a registered instrument for transferring such a claim. It is true that Section 130 of the Transfer of Property Act requires that for transferring an actionable claim there must be an instrument in writing signed by the transferor. Learned counsel for the revenue urges that the entries made in the account books of the firm and signed by the transferor do not constitute an instrument in writing as contemplated by Section 130 of the Transfer of Property Act.

23. In the case of Seetharama Ayyar v. Narayanaswami Pillai [1918] 47 I.C. 749 (Mad.) a Division Bench of the Madras High Court took the view that the words "instrument in writing" in Section 130 of the Transfer of Property Act do not mean a document couched in technical language or in any particular form. What is intended is that the transfer should be made in writing and it is sufficient if the intention of the creditor to transfer the debt due to him to the transferee can be gathered from the writing. The fact that an assignment is made in a statement of account by way of any entry would not make any difference. We are, therefore, of opinion that the debit entries made in the account books of the deceased, together with the signatures, sufficiently comply with the provisions of Section 130 of the Transfer of Property Act and the amount stands transferred to the donees. After that entry had been made any claim of the donor against the firm in respect of that amount came to an end and that claim could be enforced only by the donees to the extent it was gifted to each of them.

24. In the result, we find no defect in the gift said to have been made by the deceased to his grand-children on 9th May, 1952. This gift was made more than

two years before the death of the deceased. We accordingly answer the two questions referred to us as follows :

Q. (1) On the facts and in the circumstances of the case, the entire share in the properties included in the estate duty assessment of the deceased should have been so included as property passing or deemed to pass on his death u/s 7 of the Act. The question is accordingly answered in the negative and in favour of the revenue.

Q. (2) On the facts and in the circumstances of the case, the amount of Rs. 80,000 standing in the names of the grand-children of the deceased was incorrectly included in his estate. The question is answered in the negative and in favour of the accountable person.

25. As out of the two questions referred, our answer to one is in favour of the revenue and to the other in favour of the accountable person, we direct the parties to bear their own costs of this reference. Counsel's fee is, however, assessed at Rs. 200.