

Clarence Pais and ors. Vs. Controller of Estate Duty, Karnataka

Clarence Pais and ors. Vs. Controller of Estate Duty, Karnataka

SooperKanoon Citation : sooperkanoon.com/371581

Court : Karnataka

Decided On : Mar-22-1979

Reported in : [1980]124ITR143(KAR); [1980]124ITR143(Karn)

Judge : M.K. Srinivas Iyengar and ;M. Rama Jois, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 7

Appeal No. : Tax Referred Case No. 73 of 1975

Appellant : Clarence Pais and ors.

Respondent : Controller of Estate Duty, Karnataka

Advocate for Def. : S.R. Rajashekharamurthy, Adv.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Srinivasa Iyengar, J.

1. The Income-tax Appellate Tribunal, Bangalore Bench, has referred the following two questions for the opinion of this court :

'(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sum of Rs. 30,000 was includible in the estate of the deceased either as the value of Shimoga paddy lands or as an amount which the

deceased had a right to recover from the vendor

(2) Whether, on the facts and in the circumstances of the case, the land comprising Gaddemane Estate, standing in the name of the daughter of the deceased, was includible in the principal value of the estate as passing under section 5 of the Estate Duty Act ?'

2. The matter relates to the computation of estate duty payable in respect of the estate of one Raghupathy Hebbar, who passed away on October 20, 1967. He left a will dated August 19, 1967. The executors appointed under the will were the accountable persons and they filed the returns. The dispute relates to two parcels of lands -

(1) in regard to certain paddy lands which had been purchased in or about July, 1967, for a sum of Rs. 29,000, and (2) in regard to Gaddemane Coffee Estate, the title deed in regard to which stood in the name of Gangamma, the daughter of the deceased. This property had been purchased on September 13, 1965. In the will executed by the deceased, he had included all these properties as his self-acquisition and made dispositions.

3. So far as the paddy lands were concerned, the contention of the accountable person was that these were lands situated in an inam village and had vested in the Government and the title to these lands had been negated by the Special Deputy Commissioner for Indian Abolitions, i.e., title to these lands was defective. This contention was not accepted. It must, however, be mentioned that the Special Deputy Commissioner for Inam Abolition by his order dated October 28, 1967, upheld the title of the vendor in regard to survey No. 595 of the extent of 5 acres, but in respect of survey No. 596 of the extent of 14 acres 18 guntas, he held that the land was a tank and had vested in the Government and the inamdar had no right in respect of that property. It, however, transpires that there was a further appeal from this order to the Karnataka Appellate Tribunal and the matter was pending. The Assistant CED estimated the value of the paddy lands at Rs. 4,000 per acre and included the same in the computation of the value of the estate passing on the death of Raghupathy Hebbar. He also included the value of the Gaddemane Estate as having belonged to the deceased.

4. Before the appellate CED, the inclusion of these items as well as the estimate of their value was questioned. The Appellate CED held that certain lands in the Gaddemane Estate had to be valued at Rs. 650 per acre instead of Rs. 1,000 as adopted by the Assistant CED and the value of the paddy lands should be taken at Rs. 30,000 only instead of Rs. 74,500 as adopted by the Assistant CED. Before the Tribunal, it was contended that the inclusion of the value of the paddy lands was not justified as the title of the deceased in regard to this property was not clear. It was also contended that the Gaddemane Estate stood in the name of the daughter of the deceased and, therefore, should not be treated as property passing on the death of the deceased. The Tribunal, however, noticed that though the Special Deputy Commissioner for Inams Abolition had rejected the claim in regard to one of the paddy lands, the matter was pending before the Karnataka Appellate Tribunal and, in any event, the vendor would have been liable to refund the purchase price and, therefore, the inclusion of the sum of Rs. 30,000 was justified. The Tribunal rejected the contention in regard to Gaddemane Estate also following the decision of the Allahabad High Court in *O. S. Chawla v. Asst. CED* : [1973]90ITR68(All) . It is on these facts and circumstances, the questions mentioned above have been referred to this court at the instance of the accountable persons.

5. So far as the paddy lands were concerned, it is seen from the order of the Special Deputy Commissioner for Inams Abolition that the title of the vendor of the deceased in regard to survey No. 596 was rejected, and the land was reserved to the Government. However, the matter had been taken up in appeal to the Karnataka Appellate Tribunal. But merely on that account, it cannot be said that the title of the deceased in regard to this particular item was perfect. As matters stood. There was a cloud on the title of the deceased to the property. If the Appellate Tribunal upheld the title of the vendor, then, the full value of the property as computed by the Appellate CED was liable to be charged for estate duty. Otherwise, only the right of the deceased to claim or to sue for the return of the purchase money would have to be valued and included in the computation of the value of the estate passing on the death. That would depend upon various factors as to the solvency of the vendor, cost of litigation and the defence that may be put forth by the vendor or his representatives. That value would be only a national one

and would have to be estimated in a reasonable manner having regard to all the circumstances. From the facts it is clear that in regard to one land, survey No. 595, which was about 5 acres and about one-third in extent compared to the other survey No. 596, the title had been upheld by the Special Deputy Commissioner for Inams Abolition and Proportionate value of the same on the basis of the estimate made by the Appellate CED would have to be included in the value of the estate. Therefore, on the facts and circumstances of this case, the first question is answered as follows :

The proportionate value of 5 acres of land in survey No. 595 was includible in the value of the estate passing on death. The value of survey No. 596 can be included if the title to the said property in the vendor of the deceased is finally upheld by the authorities concerned. Otherwise, only a notional value of the right of the deceased to sue his vendor for the return of the purchase money attribute to that property would have to be estimated and included in the value of the estate.

6. So far as Gaddemane Estate is concerned, it is clear from the will, the genuineness of which was undisputed, that this property had been treated as self-acquired property of the deceased. In fact it was bequeathed in favour of his own daughter and it had been conceded before the Appellate CED that Gangamma was only a benamidar for the deceased in respect of this property. Therefore, the deceased was the true owner of the property and the title vested in him, and on his death, the title passed to the legatee. This was a property that passed on the death of the deceased and, therefore, the value was includible in the value of the estate and was liable to be charged under s. 5(1) of the E.D. Act. The benamidar was only a name-lender and only ostensibly the title deed stood in her name. Merely on that account she would not be the owner of the property and the title would not vest in her. Therefore, in view of this, the property was rightly charged for estate duty. This view of ours finds support from the Full Bench decision of the Allahabad High Court in Chawla's case : [1973]90ITR68(All) as also the decision of the High Court of Madras in CED v. Smt. S. M. Muthukaruppi Achi : [1977]109ITR345(Mad) . In the latter case, the learned judges referred to the observations of the Privy Council in *Petheperumal Chetty v. Muniandy Servai* ILR [1908] Cal 551 to the following effect :

'Where a transaction is once made out to be a mere benami, it is evident that the benamidar absolutely disappears from the title. His name is simply an alias for that of the person beneficially interested.'

7. This sums up the position so far as benamidar is concerned and, on the facts and in the circumstances of the case, it is clear that the deceased was the owner of the property and the beneficial interest in the property belonged to him and, therefore, the property passed on his death. In view of this the second question referred to us is answered in the affirmative. Parties are directed to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com