

**Narayanlal P. Lahoti Vs. Controller of Estate Duty, Andhra Pradesh, Hyderabad**

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**Court :** Andhra Pradesh

**Decided On :** Jul-06-1967

**Reported in :** AIR1969AP188; [1968]68ITR849(AP)

**Judge :** P. Jagan Mohan Reddy, C.J. and ;Sambasiva Rao, J.

**Acts :** Hindu Law; [Estate Duty Act, 1953](#) - Sections 5 and 14

**Appeal No. :** Case Referred No. 52 of 1964

**Appellant :** Narayanlal P. Lahoti

**Respondent :** Controller of Estate Duty, Andhra Pradesh, Hyderabad

**Advocate for Def. :** C. Kondaiah, Standing Counsel

**Advocate for Pet/Ap. :** K. Ramachandra Rao and ;A. Venkatarama Reddy, Advs.

**Judgement :**

Jagan Mohan Reddy, C.J.

1. The Central Board of Direct Taxes has referred the following question for our opinion, namely.

'Whether, on the facts and in the circumstances of the case, the sum of Rupees 106894 being the value of the insurance Policies taken out by the deceased on his life was rightly treated as the individual property of the deceased?'

2. The facts set out in the statement of the case out which the above question arose are: One Puraomal Surajmal Lahoti, who died on the 10th February, 1954, had insured his life in Life Insurance Policies, under which a total sum of Rs. 1,06,894 become payable to the applicant, Narayanlal P. Lahoti, who is the son of the deceased. The applicant claimed that these moneys formed part of the property of the Hindu undivided family of which the deceased was the karta, on the ground that the policies were financed with the family funds. The Assistant Controller of Estate Duty found that these policies were in fact nominated by the deceased in favour of the widow of the deceased and that there was no evidence to show that they were taken for the benefit of the joint family. He therefore treated these moneys as forming part of the estate of the deceased as if it is his individual property. The applicant in his appeal before the Board contended that the policy moneys were liable to estate duty on the death of the deceased not as individual property but as forming part of the properties of the Hindu undivided family of which the deceased was the karta, in which case, we suppose the share of the deceased would alone be incredible. The Board however found that the deceased had nominated his wife as the person entitled to receive the amounts of the insurance policies, the premiums of which were paid out of the family funds, that the amounts were credited to the account of the widow of the deceased in the family books and that the same were not merged with the funds of the Hindu undivided family not had the family derived any benefit from these policies. Nonetheless it was contended before the Board that enough the insurance moneys were not merged with the funds of the joint family, the members of the Hindu undivided family had a right to claim a share in the policy moneys as the policies had been financed from the family funds. This contention was negatived.

3. It is contended before us by Sri Ramachandra Rao that the payment of the premium from the joint family funds is a detriment to the joint family and consequently, the policy amounts when payable would ensure for the benefit of the joint family. On the other hand, Shri Kondaiah for the department contends that

it is not the detriment alone that should be taken into consideration but also the intention with which the premiums were paid. In other words, were the premium amounts paid to benefit the joint family or were they paid for the individual benefit of the assured.

4. We may state that it is one of the basic principles of Hindu law that amounts earned with joint family property are moneys belonging to the joint family. Where therefore, policies are taken to the members of joint family and premiums are paid out of the joint family funds, ordinarily the insurance amounts when due would belong to the joint family, in which case, a great deal depends on what was the intention of the joint family in advancing the premium amounts. Was it with a view to benefit the joint family or was it an advance to one of the coparceners who pays the premium as an individual for the benefit of his family.

5. In *Smt. Parbati Kuer v. Sarangdhar Sinha*, : AIR 1960 SC403 their Lordships of the Supreme Court held that there is no proposition of law by which insurance policies must be regarded as the separate property of the coparceners on whose lives the insurance is effected by a coparcenery and that the proceeds of an insurance policy do not belong to the joint family, The question, their Lordships stated, is not whether the karta took out the policies for the benefit of his own family but whether he did so without detriment to the joint family funds and if it was the latter, then anything obtained with the joint family. In that case one Ramadin Sinha had three sons, Ram Ran Vijaya Sinha, Sarangdhar Sinha and Ramji Sinha, the last two being the step brothers of Ram Ran Vijaya Sinha. Even after the death of their father, the brothers continued in a state of jointness till the death of Ram Ran Vijaya Sinha on October 27, 1936, leaving behind three daughters, one by his third wife and two by his fourth wife. All the three brothers had separate insurance policies. One of the properties which Ram Ran Vijaya Sinha left was three insurance policies and it was contended that the amounts payable on these policies belong to the joint family. The trial Judge held that the insurance policies were the private property of Ram Ran Vijaya Sinha and that the widow was entitled to succeed to them. The High Court, however, in appeal, reversed that finding and held that the policies also formed the assets of the coparcenery to which the plaintiffs were entitled as survivors. It was found by their Lordships of

the Supreme Court that though all the three brothers had Amanat Khata in the account books of the press and withdrew sums from the press account and put them in their own names in the Amanat Khata, to be used by them as occasion arose, the premia however was not paid from this Amanat Khata, Hidayatullah, J., who spoke for the Court dealing with the argument that the premiums were not paid from Havali Khata showed the drawings of all the three brothers from the press account and hence the amounts were not paid from joint funds, observed at page 405:

This argument would have had some validity if the payments of the premia was from the Amanat Khata ..... Occasionally, cash was also sent towards such payments but that makes little difference, because what we have to see is whether the premia were paid to the detriment of the joint family fund or not. IN the account books of the Press, there was an insurance khata in which the entry of the payment of premia for all the policies used to be made. There does not appear to have been a separate khata for each brother, so that the amount could be debited to his individual Khata, whenever premium for his policy was paid.'

'It also appears' their Lordships stated, 'that though the amounts were stated in respect of each policy separately, a total of the entire amount was made in the account books of the Press, and that total was carried also to the insurance khata, though there again the names of the companies and the numbers of the policies together with the names of the assured were noted....There is also proof that three of the policies standing in the name of Ram Ran Vijaya Sinha matured in his lifetime the proceeds of one policy were deposited in the Amanat Khata, those the second in the Havali Khata and those of the last in the insurance khata. These three acts clearly show that the insurance transactions were viewed as of the joint family and not those of any individual. The Havali Khata, as we have already said. was a khata in which money from the Press was put in, to be used for the purposes of the joint family. The insurance khata was also of a similar character. No doubt the proceeds of one of the policies were put in the Amanat Khata but that was because that money was to be used for celebrating the anniversary of Ramdin Sinha. The use of that money towards a purpose of the family also indicates that it was a joint family asset and not separate property.'

Dealing with the argument that insurance was a special venture and was meant only for the benefit of the family of the assured and that the other coparceners had no interest in the policies, and also the fact that Ram Ran Vijaya Sinha in his proposal showed that the policy was for the benefit of his family. i.e., his wife and children, his Lordship said at p. 406 thus:

'This might be true, but the question is not whether Ram Ran Vijaya Sinha took out the Policies for the benefit of his own family but whether he did so without detriment to the joint family funds. If it was the latter, then anything obtained with the joint family funds. If it was the latter, then anything obtained with the joint family funds would belong to the joint family, and this is the result, in view of our finding that it was the joint family which had paid for these policies and not Ram Ran Vijay Sinha individually.'

6. We may in this connection refer to the following observations of Rajamannar C. J. and Venkatarama Aiyar, J. (as he then was) in Venkata Subba Rao, v. Lakshminarasamma, : AIR1954 Mad222 :

'In our opinion, having regard to the modern social conditions and the growth of individual consciousness in marked contrast to the more corporate outlook of an earlier days the general presumption must be that when one of the members of a joint family insures his life. the amount of the policy belongs to the assured and his separate property and does not become a joint family asset. No doubt, if there is clear indication that the member did not intend to treat as his separate asset, the position would be different. In a case where each of the several members of the family has taken a policy in his name the presumption becomes stronger that the policies were not part of the joint family assets. The premia must be treated as amounts drawn by the individual members and they must be debited with those amounts.' The above observations were referred to by Hidayatullah, J., who stated at page 406: 'We need not decide whether such a broad proposition should be accepted as being in consonance with the rules of Hindu Law, but unfortunately for the appellant, there are clear indications that none of the three brothers intended to treat as a separate asset the income which would have accrued on the maturity or otherwise of the insurance policies. The case thus falls within the exception

contemplated by the learned Judges themselves.'

It is clear from this decision that the test is whether the joint family suffered a detriment and what was the intention at the time of effecting the insurance, namely, whether the income which would have accrued on the maturity or otherwise of such a policy would go to the benefit of the individual or the joint family.

7. In *Karuppa Gounder v. Palaniammal* : AIR1963 Mad245 a Bench of the Madras High Court was dealing with a case where the premium amounts for the policy were paid out of moneys which the assured had received from the joint family. It was held that the funds for the insurance policy did not come from the joint family and that the policy belongs to the individual member and not to the joint family. Srinivasan, J., dealing with the observations of their Lordships of the Supreme Court in : AIR 1960 SC403 , confined them to the facts of that case. At p. 91 (of Mad LJ) ; (at p. 248 of AIR) he stated;

'But where a coparcener has effected insurance upon his own life, though he might have received the premia from out of the funds which he might have received from the joint family. It does not follow that the joint family insured the life of the members or paid the premia in relation thereto. It is undeniable that a member of a coparcenery may with the moneys which he might receive from the coparcenery effect an insurance upon his own life for the benefit of the members of his immediate family. His intention to do so and to keep the property as his separate property would be manifested if he makes a nomination in favour of his wife or children, as the case may be. It would therefore appear that no general proposition can be advanced in the matter of a coparcenery and that each case must be dealt with in accordance with the circumstances surrounding it.'

A single Judge of the Nagpur High Court in *Sugandhabai V. Kesarbai*, AIR 1932 Nag 162 seemed to have thought that where a coparcener takes a life insurance policy, it being a contract between himself and the insurance company, the presumption is that it was taken for his individual benefit, unless it is provided that the policy was taken out with the intention to benefit the joint family and that the premium amounts were paid out of the joint family funds and that in the absence of

any proof to that effect, the correct presumption is that the policy was taken out as a personal heirs of assured. To the same effect is the decision of a Bench of that Court in *Manharan Lal v. Jagjiwanlal* AIR 1952 Nag 73.

8. In *Seethalakshmi Ammal v. Controller of Estate Duty* : [1966]61ITR317(Mad) a Bench of the Madras High Court consisting of Veeraswsami and Kailasam, JJ. had to consider a case where the deceased, who was the karta of a Hindu undivided family consisting of himself and his two minor sons, had taken out certain life insurance policies, two of which were assigned in favour of his wife and in respect of others there were nominations in her favour. The premia for these policies had been paid from and out of the joint family funds. It was held that the insurance policies were the property of the joint family consisting of the deceased and his two minor sons and that they were not effected for his individual benefit. It was further observed that nomination under the law of insurance does not involve a transfer of the rights under a policy unlike an assignment and hence nomination for the purpose of Section 14 of the [Estate Duty Act, 1953](#) must be such as will constitute the nominee a donee entitled to the benefit of the policy money. Dealing with the observations of their Lordships of the Supreme Court while considering the judgment in : AIR1954 Mad222 *Veeraswami, J.* said at p.322:

'It may be seen that as we understand the judgment of the Supreme Court, the decision that the policy moneys formed part of the assets of the coparcenery was rested on the principle that anything obtained with the joint family funds would belong to the joint family and on the test not whether the deceased had taken out the policies for the benefit of his own family but whether he did so without detriment to the joint family funds. It may further be noticed in that case taken at the same time on the lives of the other brothers of the deceased, the premiums for which were also paid from the funds of the press which was owned by the joint family just as in the case of the three policies in the name of the deceased.'

Dealing with the observations in : AIR1963 Mad245 he further observed at page 323:

'The presumption based on the personal contractual relationship and the modern concept of society and economy and individual rights may not hold where life

insurance policies are taken out on the lives of the members of a coparcenary and are kept up, that is to say, the premiums therefore were paid out of joint family funds or to the detriment of the joint family assets. IN such a case, the principles of Hindu Law will have application with the result that whatever is acquired out of coparcenary property or to the detriment of the joint family assets will belong to the coparcenary or joint family.'

9. It would appear from a review of the above cases, that in every case where joint family funds are used for payment of premia of a life insurance policy, there is a detriment to the joint family, but that is not the sole criterion. If joint family funds are advanced to members of the coparcenary for their individual benefit, there is though strictly speaking a detriment to the joint family nonetheless the intention with which that money is advanced and the use of it by the individual for his own benefit would determine the character of the income or the amounts earned therefrom. No doubt there should be proof aliunde of such an intention and the treatment of any income earned from such an advancement.

10. Applying these principles to the facts as found in this reference, it would appear that the policies were effected for the individual benefit of the assured and not the joint family. The joint family itself did not treat the insurance effected upon the deceased as one enduring for the benefit of the joint family. The amounts were received by the widow and were credited to her separate account in the joint family books. It was also admitted that these moneys were not merged with the funds of the Hindu undivided family not had the family derived any benefit from these policies. There is no proof that though the premium amounts came from out of the joint family funds, whether they were paid on behalf of the joint family or were advanced to the deceased who paid the premiums from out of those funds, to keep the policy alive for the benefit of the immediate members of his family. The subsequent conduct of the joint family gives an indication of the intention at the time when the premiums were paid, namely that the policies were intended to be for the benefit of the deceased.

11. Our answer to the question is accordingly in the affirmative and in favour of the department with costs. Advocate's fee Rs. 250.

12. Reference answered affirmatively.

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