

A. Vs. Pratap Reddi V. Commissioner of Agricultural Income-tax.

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Court : Andhra Pradesh

Decided On : Jan-17-1962

Reported in : [1962]46ITR898(AP)

Appeal No. : Case Referred No. 12 of 1959

Appellant : A.

Respondent : Pratap Reddi V. Commissioner of Agricultural Income-tax.

Judgement :

UMAMAHESWARAM J. - Two questions are referred for decision under section 26 of the Hyderabad Agricultural Income-tax Act (13 of 1950) (hereinafter referred to as the Act). Those questions are :

'(1) Whether, on the facts and circumstances of the case, the learned Appellate Deputy Commissioner is justified in holding that the income derived by the minor sons from the lands given to their shares is to be included in the income of his father; and

(2) Whether on a true construction of the provisions of the Transfer of Property Act, the Deputy Commissioner is right in holding that partition is transfer so as to attract the applicability of section 9 of the Agricultural Income-tax Act to the instant case ?'

The relevant facts are as follows : The assessee and his sons entered into a valid partition on 1st October, 1952. The Agricultural Income-tax Officer and the Deputy Commissioner of Agricultural Income-tax came to the conclusion that the partition entered into between the father and the sons was a transfer within the meaning of section 9 of the Act. Section 9 is as follows :

'In computing the total agricultural income of an individual for the purpose of assessment, there shall be included

(a) so much of the total agricultural income of a wife or minor child of such individual as arises directly or indirectly -

(i) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in the connection with an agreement to live apart;

(ii) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration.'

The question that arises for decision is whether the partition entered into between the father and the sons is a transfer of the assets of the assessee within the meaning of section 9 of the Act.

The question as to whether a partition is a transfer within the meaning of section 53 of the Transfer of Property Act came up for decision before Subba Rao J. (as he then was) and Panchapakesa Ayyar J. in *Radhakrishnaiah v. Sarasamma*. The learned judges reviewed all the prior decisions and came to the conclusion that partition is not a transfer. At page 217 the learned judges held as follows :

'Partition, therefore, is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the shares had an antecedent title and, therefore, no conveyance is involved in the process as a conferment of a new title is not necessary.'

There is an earlier decision of the Madras High Court in *Narasimhalu v. Someswara Rao*, wherein Patanjali Sastri J. (as he then was) defined partition in

the following terms :

'.... each co-sharer renounces his rights in the other common properties in consideration of his getting exclusive right to and possession of specific properties in which the other co-owners renounced their rights. It is thus a renunciation of mutual rights and does not involve any transfer by one co-sharer of his interest in the properties to the others.'

These decision were followed by a Division Bench consisting of one of us (Umamaheswaram J.) and our learned brother, Mr. Justice Krishna Row, in *Macharacharyulu v. Veeracharyulu*. Considering the provisions of section 5 of the Madras Hereditary Village Offices Act it was held that partition was not a transfer. They also declined to refer the question to a Full Bench.

The learned Government Pleader is not able to cite any decision of this court which has taken a view different from the decision in *Macharacharyulu v. Veeracharyulu*. He relied upon the decisions of the other High Courts taking a different view. We are bound by the decision of our High Court and we follow that decision. The conflict is noticed by Mulla in his *Commentary on the Transfer of Property Act* (fourth edition, page 257). The learned author says that though the preponderance of authority is in favour of a partition being treated as a transfer for the purpose of section 53, the correct view is that a partition is not a transfer. It is surprising that the income-tax authorities did not make a reference to the decisions aforesaid. The view taken by the Deputy Commissioner that 'there is obviously a transfer of property by the partition' is erroneous. There is no suggestion in the present case that the partition entered into between the father and the sons is a colourable partition and is no partition in the eye of law.

In the result, the questions are answered as follows :

- (1) The income derived by the minor sons from the lands given to their share is not liable to be included in the income of the father; and
- (2) The partition entered into between the father and the sons is not a transfer within the meaning of section 9 of the Hyderabad Agricultural Income-tax Act.

The assessee is entitled to his costs. Advocates fee is fixed at Rs. 250.

Questions answered accordingly.

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