

Hari Hari Vs. Commissioner of Agricultural Income-tax, Hyderabad.

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Court : Andhra Pradesh

Decided On : Jan-19-1962

Reported in : [1963]48ITR791(AP)

Appeal No. : Case Referred No. 18 of 1959

Appellant : Hari Hari

Respondent : Commissioner of Agricultural Income-tax, Hyderabad.

Judgement :

UMAMAHESWARAM J. - This is a reference under section 26 of the Hyderabad Agricultural Income-tax Act. The two questions that are referred to for our decision are as follows :

- '1. Whether on the facts and circumstances of the case it is correct in law to hold that the income derived by the wife and minor sons from the lands given to their shares could be included in the income of the petitioner
2. Whether on a true construction of the provisions of the Transfer of Property Act, partition between the members of the Hindu joint family 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 hereunder :

The assessee is the father. He entered into two partition deeds with his minor sons represented by his wife. At the time when the first document of partition was executed, viz., on June 19, 1952, he had only two minor sons. Under that document the father took Ac. 94-11 Guntas of dry land and Ac. 44-13 Guntas of wet land. The wife (Amrute Bai) was allotted Ac. 26-38 Guntas of dry land and Ac. 25-13 Guntas of wet land. The first son, Sri Kamalakar Row, was allotted Ac. 35-24 Guntas of dry land and Ac. 16-24 Guntas of wet land. The second son, Sri Venkata Ramanarow, was allotted Ac. 36-16 Guntas of dry land and Ac. 27-13 Guntas of wet land. Subsequent to the partition another son was born and under a partition deed dated January 21, 1955, that son was allotted Ac. 15-18 Guntas of dry land and Ac. 11-36 Guntas of wet land. The Agricultural Income-tax Officer as well as the Deputy Commissioner of Agricultural Income-tax on appeal took the view that the terms of section 9 of the Act applied and that the income in the hands of the wife as well as the minor sons should be taken into account in assessing the father. On revision to the Commissioner of Agricultural Income-tax their orders were confirmed. A reference was made to this court under section 26 of the Hyderabad Agricultural Income-tax Act by the Commissioner of Agricultural Income-tax. The statement is no doubt defective. It does not set out the facts and the findings arrived at by the several authorities.

So far as the second question, we held in R. C. No. 12/59 dated January 17, 1962 (A. V. Pratap Reddy v. Commissioner of Agricultural Income-tax) that partition is not a transfer within the meaning of section 9 of the Hyderabad Agricultural Income-tax Act. So, the income of all the minor sons cannot be added to the income of the father in assessing him under the provisions of the Act.

Sri N. V. B. Sankar Row, the learned Government Pleader, contended that as the wife is not entitled to a share in a partition entered into between the members of a joint Hindu family, the reasoning in R. C. No. 12 of 1959 does not apply to the income realised by the wife in respect of the properties allotted to her under the partition document. This contention, in our opinion, is quite sound, as the wife has no right by birth in the joint Hindu family properties and is not entitled to a share therein. It is not suggested that the wife was living separate and that the properties were allotted to her in lieu of maintenance. The evidence discloses that the wife

was living with the husband and that a son was born subsequently. A careful reading of the partition deed shows that all the three sharers, i.e., the father and the two sons, had transferred Ac. 26-23 Guntas of dry land and Ac. 25-13 Guntas of wet land in favour of Amrute Bai. The income from the 1/3rd share of the properties allotted to Amrute Bai should be added to the income of the father under the provisions of Section 9 of the Act as representing the transfer of his interest in those properties. The income-tax authorities were not justified in adding the entire income from the properties allotted to her in assessing the income of the father.

Sri Sankar Row, the learned Government Pleader, sought to contend further that the partition that was entered into between the father and the minor sons was only a colourable partition. There is no evidence to that effect. The income-tax authorities have not found as a fact that the partition is not a genuine one. It was contended that the partition was entered into with a view to avoid payment of agricultural income-tax. As pointed out by Beaumont C.J. in *Central Talkies Circuit, Matunga, In re.*, '... any one is entitled so to conduct his affairs within the law as to avoid incidence of taxation, and if a man finds that he will suffer less in taxation by carrying on business in partnership with his mother rather than his wife, he is entitled to select his mother. But the partnership must be a genuine partnership.' It is clear law that a partition may be validly entered into between the parties even though it might result in the avoidance of the incidence of taxation.

On the facts and circumstances of the case we answer question No. 1 as follows :

The income derived by the minor sons from the lands allotted to them under the partition deed cannot be included in the income of the assessee. Only 1/3rd of the income derived by the wife from the lands allotted to her in the partition should be added to the income of the assessee.

The petitioner is entitled to costs. Advocates fee is fixed at Rs. 100.

Order accordingly.