

Deokinandan Khetan Vs. Controller of Estate Duty.

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Court : Allahabad

Decided On : Feb-06-1968

Reported in : [1968]69ITR801(All)

Appeal No. : Estate Duty Reference No. 839 of 1963

Appellant : Deokinandan Khetan

Respondent : Controller of Estate Duty.

Judgement :

OAK C.J. - This is a reference under section 64 of the Estate Duty Act, 1953. Chiranjilal Khetan died on June 4, 1956, leaving considerable property. He was survived by his widow, Smt. Rami Bai, and adopted son, Shri Deokinandan. Smt. Rami Bai and Deokinandan were the accountable persons under section 53 of the Act. The Assistant Controller proceeded to levy estate duty. In fixing estate duty, he included 1/5th share in certain immovable property situated at Hardwar and Jhunjhnu as property of Chiranjilal Khetan deceased. The valuation of that share was fixed at Rs. 54,720.00. Deokinandan appealed against the order of assessment. The appeal was apartly allowed by the Central Board of Revenue. But the Central Board of Revenue did not accept the appeallants contention that the property at Hardwar and Jhunjhnu was endowed property. Being dissatisfied with the appellate decision, Deokinandan applied for a reference to this court. Accordingly, the Central Board of Revenue has referred the following question of law to this court :

'Whether, on the facts and in the circumstances of the case the inclusion in principal value of the estate of the deceased, of the sum of Rs. 54,720 as representing 1/5th share of the deceased in the immovable properties at Hardwar and Jhunjhnu, was justified in law ?'

The broad facts giving rise to this reference are these : Chiranjilal Khetan was the son of Seth Ram Bilas Rai. A deed of endowment was executed in the year 1919. The property now in dispute was not included in the deed of endowment. For a number of years the property was recorded in the name of Seth Ram Bilas Rai. He died in the year 1936. In the year 1954, Chiranjilal applied to the municipal board that the property be registered in the name of the manager of Shri Lakhsmi Nathji Temple, Jhunjhnu, because his father Seth Ram Bilas Rai, had dedicated the property to the temple. Mutation was accordingly made in the year 1956, in favour of the trust. As already mentioned, Chiranjilal Khetan died on June 4, 1956.

Mr. Gopal Behari, appearing for the Controller of Estate Duty, raised a preliminary objection that the present case does not raise any question of law, and that the reference is incompetent. In *Sree Meenakshi Mills Ltd. v. Commissioner of Income-tax* their Lordships of the Supreme Court explained the distinction between questions of fact and question of law. Their Lord-ships observed on page 40 :

'In between the domains occupied respectively by questions of fact and of law, there is a large area in which both these questions run into each other, forming so to say, enclaves within each other. The questions that arise for determination in that area are known as mixed questions of law and fact. These questions involve first the ascertainment of facts on the evidence adduced and then a determination of the rights of the parties on an application of the appropriate principles of law to the facts ascertained. To take an example, the question is whether defendant has acquired title to the suit property by adverse possession. It is found on the facts that the land is a vacant site, that the defendant is the owner of the adjacent residential house and that he has been drying grains and cloth and throwing rubbish on the plot. The further question that has to be determined is whether the above facts are sufficient to constitute adverse possession in law. Is the user

continuous or fugitive Is it as of right or permissive in character Thus, for deciding whether the defendant has acquired title by adverse possession, the court has firstly to find on an appreciation of the evidence what the facts are. So far, it is a question of fact. It has then to apply the principles of law regarding acquisition of title by adverse possession, and decide whether on the facts established by the evidence, the requirements of law are satisfied. That is a question of law.'

In the present case, the question is whether the property in dispute was endowed property, or belonged to the Hindu undivided family of which Chiranjilal Khetan was a member. There is no instrument of dedication covering the property in dispute. The Central Board of Revenue has enumerated several facts having a bearing on this controversy. The question is whether the facts found by the Central Board of Revenue will lead to the inference that the property is endowed. That is a question of law. We thus find that the case does rise a question of law. We overrule the preliminary objection, and hold that the reference is competent.

The Central Board of Revenue permitted the appellant to file an affidavit before it. The appellant filed before the Central Board of Revenue a lengthy affidavit covering several matters. The question has been raised whether we should use the affidavit for disposal of the present reference. It appears from the appellate order that the Central Board of Revenue permitted the filing of an affidavit on a limited question, and that the affidavit actually filed went a good deal beyond the limited question. We may not, therefore, make use of the lengthy affidavit filed before the Central Board of Revenue.

In statement of the case we find the following observation by the Central Board of Revenue :

'The Assistant Controller observed that in the case of Commissioner of Income-tax v. Shri Thakurji Lakshmi Nathji in which the Allahabad High Court held that the endowment created by Seth Ram Bilas Rai and others in 1919, was public religious charitable trust, no reference had been made to the properties now in dispute as belonging to the trust.'

That observation in the statement of the case is somewhat misleading. The report in *Commissioner of Income-tax v. Thakurji Lakshmi Nathji* starts with the statement of the case on page 215. The statement of the case continues up to page 218. The judgment of the court is reported on pages 218 and 219. It is true that the judgment of the court did not mention that the property at Hardwar or Jhunjhnu was endowed property. But we find some reference to this question in the statement of the case on page 216 :

'The dharam karta had to make all arrangements to maintain the worship and to perform the requisite ceremonies in the temple and whatever remained out of the income was to be spent on, (i) charity to be given at Rishi Kesh, Hardwar and Badrinath..... He found the net income to be Rs. 9,180, out of which he made allowances to the extent of Rs. 2,925, in respect of annual expenses of 'Chetra' at Hardwar, Badrinath and Benares and of Rs. 1,200 for Hospital and other charitable expenditure at Jhunjhnu'.

It is true that even that recital in the statement of the case did not clearly indicate whether the property now in dispute was endowed property or not. But it is of some significance that the Appellate Tribunal found in that case that a part of the income of the endowed property was being spent at Hardwar and Jhunjhnu. It is legitimate to read the statement of the case along with the judgment in that case.

The Assistant Controller and the Central Board of Revenue relied upon the following circumstances in support of the view that the property in dispute belonged to the Hindu undivided family :

1. The deed of endowment of the year 1919 made no mention of the property now in dispute :
2. The property was recorded in the name of Seth Ram Bilas Rai till his death in the year 1936 :
3. Seth Chiranjilal wrote to the Municipal Board requesting that lease be renewed in favour of the firm Seth Ram Karan Das Ram Bilas Rai.

On the other hand, the Central Board of Revenue appears to have found the following facts, which support the assessee's contention :

1. The income from the property at Hardwar and the shops at Jhunjhnu was included in the account books of the trust along with other admitted income of the trust;
2. The expenditure on the trust at Hardwar and other places was debited to the trust account;
3. The income from the property at Hardwar was utilised on 'Chetras' and for supplying food to students at Hardwar and for distribution of 'Sadabrat' at Hardwar and Benares :
4. An expenditure of Rs. 4,585 involved in the construction of a new verandah in the Hardwar property was debited in the books of the trust;
5. The income from agricultural land at Jhunjhnu was credited to trust accounts;
6. Expenditure incurred on a well and a garden was debited to the trust;
7. Salary of servants, who looked after a bungalow, was debited to trust accounts;
8. Two tenants for the property at Hardwar entered into agreements with the trust, and not with the deceased personally;
9. Leases for the land in dispute were renewed in favour of the trust;
10. In the year 1954 Chiranjilal, deceased, applied to the Municipal Board for registering the property in the name of the manager of Shri Lakshmi Nathji Temple, Jhunjhnu, on the ground that his father, Seth Ram Bilas Rai, had dedicated the property to the temple; and
11. The property was ultimately recorded in the year 1956 in the name of the trust.

Recently there has been some litigation about the endowed property. Mannalal and two others filed a suit against Smt. Rami Bai and others. On the one hand, the property now in dispute was not included in the property detailed at the foot of the

plaint of the suit. On the other hand, in the written statement filed by defendants in that suit the property now in dispute was included as endowed property. The written statement appears to have been filed some time in April, 1957. that was soon after the death of Chiranjilal Khetan.

If regard be had to the three circumstances upon which the Assistant Controller and the Central Board of Revenue have relied in support of view that the property in dispute belonged to the Hindu undivided family, it will be seen that each one of the circumstances is in no way inconsistent with the case of the assessee that the property is indeed endowed property. The deed of endowment executed in the year 1919, does not mention the property. But, it must be remembered that the assessee's case is that the properties were acquired by Ram Bilas Rai, the dharam karta, after the year 1919. There is no finding that the property was acquired before that year. Then, the revenue points out that the property was recorded in the name of Seth Ram Bilas Rai until his death in the year 1936. Here again, it must be remembered that Seth Ram Bilas Rai was the dharam karta and it is not unusual for endowed property to be recorded in the name of the dharam karta. The third circumstance upon which the revenue relies is that when the lease was about to expire the application for renewal of the lease was made by Seth Chiranjilal in favour of the firm Seth Ram Karan Das Ram Bilas Rai. That application, however, it is clear, was not pursued, and it is not apparent on what basis Chiranjilal sought renewal in favour of the firm. It is sufficient to point out that the property was ultimately registered in the name of the manager of Shri Lakshmi Nathji Temple, Jhunjhnu, and subsequently in 1956, the property was recorded in the name of the trust. It seems to us that the facts found by the Central Board of Revenue which support the assessee's contention clearly make out a case for holding that the property is endowed property, and the three circumstances upon which the revenue has relied do not lead to any definite conclusion to the contrary.

In passing, we may point out that upon the stand taken by the deceased Chiranjilal and his heirs throughout, that the property is endowed property, Deokindan and his mother while effecting a saving of a few thousand rupees in estate duty, are likely to lose the property altogether on the case taken by them a position which they would not have assumed if the property was not in fact endowed property.

It is true that there is no deed of dedication covering the property in dispute. But no writing is necessary to create an endowment (see Principles of Hindu Law by Mulla, 13th edition, section 407 at page 438). The proper inference to be drawn from application of profits of property has been explained in the Principles of Hindu Law by Mulla under section 409 at page 441 :

'Where there is no instrument of grant, the mere fact that the profits of any land are being used for the support of an idol is not proof that land formed an endowment for the purpose; but where there is apparently good evidence going back for a long period, e.g., for more than half a century, that the land was given for the support of an idol, proof, that from that time the profits had been so expended would be strong corroboration.'

In the circumstances we are satisfied that the finding of the Central Board of Revenue that the property in dispute belonged to the Hindu undivided family is not supported by the evidence on the record, and accordingly we hold that the inclusion of the sum of Rs. 54,720.00 in the principal value of the estate of the deceased, as representing the one-fifth share of the deceased in the property in question, was not justified in law.

We answer the question referred to this court in the negative. Deokinandan Khetan will receive from the Controller of Estate Duty costs of the reference, which we assess at Rs. 300.

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