

Controller of Estate Duty Vs. Smt. S. Harish Chandra

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Court : Allahabad

Decided On : Sep-24-1986

Reported in : (1987)59CTR(All)56; [1987]167ITR230(All);
[1987]30TAXMAN100(All)

Judge : K.C. Agarwal and ;R.P. Singh, JJ.

Acts : Hindu Seccession Act, 1956 - Sections 6; [Estate Duty Act, 1953](#) - Sections 5

Appeal No. : E.D.R. No. 52 of 1978

Appellant : Controller of Estate Duty

Respondent : Smt. S. Harish Chandra

Judgement :

K.C. Agarwal, J.

1. This is a reference made by the Appellate Tribunal under Section 64(1) of the [Estate Duty Act, 1953](#). The question referred to us is:

'Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that a notional partition is to be assumed prior to the date of death of the deceased in consequence of which 1/4th of the coparcenary property passed on his death ?'

2. The facts, briefly stated, are that late Justice Harish Chandra died on September 11, 1972, leaving behind his widow, Smt. S. Harish Chandra, who filed a statement of the family property claiming that the deceased had only one-fourth share in the property. The deceased had one brother, Bishan Chandra, who had died even before leaving behind Smt. Swarup Rani, his widow, and no issue. The deceased, late Justice Harish Chandra, had only one daughter who had been married before his death. According to the accountable person, the branch of the deceased had one-half share in the coparcenary property, and in that half share, the share of the deceased was only one-fourth and the remaining belonged to the accountable person, since she was entitled to a share in the event of partition between herself and her husband.

3. The contention of the petitioner was that as only one-fourth share on the death of her husband passed on to her, the value of one-fourth share alone was required to be taken into consideration under Section 5 of the Estate Duty Act.

4. The Assistant Controller held that the deceased was the sole owner of whole of the property of his branch and on his death, the whole of the property vested in him, passed on to his wife. We have noted above that in the family of the deceased there were only two members, i.e., the deceased and his wife and, as such, there was no scope for any partition between them.

5. The appeal preferred by Smt. S. Harish Chandra was dismissed holding that the deceased had one-half share, and not one-fourth, as was pleaded by the accountable person. On the death, the whole of his share passed on to his wife, the accountable person, and, as such, the value of half share had to be taken into account for finding the liability of estate duty.

6. The appeal filed by the accountable person was allowed by the Appellate Tribunal on September 20, 1976, on the ground that the share of the deceased was only one-fourth in the property and not one-half. It was thereafter, that an application was made by the Revenue for referring the question, mentioned above, to the High Court under Section 64(1). The Tribunal, being satisfied that the question sought to be referred by the Department was one of law, made a reference of the same under Section 64.

7. In the instant case, the admitted position is that there was a joint Hindu family of late Justice Harish Chandra and Bishan Chandra. Admittedly, a partition took place between the two brothers, as a result of which half share of the property went to the deceased, late Justice Harish Chandra, and the remaining half went to his brother, Bishan Chandra. Late Justice Harish Chandra had no male issue and the only daughter he had was married before his death.

8. The argument raised on behalf of the accountable person before the Tribunal and which was accepted by it was that since she was entitled to have one-fourth share in the property received by her husband, late Justice Harish Chandra, what passed on to her was only the share which, belonged to late Justice Harish Chandra, and, as such, the value of the one-fourth share alone could be taken in law for the purpose of charging estate duty under the Estate Duty Act.

9. The accountable person had relied on Explanation 1 to the proviso to Section 6 of the Hindu Succession Act, 1956, to substantiate her case that although she was living with her husband, on the basis of the concept of notional partition because of the fiction incorporated in Explanation 1 to the proviso to Section 6 of the Hindu Succession Act, her share was only one-half of one-half which had been received by late Justice Harish Chandra.

10. Section 5 of the Estate Duty Act deals with levy of estate duty which is payable on the property which passes on the death of its owner. The expression 'passes' means 'changes hands'. It is on the true value of the estate which passes on or is left by the deceased that duty is payable.

11. On the basis of Explanation 1 to the proviso to Section 6 of the Hindu Succession Act, 1956, Smt. S. Harish Chandra had claimed her right to one-fourth share, Explanation 1 reads as under :

'For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.'

12. Section 6 of the Hindu Succession Act, 1956, deals with the question of a coparcenary in a Mitakshara coparcenary dying without making any testamentary disposition of his undivided share in the joint family property. It provides that in the absence of a will, the interest of the deceased shall devolve by survivorship upon the surviving members. The proviso to Section 6 confers new rights upon the specified female heirs and the predeceased daughter's son of a deceased coparcener, provided that the deceased had not disposed of his property by will. Explanation 1 defines the expression 'the interest of the deceased in the Mitakshara coparcenary property'. It incorporates the concept of a notional partition. The Explanation creates an imaginary state of affairs as real and provides that the consequences and incidents mentioned in the Explanation would follow in case the conditions mentioned therein are satisfied. It may be important to note that the Explanation will apply only where the question is devolution of interest of the deceased in coparcenary property. If there is no coparcenary property, or no coparcenary interest, Section 6 will not apply.

13. In the present case, we have seen above the coparcenary of late Justice Harish Chandra consisted of himself and his brother. The property between them had been divided. Since the family had already separated and late Justice Harish Chandra had obtained the share out of the coparcenary property before his death, there was no question of his getting any share in the same. As he could not get any share, there could be no occasion for notional partition on the basis of which his wife, who is the accountable person before us, could claim any share in the property. Bishan Chandra, the brother of late Justice Harish Chandra, had died before the death of Justice Harish Chandra. There was thus no question of a coparcenary continuing inasmuch as if a coparcenary consists of only two persons and one of them dies, the coparcenary would cease to exist. At least two surviving coparceners of the coparcenary have to exist to continue it without destruction.

14. Mulla in his Hindu law observes (paragraph 214, at p. 281, 15th edition by S. T. Desai) :

'The conception of a joint Hindu family constituting a coparcenary is that of a common male ancestor with his lineal descendants in the male line within four

degrees counting from and inclusive of such ancestor.

There can be no coparcenary if there are not more than two members to form it.'

15. Counsel for the respondent urged that as the wife of late Justice Harish Chandra was alive, the coparcenary could not come to an end. The submission is unfounded.

'A Hindu coparcenary is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are the sons, grandsons, and great grandsons of the whole of the joint family.

No female can be a coparcener although a female can be a member of a joint Hindu family.'

16. (See paragraph 217 of Mulla's Hindu Law),

17. In *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh* : [1987]163ITR31(SC) , the Supreme Court has taken the same view.

18. A joint family may consist of female members. The property of a joint family does not cease to belong to the family because there is only a single male member in the family inasmuch as it is not necessary that there should be two male members to constitute a joint family. This is, however, not true of a coparcenary. In order to constitute a coparcenary as said above, there is need of more than one male member and both of them should be entitled to be called coparceners.

19. In the instant case, what we find is that late Justice Harish Chandra was the only male member in his family. He did not have any male issue. Consequently, there was no coparcenary, and since there was no coparcenary, neither could Section 6 nor Explanation 1 apply. In such a case, the widow or the accountable person could not by taking advantage of Explanation 1 to the proviso to Section 6 of the Hindu Succession Act, 1956, claim that she had one-fourth share. The question of notional partition could arise, as stated earlier, in respect of a

coparcenary property and not otherwise.

20. CED v. Anari Devi Halwasiya, : AIR1972 All179 , relied upon by the respondent's learned counsel instead of supporting his contention goes in favour of the Revenue. In that case, there was a Hindu undivided family consisting of D.P. Halwasiya, his two wives, Tribeni Devi and Anari Devi, a son and three daughters. D.P. Halwasiya died on December 22, 1957. Thereafter, Tribeni Devi died on December 5, 1958. It was on her death that the question of payability of the duty on her estate arose. The learned judges, who decided this case, were required to consider the effect of Explanation 1 to the proviso to Section 6 of the Hindu Succession Act. In that case, admittedly, there was a coparcenary as D.P. Halwasiya had a son at the time of his death. For deciding the controversy before us, it is not necessary to deal with this case elaborately inasmuch as what will suffice to mention is only that the High Court found that there was a coparcenary in existence and with reference to the coparcenary, the controversy with regard to the application of Explanation 1 to the proviso to Section 6 was decided.

21. In Maharani Raj Laxmi Kumari Devi v. CED : [1980]121ITR1002(All) , although the controversy was not exactly the same as has cropped up before us, the assistance is derived for the purpose of interpreting section 6 of the Hindu Succession Act. It was observed in this case (at page 1008) :

'Further, the very fact that Section 6 talks of male Hindu having an interest in a Mitakshara coparcenary postulates that at the time of death of the Hindu male a coparcenary existed of which he was a member. This militates against the contention that the proviso effects a partition in the coparcenary during the lifetime of the coparcener. After the death of the coparcener there cannot be any question of a partition at all between the deceased coparcener and a surviving member of the coparcenary, because a partition can be effected only between living coparceners or persons who claim under a deceased coparcener.'

22. The proviso to Section 6 creates a fiction only for the purpose of the said section which sets out the mode of devolution of interest in coparcenary property. It comes into operation only after the death of the coparceners, and only for the limited purpose of laying down the succession. But where, as here, there was no

coparcenary in existence at the time of the death of Justice Harish Chandra, there was no question of applying Explanation 1 to the present case.

23. In *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh* : [1987]163ITR31(SC) , Section 6 of the Hindu Succession Act came to be considered. This decision also indicates that Explanation 1 to the proviso to Section 6 can apply only to a case where there is a coparcenary. It has also discussed the decision of the Supreme Court in *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum* : [1981]129ITR440(SC) .

24. From what we have said above, we answer the question in the negative and against the assessee and in favour of the Revenue. We do not make any order as to costs.

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