

Dulari Devi and ors. Vs. Controller of Estate Duty

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Court : Orissa

Decided On : Nov-08-1994

Reported in : (1995)124CTR(Ori)398; [1995]211ITR524(Orissa)

Judge : G.B. Patnaik and ;K.L. Issrani, JJ.

Acts : [Estate Duty Act, 1953](#); Income Tax Act; Wealth Tax Act

Appeal No. : S.J.C. No. 17 of 1988

Appellant : Dulari Devi and ors.

Respondent : Controller of Estate Duty

Advocate for Def. : A.K. Roy, Adv.

Advocate for Pet/Ap. : D.K. Mohapatra, Adv.

Judgement :

G.B. Patnaik, J.

1. On an application being filed under Sub-section (3) of Section 64 of the [Estate Duty Act, 1953](#) (hereinafter referred to as 'the Act'), by the persons held to be accountable, after their application under Sub-section (1) thereof was rejected by the Appellate Tribunal, the High Court directed the Tribunal to draw up a statement of case and refer the following question of law :

'Whether the Tribunal is correct in distinguishing the decision reported in Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum : [1981]129ITR440(SC) to hold that the property of the deceased passed to the assessee was not inherited by them ?'

2. The question thus posed has not properly been framed, and accordingly, after hearing learned counsel for the parties, we reframe the question as follows :

'Whether the Tribunal was right in distinguishing the decision reported in Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum : [1981]129ITR440(SC) , in arriving at the conclusion that on the death of the deceased Ramraja Ram, the entire Hindu undivided family property passed to his heirs and is thus includible in the dutiable estate ?'

3. The brief facts of the case are that the late Ramraja Ram was the karta of a Hindu undivided family consisting of himself and his three wives, and he had all along been assessed to income-tax as well as wealth-tax in the capacity of the karta of the Hindu undivided family. After his death, the accountable persons took the stand before the Assistant Controller that the deceased Ramraja Ram had only one-fourth share in the property which passed on his death to the accountable persons and, therefore, the estate duty is leviable only on the said one-fourth interest. The Assistant Controller, relying upon a decision of this court in CIT v. K. Satyanarayan Murty : [1984]147ITR140(Orissa) , came to hold that the property belonging to the Hindu undivided family consisting of a single male member and other family members are coparcenary property and, therefore, on the death of Ramraja Ram, the entire property passed to the heirs. He also came to the conclusion that since the deceased Ramraja Ram was the only coparcener, there could not be any notional partition of the Hindu undivided family property. Accordingly, the entire Hindu undivided family property would be a dutiable estate. On appeal by the accountable persons, the appellate authority dismissed the appeal and confirmed the order of the Assistant Controller. A second appeal had been preferred to the Tribunal and the Tribunal also dismissed the second appeal and rejected the contentions raised on behalf of the accountable persons. The Tribunal was of the view that even though there is no dispute that the property

belonged to the Hindu undivided family of which the deceased was the sole coparcener and other members of the Hindu undivided family were his three wives, since the deceased was entitled to dispose of the entire Hindu undivided family property as if it was his own property, the entire property passed on the death of the deceased under Section 6 of the Act. The Tribunal also came to the conclusion that it was unnecessary to take recourse to any deeming provision. Though the accountable persons relied upon the decision of the Supreme Court in *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum* : [1981]129ITR440(SC) , the Tribunal came to hold that the said decision has no application to the facts of the case. Ultimately, the Tribunal having dismissed the second appeal, an application for making a reference under Sub-section (1) of Section 64 of the Act was filed and that having been rejected, the jurisdiction of this court was invoked under Sub-section (3) of Section 64 and finally pursuant to the direction of this court, the Tribunal has made a statement of case and submitted the same for the opinion of the court on the question of law as already stated.

4. Mr. Mohapatra, learned counsel, appearing for the petitioners, contends that in view of Explanation 1 to Section 6 of the Hindu Succession Act, 1956, and Section 39(1) of the [Estate Duty Act, 1953](#), in the case of the death of a member of the Hindu undivided family, the value of the share of the deceased in such joint family property which would have been allotted to him had there been a partition immediately before his death, would be taken to be the value of his interest in the joint family property ceasing on death and, therefore, that portion of the property which would have fallen to the share of the deceased in the event of a partition of the family taking place immediately before the death would be deemed to be the interest of the deceased in the joint family property. The Tribunal, therefore, committed an error in directing that the entire property of the deceased would pass. Learned standing counsel for the Department, on the other hand, contended that even though the property was treated to be the property of the Hindu undivided family, both under the Income-tax Act as well as the Wealth-tax Act, and the Hindu undivided family consisted of the deceased Ramraja Ram and his three wives, on the death of Ramraja Ram, the entire property must be deemed to have passed since Ramraja Ram had unfettered power and competence to dispose of

the entire property at the time of his death as is apparent from Section 6 of the Act and, therefore, the Tribunal rightly rejected the petitioners' contention. In order to appreciate the correctness of the rival submissions, it would be appropriate for us to notice certain provisions of the Act itself. Section 5 of the Act provides for levy of estate duty which is the charging section. Under Section 5, the duty is levied on a person dying after the commencement of the Act and the levy is based on the principal value of the property, which property either passes or is deemed to pass after the death of such a person. Under Section 6, the property which the deceased was competent at the time of his death to dispose of shall be deemed to pass. In fact, Sections 6 to 16 define and describe what is the property which is deemed to pass. Part V of the Act containing Sections 36 to 43 provide as to how the principal value of any property shall be estimated. Section 39 deals with the mode of valuation of interest in coparcenary property ceasing on death. Section 39(3) of the Act provides that for the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of the Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased. For better appreciation of the point in issue, Section 39 of the Act is extracted hereinbelow in extenso :

'39. Valuation of interest in coparcenary property ceasing on death.--(1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death.

(2) The value of the benefit accruing or arising from the cesser of an interest in the property of a tarwad or tavazhi governed by the Marumakkattayam rule of inheritance or of a kutumba or kavaru governed by the Aliyasantana rule of inheritance which ceases on the death of a member thereof shall be the principal value of the share in the property of the tarwad or tavazhi or, as the case may be, the kutumba or kavaru which would have been allotted to the deceased had a

partition taken place immediately before his death.

(3) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of this Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.'

5. That Ramraja Ram and his three wives constituted a joint Hindu family and the property in the hands of Ramraja Ram was being taxed as Hindu undivided family property both for the purpose of income-tax and wealth-tax is not disputed. But the authority under the Act as well as the Tribunal being of the opinion that the sole surviving coparcener can dispose of the entire Hindu undivided family property as if it was his own property and applying Section 6 of the Act, held that there is no necessity to take recourse to any deeming provision and the decision of the Supreme Court in Gurupad Khandappa Magdum's case : [1981]129ITR440(SC) has no application. The Assistant Controller, however, solely relying upon the Bench decision of this court in K, Satyanarayan Murty's case : [1984]147ITR140(Orissa) , came to hold that the status of a coparcener in a single coparcenary Hindu undivided family is that of an individual and, therefore, though Ramraja Ram and his three wives constituted Hindu undivided family, it is Ramraja Ram as karta who had possessed the right to dispose of the entire property and consequently on his death, the entire property must be deemed to have passed and as such is dutiable. At the outset, it may be stated that the Bench decision of this court in K. Satyanarayan Murty's case : [1984]147ITR140(Orissa) has no application at all to the case in hand. The question for consideration before the court in K. Satyanarayan Murty's case : [1984]147ITR140(Orissa) , was whether in respect of a business when Hindu undivided family was the owner and one of the partners claiming as the karta of the Hindu undivided family claimed partition and partial partition of the Hindu undivided family business was allowed, then the property coming to the hands of the said karta whether would be his personal property or joint family property. This court answered the aforesaid question by holding that the said property became his personal property and had no longer the

incidence of joint family character. We really fail to understand how the aforesaid decision can be the basis for the conclusion of the Assistant Controller that on the death of Ramraja Ram the entire property must be deemed to have passed and, therefore, is dutiable under Section 5 of the Act. The expression 'Hindu undivided family' for the purpose of the Income-tax Act, or the Wealth-tax Act, or the Estate Duty Act, is not coterminous with a Hindu coparcenary. The said expression 'Hindu undivided family' is used in the sense in which it is understood in the personal laws of Hindus. That means, a joint family may consist of a single male member, wife and daughters, and there is no embargo either under the Income-tax Act, or the Wealth-tax Act, or the Estate Duty Act, to suggest that unless there is more than one male member, there cannot be an assessable unit of Hindu undivided family. In this connection, the decisions of the Supreme Court in the case of N.V. Narendranath v. CWT : [1969]74ITR190(SC) , as well as in the case of C. Krishna Prasad v. CIT : [1974]97ITR493(SC) may be seen. In Gurupad Khandappa Magdum's case : [1981]129ITR440(SC) on which the petitioners placed reliance before the Tribunal, but the Tribunal did not rely upon it. The question that arose for consideration was as to what would be the share of the heirs in coparcenary property on the death of a coparcener. The Supreme Court, therefore, considered Explanation 1 to Section 6 of the Hindu Succession Act, 1956, and came to hold that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased. Their Lordships ultimately held that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition. The provisions of Sub-section (1) of Section 39 of the Estate Duty Act came up for consideration in the case of CED v. Alladi Kuppaswamy : [1977]108ITR439(SC) . After considering the scope and ambit of the provisions, their Lordships held that on the death of Smt. Alladi, her interest in the Hindu undivided family property passed to her three sons and the value of this interest being one-fourth, the heirs would be liable to pay estate duty on the value of one-fourth share of the Hindu joint family property. In CED v. P.G. Chaware : [1993]204ITR513(Bom) , the Division Bench of the Bombay High Court considered directly the question which

has been raised in the present case and came to the conclusion that in a case of a Hindu joint family consisting of the deceased and his wife, on the death of the deceased who was the sole coparcener, the estate duty would be leviable on the value of the property which the deceased would have got had there been a notional partition prior to his death by application of Section 39(1) of the Estate Duty Act. Learned standing counsel for the Income-tax Department vehemently argued that the aforesaid decision does not lay down the correct position and has ignored to take note of the provisions of Section 6 of the Estate Duty Act, but we are unable to persuade ourselves to agree with this submission of learned standing counsel. Since Ramraja Ram and his three wives constituted a Hindu undivided family and the property was being assessed for the purpose of income-tax and wealth-tax as Hindu undivided family property, on the death of Ramraja Ram, it is his interest in the property which would be liable to estate duty, and in the event of a partition between Ramraja Ram and his three wives prior to the death of Ramraja Ram, Ramraja Ram would have got an eight annas interest. Consequently, it is that interest of Ramraja Rani which must be deemed to have passed and as such is liable to duty under the Estate Duty Act. In the circumstances, our answer to the question reframed by us is that the Tribunal was not right in distinguishing Gurupad Khandappa Magdum's case : [1981]129ITR440(SC) , and the conclusion of the Tribunal that the entire Hindu undivided family property of Ramraja Ram is includible in the dutiable estate is wholly unsustainable. We further hold that it is only the eight annas interest of Ramraja Ram in the property which would be includible in the dutiable estate.

6. The reference is answered accordingly.

K.L. Issrani, J.

7. I agree.