

Pusarla Narasaraju Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Hyderabad

Decided On : Sep-22-1984

Reported in : (1985)11ITD683(Hyd.)

Judge : S Rajaratnam, K Thanikkachalam, J Member

Appellant : Pusarla Narasaraju

Respondent : Assistant Controller of Estate

Judgement :

1. This appeal is directed against the order of the Appellate Controller, Southern Zone, Madras, dated 27-7-1983, .passed in ED Appeal No. 4 ED KKA of 1981-82.
2. According to the facts of this case, late P. Peda Venkataraju expired on 5-8-1979, leaving behind movable and immovable properties.

The accountable person, Smt. P. Narasaraju, has filed an estate duty account on 6-2-1980. Before the Appellate Controller, the claim made by the accountable person was for deduction of provision for marriage expenses of three unmarried daughters of the deceased from the principal value of the estate of the deceased. The claim made under this head was Rs. 30,000. This claim was also made during the course of the assessment proceedings on 16-3-1981. The Assistant Controller did not allow this claim in the assessment order. The accountable person reiterated this claim before the Appellate Controller. The Appellate Controller, following the ratio of the decision of the Andhra Pradesh High Court in the case of

CED v. Estate of Late S. Srinivasulu Reddy, A/P Sumanamma [Case Referred No. 107 of 1976, dated 21-12-1979], came to the conclusion that inasmuch as the daughters are entitled to have share in their father's estate, they are not entitled for maintenance.

Accordingly, he confirmed the view taken by the Assistant Controller.

3. Aggrieved, the assessee is in appeal before us. Before us, it was submitted that the Appellate Controller was not justified in confirming the disallowance of Rs. 30,000 claimed by way of marriage expenses for the three unmarried daughters. It was further submitted that the decision of the Andhra Pradesh High Court in Estate of Late S.Srinivasulu Reddy, A/P Sumanamma's case (supra) does not apply to the facts of this case. Accordingly, it was pleaded that inasmuch as the marriage expenses of the daughters, which is in the nature of charge on the property, should be considered as deductible from the estate of the deceased.

4. On the other hand, the learned departmental representative supported the order passed by the Appellate Controller.

5. We have heard the rival submissions made by the parties. The fact remains that P. Peda Venkataraju expired on 5-8-1979, leaving behind movable and immovable properties. The deceased left behind his widow, three daughters and a son. The son was aged about 12 years at that time. The three daughters are unmarried. According to the learned counsel appearing for the accountable person, the deceased has been a karta of his HUF during his lifetime. The case of the accountable person was that besides the share, they would get in the share of their father's interest in the joint family property; they would also be entitled to some amount by way of provision for maintenance and marriage expenses out of joint family. He further reiterated that there was no partition in the present case and we were only to compute the value of the deceased's interest in the joint family on the assumption of partition of the family immediately before his death. According to the learned counsel, the Hindu Adoptions and Maintenance Act, 1956, makes provision for dependent members of the family vis-a-vis the property of the deceased and not out of the property which the deceased gets by way of his share. He further submitted that the obligation as regards the maintenance of the

dependent members of the family is both on the individual and the HUF. While after passing the Hindu Adoptions and Maintenance Act, obligation of the individual can only be governed by that Act, the obligation as regards HUF's property, about which there is no provision made in the Hindu Adoptions and Maintenance Act, will have to be governed by the ancient Hindu law. It was also submitted that before a partition took place of the joint family property, provision should be made for maintenance and marriage expenses of the unmarried daughters.

6. A similar question came up for consideration before the Madras High Court in the case of *Karuppana Gounder v. Chinna Nachammal* AIR 1974 Mad. 329. According to the facts, in that case the karta of the joint Hindu family was survived by his widow, one son and one daughter, out of whom one was unmarried. The unmarried daughter claimed that besides the share, she would get in the share of her father's interest in the joint family property ; she was entitled to some amount by way of provision for maintenance and marriage expenses out of the joint family property. The Madras High Court refused to accept the contention put forward in this respect and held as under : The maintenance is a matter for which provision is made in the Act and therefore any one claiming maintenance which takes in the marriage expenses of an unmarried daughter (under Section 3(b) of the Act), would have to work his/her rights only under the provisions of the Act and the textual Hindu Law cannot be invoked at all. It cannot therefore be contended that the abrogation of the textual law under Section 4 of the Act would be limited to the maintenance right in lieu of the estate of the deceased only and that such textual law as against the remaining part of the joint family property cannot be said to have been abrogated.

The Special Bench of the Madras Tribunal had an occasion to deal with this question in the case of *Smt. K.S. Jayam v. ACED* [1983] 3 ITD 804.

In that case, the Tribunal held after considering the judgment of the Madras High Court in *Karuppana Gounder's* case (*supra*) : We have considered rival contentions carefully. It appears that Article 304 of Mulla's Hindu Law which provides for determination of 'the property available for partition' before actual

notional partition can take place has not been considered as such by the learned Judges of the Madras High Court. The distinction drawn before us by the learned counsel that the provisions of the Hindu Adoptions and Maintenance Act refer to the maintenance qua deceased's own property only and not the joint family property in which the deceased also had an interest and, therefore, that the Act may not modify or affect the maintenance provisions as regards joint family property under the S'hastric Hindu Law, also seems apparently significant. However, the issue is squarely covered by the Madras High Court decision (*supra*) and it is not open to us to distinguish it on the ground that some relevant aspects were not considered in that case. The propriety demands of us to assume that all such aspects were considered but their Lordships did not consider it worthwhile to refer to them in their order. Therefore, respectfully following the said decision, we hold that there is no justification for provision as regards maintenance and marriage expenses of the unmarried daughter and the widow before computing the property available for partition so as to further determine the deceased's interest in the said property.

7. The determination of widow's interest in the coparcenary property came up for consideration before the Supreme Court in the case of *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum* AIR 1978 SC 1239.

While considering Section 6 of the Hindu Succession Act, 1956, the Supreme Court observed as under : In order to ascertain the shares of heirs in the property of a deceased coparcener it is necessary in the very nature of things, and as the very first step, to ascertain the share of the deceased in the coparcenary property. For, by doing that alone, can one determine the extent of the claimant's share. Explanation 1 to Section 6 resorts to the simple expedient, undoubtedly fictional, that 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 that property had taken place, immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property,

one cannot go back on that assumption and ascertain the share of the heirs without reference to it. The assumption which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's imagination to boggle. All the consequences which follow from a real partition have to be logically worked out, which means 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. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion.

It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled. The inevitable corollary of this position is 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.

In deciding the coparcenary interest of a Hindu widow, there is a decision of the Supreme Court in the case of *CED v. Alladi Kuppuswamy* [1977] 108 ITR 439. According to the facts in that case, Shri Alladi Krishnaswami Iyer died sometime before the passing of the Estate Duty Act, 1953 ('the Act'), but during his lifetime he had settled certain properties absolutely on his wife, Smt. Alladi Venkalakshamma. He had also declared certain other properties to form part of the joint family properties. Shri Krishna-swami Iyer was the member of the Hindu coparcenary consisting of himself, his wife and three sons. In the instant case, the Court was concerned with the joint family properties left by Shri Alladi. Smt. Alladi died on 5-1-1956, a few months before passing of the Hindu Succession Act, and the Assistant Controller valued her estate at a total amount of Rs. 7,25,527 including a sum of Rs. 2,02,271 being the value of her share in the joint family properties. The dispute centred round the inclusion of the aforesaid sum of Rs. 2,02,271. The revenue assessed the estate duty on the footing that, as Smt. Alladi

was a member of the Hindu coparcenary, her interest in the joint family properties passed on her death to the other three sons and the value of this interest being one-fourth, the heirs would be liable to pay estate duty on the value of the one-fourth share assessed at Rs. 2,02,271. The contention of the accountable person was that as Smt. Alladi died as a Hindu widow, she possessed no coparcenary interest which could pass on her death ; her interest merged without any benefit accruing or arising to the coparceners and, hence, Sub-section (1) of Section 7 of the Act had no application. On these facts, the Supreme Court summarised the legal position as under : By virtue of the provisions of the Act of 1937 a Hindu widow undoubtedly possesses a coparcenary interest as contemplated by Section 7(1) of the Act and she is also a member of a Hindu coparcenary as envisaged by Section 7(2) of the Act. On the death of Smt. Alladi, therefore, there was clearly a cessor of her interest and her interest merged in the coparcenary property and by reason of the inclusive part of Sub-section (!) of Section 7, it must be taken to have passed on her death and was hence exigible to estate duty.

Since Smt. Alladi was a member of the coparcenary, this interest of her's which passed on her death was liable to be valued in accordance with the method provided by Section 39 of the Act.

Again deduction allowable with regard to the provisions for marriage expenses of unmarried daughter of the deceased from the ancestral property came up for consideration before the Madras High Court in the case of CED v. Dr. B. Kamalamma [1984] 148 ITR 434. According to the facts in that case, the deceased died possessed of an estate worth Rs. 4,17,744. The estate comprised of both ancestral property and self-acquisitions. The deceased was survived by his wife and a minor daughter aged 17 years. The deceased's widow filed an estate duty account with the Assistant Controller. She claimed, inter alia, a deduction for Rs. 72,000 as provision for the marriage of the daughter.

The Assistant Controller, however, negatived this claim. He took the view that the obligation to get the daughter married was a personal obligation of the deceased and was not a charge on the estate. The Appellate Controller and the Appellate Tribunal took a different view.

They held that under the Hindu law, an obligation of this sort is enforceable against the ancestral property which the deceased died possessed of. They, however, limited the allowance in this case to Rs. 50,000 as representing a reasonable provision, as against the amount of Rs. 72,000 which the accountable person claimed as a deduction. On appeal, the High Court held as under : A girl born in a Hindu family is entitled to look to the family property for defraying the expenses for her marriage and she can enforce the right against the family property. This right arises from her membership in the joint family and from her inherent right in the family property as an unmarried daughter. The liability of the family property in this regard is independent of the father's personal obligation to get the daughter married. The statutory provisions under the Hindu Adoptions and Maintenance Act, 1956, providing for the obligation of a Hindu father to perform and spend for the marriage of his unmarried daughter do not affect the daughter's independent right under her personal law to render ancestral property liable for her maintenance and marriage. The provision for the marriage of unmarried daughters in a Hindu family being enforceable against ancestral property, it has got to be deducted as a debt or encumbrance under Section 44 of the Estate Duty Act, 1953, wherever the dutiable estate includes ancestral property of the deceased. Consequently, the liability of the ancestral or coparcenary property of a Hindu to pay for the marriage expenses of unmarried daughters in the family would be a proper debt deductible under the general provisions of Section 44, where the deceased died possessed of such property. This liability does not fall under any of the special categories covered by Clauses (a) to (d) of Section 44 and is not subject to the limitations contained therein.

Accordingly, the Madras High Court held that the Tribunal was justified in its view and the sum of Rs. 60,000 was deductible from the principal value of the estate.

8. Our attention was also drawn to a passage occurring in the Principles of Hindu Law by Mulla, 15th edn., para 440, wherein with regard to the marriage expenses, it was stated as under : Marriage expenses - In the case of a joint family governed by the Mitakshara law, the joint family property is liable, while the family is still joint, for the legitimate marriage expenses of male members of the family (k), and also of the daughters of male members of the family.

The decision in Subbayya v. Ananta, 53 Mad. 84 implies that a father in possession of a joint family property is under a legal obligation to get his daughter married. It follows that if a father so in possession neglects his duty, the mother may perform it and recover the expenses from her husband. When there is no joint family property in the hands of the father there is no legal obligation on his part to marry his daughter and bear the expenses of marriage. It is doubtful also whether the marriage of an infant girl could be brought under the head of 'Necessaries' within the meaning of Section 68, the Indian Contract Act. On the other hand the proposition of law laid down in Sundari Ammal v. Subramania Ayyar 26 Mad. 505 that 'under the Hindu law, a father is under no legal obligation to get his daughter married', appears to have been stated too broadly. The obligation may not exist when the father is not a member of a joint family and has no ancestral property.

The texts enjoin the payment of expenses of sanskaras or sacraments out of the family property. Marriage is a sanskara, and its expenses, therefore, are to be provided for out of the joint family property. A debt contracted for the marriage of a coparcener or the daughter of a deceased coparcener in a joint Hindu family is a debt contracted for a family purpose, and, therefore, for the benefit of the family.

9. In the case of marriage expenses of a daughter, a text-book called Principles and Precedents of Hindu Law by N.R. Raghavachariar, 6th edn., states as under : Expenses of marriage - Marriage being a sacrament with the Hindus, its performance, especially in the case of girls, is an imperative duty upon the manager of the family and a debt contracted by the manager is one for the family's benefit. Under the Mitakshara, the marriage expenses of the male members of a joint family and of their daughters are borne by the family property so long as the family is joint. Even when a son institutes a suit for partition against his father and brothers, his share in the family property cannot escape the liability to share in the expenses of the marriage of his sister who is married after the institution of the suit and of those sisters who are still to be married. But in such a case the expenses of the future marriage of a daughter of the plaintiff would be borne by his own share, and the share of his brother will not be liable for such expenses. This rule that a provision should be made on partition for expenses of future marriages in the family does not apply in the case of unmarried male members of the family and, in

a suit instituted for partition, a male member who remains unmarried at the time is not entitled to have provision made for his marriage expenses even though the marriage takes place before the decree in the partition suit. The widowed mother of a girl who gave her away in marriage without consulting her husband's father, is entitled to recover reasonable expenses of the marriage out of the joint property even though she does not show that, her father-in-law or the other members of the joint family wrongly or improperly refused to perform the marriage. So also a daughter of a sudra is entitled to have her marriage expenses paid out of the father's estate in the hands of her step-mother. For the same reason where the paternal relatives of the girl refuse to incur the expenses of her marriage, whereupon her maternal uncle who had also been legally appointed her guardian, effected the marriage bonafide, he is entitled to recoup himself from the estate of the girl's father in the hands of his collateral. The property of a Hindu passing into the hands of his collateral heirs after his death, is liable for the reasonable marriage expenses of the daughter of the last holder's predeceased son. In the case of the marriage of a sister, though the duty of giving her in marriage devolves upon the brother in the absence of the father or the grandfather, its expenses are chargeable only upon the paternal estate in his hands and his separate property is not liable for such expenses.

10. However, the learned Appellate Controller, in order to support his view, relied upon a judgment of the Andhra Pradesh High Court in the case of Estate of Late S. Srinivasulu Reddy, A/P S. Sumanamma (supra).

According to the facts arising in that case on the death of Shri S.Srinivasulu Reddy, who passed away on 28-9-1965, the accountable person claimed deduction of a sum of Rs. 1,00,000 towards maintenance, educational and marriage expenses of his one year old minor daughter and a sum of Rs. 60,000 towards the maintenance expenses of his widow.

On these facts, considering Sub-section (2) of Section 21 of the Hindu Adoptions and Maintenance Act and the earlier decisions in the case of CED v. Smt. P. Leelavathamma [1978] 112 ITR 739, in S. Kameshwaramma v.S. Subramanyam AIR 1959 AP 269 and in Nalla Lalithamba v. Yella Venkatalaxmi 1970 (1) An. WR

245, the Andhra Pradesh High Court was of the view that "it is sufficient to note that the accountable persons being entitled to a large share than what they would have been entitled by way of maintenance they could not claim any maintenance. Hence, any claim for maintenance could not be a charge or encumbrance on the estate of the deceased. Consequently, the same cannot be deducted in arriving at the net principal value of the estate of the deceased for the purpose of levy of estate duty". In arriving at this conclusion, the High Court also took note of the decision in *CED v. Estate of Late Omprakash Bajaj* [1977] 110 ITR 263 (AP). It is significant to note that according to the facts arising in the case of *Estate of Late S.Srinivasulu Reddy, A/P S. Sumanamma* (supra), the property left by the deceased was the self-acquired property in which the unmarried daughter was having a share. Hence, the question of considering the right of maintenance in the joint family property of the deceased was not before the Andhra Pradesh High Court in that case. Hence, the Andhra Pradesh High Court had no occasion to consider the right of maintenance and marriage expenses of unmarried daughter in the coparcenary property left by her father. Therefore, the decision is not applicable to the facts of the case.

11. Similarly, in the case of *Smt. P. Leelavathamma* (supra) the accountable person claimed deduction of Rs. 2,79,510 towards the maintenance expenses of the daughter including marriage expenses of Rs. 1,18,880 towards maintenance of the widow of the deceased from the estate on the ground that the deceased, during his lifetime, was under legal obligation to maintain his wife and daughter. On appeal, the accountable person raised an additional contention that the estate duty payable on the estate has to be deducted from the gross estate while computing the net estate. On these facts, the Andhra Pradesh High Court held as under : . . . the wife, being a heir of the deceased under Section 8 of Hindu Succession Act, is not entitled to separate maintenance after the death of the deceased under Section 22(2) of the Hindu Adoptions and Maintenance Act. She had no choate or clear right against any specific property of the deceased when he was alive in respect of her claim for maintenance and her right is only personal in nature.

It is only after she files a suit and obtains a decree with a charge for her maintenance on a particular portion of the property, that the portion of the property which is charged, can be said to be charged on the estate. But so long as the right does not take that concrete or choate shape, it cannot be said that the husband cannot dispose of the property as he liked. The Appellate Tribunal was not right in law in allowing deduction towards maintenance expenses of the wife of the deceased from the estate passing on his death : In this case, the deceased was a sole surviving coparcener of a HUF, who died intestate leaving behind him his mother (the accountable person), widow and a minor daughter. The Court was of the view that the maintenance right of the wife since it was not crystallised, cannot be considered as a deductible entity in the estate of the deceased.

Further, it was pointed out by the High Court that in the matter of maintenance with regard to the daughter, no question of law for the decision of the High Court was placed before it. Therefore, the High Court has no occasion to deal with the maintenance right of an unmarried daughter over the property left by the deceased's father. It merely deals with the maintenance right of the wife. Under these circumstances, we are of the view that the judgment of the Andhra Pradesh High Court in the case of Smt. P. Leelavathamma (supra) is not applicable to the facts of this case.

12. Our attention was also drawn to a judgment of a Division Bench of the Andhra Pradesh High Court in S. Kameshwaramma's case (supra), wherein, after a combined reading of Sub-sections (1) and (2) of Section 22 of the Hindu Adoptions and Maintenance Act, the High Court observed as under : A combined reading of the provisions of Sub-sections (1) and (2) indicates that while Sub-section (1) imposes a liability on a heir and confers a correlative right on the dependant to claim maintenance under the provisions of the Act, Sub-section (2) excludes the dependants acquiring a share in the property of a person who died after the Act, from claiming maintenance. . . .

This is a case of a widow and it was pointed out that the property involved in this case was self-acquired property of the deceased. Under such circumstances, it was pointed out by the learned counsel for the assessee that the decision of the

Andhra Pradesh High Court in S.Kameshwaramma's case (supra) is not applicable to the facts of this case, since it has no relevance to a case where daughter's marriage expenses out of joint family property were involved.

13. The learned counsel appearing for the accountable person also drew our attention to a judgment of the Andhra Pradesh High Court in the case of Nalla Lalithamba (supra). In that case, while dealing with the marriage expenses of unmarried daughters under Section 22(2), the Andhra Pradesh High Court held as under : Even at the present day, as the Hindu law relating to partition of joint family property has not been superseded by any statute, it will be open to the unmarried daughters in the family at the time of partition to claim a provision for marriage and maintenance. But in a case governed by the Hindu Succession Act, like the present one, where the property is partitioned between the co-heirs, there is no question of division of coparcenary property among the coparceners and hence the question of provision for marriage expenses does not arise for the simple reason that the daughters also are equally entitled to a share along with their brothers in the property of their father.

A reading of this judgment will clearly show that a right to claim maintenance and marriage expenses by unmarried daughters in the family at the time of partition out of joint family property is intact without any modification.

14. We have already set out the findings in the order of the Special Bench of the Tribunal in Smt. K. S. Jayain's case (supra) wherein it was stated as under : We have considered rival contentions carefully. It appears that Article 304 of Mulla's Hindu Law which provides for determination of 'the property available for partition' before actual, notional partition can take place has not been considered as such by the learned Judges of the Madras High Court. The distinction drawn before us by the learned counsel that the provisions of the Hindu Adoptions and Maintenance Act refer to the maintenance qua deceased's own property only and not the joint family property in which the deceased also had an interest and, therefore, that the Act may not modify or affect the maintenance provisions as regards joint family property under the Shastric Hindu Law, also seems apparently significant. . . .

But, however, the Tribunal preferred to follow the ratio of the judgment of the Madras High Court in the case of Karuppana Gounder (supra). It is significant to note that in the later judgment in Dr. B.Kamamma's case (supra), the Madras High Court was of the view that : . . .The statutory provisions under the Hindu Adoptions and Maintenance Act, 1956, providing for the obligation of a Hindu father to perform and spend for the marriage of his unmarried daughter do not affect the daughter's independent right under her personal law to render ancestral property liable for her maintenance and marriage. . . .

. . . The provision for the marriage of unmarried daughters in a Hindu family being enforceable against ancestral property, it has got to be deducted as a debt or encumbrance under Section 44 of the Estate Duty Act, 1953, wherever the dutiable estate includes ancestral property of the deceased. . . .

. . . the liability of the ancestral or coparcenary property of a Hindu to pay for the marriage expenses of unmarried daughters in the family would be a proper debt deductible under the general provisions of Section 44, where the deceased died possessed of such property. . . .

But this later judgment of the Madras High Court in Dr. B.Kamamma's case (supra) was not in existence at the time when the Special Bench of the Tribunal decided the case in Smt. K.S. Jay am (supra). We are also aware of the legal position that when there are two decisions of the same High Court on a particular point, the later one will prevail over the earlier one.

15. Thus, considering the submissions made by the learned counsel appearing for the assessee in the light of the commentaries occurring in Mulla's Hindu Law, Principles and Practice of Hindu Law by N.R.Raghavachariar and the judicial pronouncements, we hold that the liability of ancestral or coparcenary property of a Hindu to pay for marriage expenses of unmarried daughters in the family would be a proper debt or encumbrance deductible under the general provisions of Section 44, where the deceased died possessed of such property.

16. Accordingly, we direct the Assistant Controller to apply the principle of law as set out by us supra to the facts of this case and deduct a sum of Rs. 30,000, being

the provision for marriage expenses of three unmarried daughters which appears to be quite reasonable out of the ancestral or coparcenary property left by the deceased. The accountable person had claimed the entire amount of Rs. 30,000 as a deduction in the deceased's share of the family assets. On our finding of law, this will be deducted from the value of the family assets computed at Rs. 4,12,584. Half of the balance, i.e., Rs. 1,91,292, will be subject to duty at the rate applicable to Rs. 3,82,584. Hence, the appeal stands partly allowed.

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