

Mrs. S. Pushpam Vs. Assistant Controller of Estate

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-30-1991

Reported in : (1991)39ITD26(Delhi)

Judge : G Krishnamurthy, U Shah, Vice, M Agarwal

Appellant : Mrs. S. Pushpam

Respondent : Assistant Controller of Estate

Judgement :

1. This appeal arises out of the estate duty assessment in the matter of the estate of late Shri R. Satakopan, who died on the 1st of October, 1976 and the only point that arises in this appeal is about the extent of the share of the deceased in property No. D -25, N.D.S.E Part-II, New Delhi that passed on his death.

2. The said Shri R. Satakopan constituted a Hindu Undivided Family with his brother Shri Ramanujam. Ramanujam had a son Murali Manohar. The aforesaid immovable property was owned by the said HUF. The deceased Shri R. Satakopan executed a will on the 4th of September, 1975 by which he bequeathed his undivided share in the aforesaid property to his nephew Murli Manohar aforesaid and all his movable properties to his wife Smt. Pushpam Satakopan. The aforesaid bequests have been made in paragraphs 1 and 2 of the will, which are reproduced below :- 1.1 hereby devise and bequeath my undivided share in the aforesaid property No. D-25, NDSE-2, New Delhi absolutely in favour of Sri Murli Manohar, aged 27, son of my brother, Shri Rangaswami Ramanujam, for his

personal benefit and I have no other immovable property or interest in any immovable property.

2.1 hereby devise and bequeath all my movable property personal belongings, bank balances, fixed deposits and anything and everything movable to my wife, Smt. Pushpam Satakopan, aged 65, absolutely and for ever with all rights of disposal over the same.

Earlier in the recitals of the will the deceased stated, "I have made sufficient arrangement for the maintenance of my wife out of my personal resources.

3. As stated above, Shri R. Satakopan died on the 1st October, 1976. He was issue-less and the only heir of class-I was his wife, Smt. Pushpam Satakopan. In the present proceedings Smt. Pushpam Satakopan is the Accountable Person and it was contended on her behalf that succession to the estate of the deceased would be governed by the provisions of the Hindu Succession Act, as he had left a female heir and in terms of Explanation 1 to Section 6, a partition would be deemed to have taken place immediately before the death of the deceased and if a partition had taken place at that time the deceased would have got only 1/4th share in the house, as his wife Smt. Pushpam Satakopan would also have been entitled to a share. This contention was negated by the Assistant and the Appellate Controllers of Estate Duty, who held that on a deemed partition immediately before the death of Shri R. Satakopan he would have got 1/4th share in the estate of the deceased and it is that half share which passed on the death of the deceased within the meaning of Section 6 of the Estate Duty Act, The Accountable Person is now in appeal before this Tribunal.

4. When this appeal came up for hearing before a Division Bench of the Tribunal, the Accountable Person placed reliance on an order of the Tribunal in the income-tax matter of Murli Manohar aforesaid. In those proceedings Murli Manohar had also contended that in pursuance of the will aforesaid, what he got was only 1/4th share of the aforesaid immovable property and, therefore, only the income relating to that 1/4th share was assessable in his hands. That contention was accepted by a Division Bench of this Tribunal in the case of Murli Manohar [IT Appeal No. 4542 of 1985] for assessment year 1978-79. The Division Bench that was hearing the

present appeal doubted the correctness of the Tribunal's decision in the case of Murli Manohar (supra) and, therefore, recommended to the President vide order dated 21st July, 1986 for the constitution of a larger Bench, It is in this manner that this appeal was placed before and was heard by this Special Bench.

When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act: Provided that, if the deceased had left him surviving a female relative specified in Clause I of the Schedule or a male relative, specified in that class who claims, through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1 - 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.

Explanation 2 - Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

6. In the case before us the deceased Shri R. Satakopan alongwith his brother and nephew constituted Mitakshara joint Hindu family. He left behind him a female heir i.e., his wife Smt. S. Pushpam. Therefore, in terms of the proviso to Section 6 of the Hindu Succession Act, his share in the Joint family property does not devolve on the remaining coparceners by survivorship but devolves by testamentary succession in terms of the will referred to above. What is the extent of share of the deceased in the joint family property that devolves on his death is governed by Explanation 1, which says that the interest of the 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. How a partition is to be effected is not provided for in the Hindu Succession Act. Under the Shastrik Law governing Mitakshara Hindu families, partition amongst coparceners has to be per stripes, i.e., according to branches and in that manner in case a partition had taken place immediately before the death of R. Satakopan, he would have got half share in the family property, i.e., the house in dispute. This position of law was admitted by the learned counsel for the assessee Shri S.B. Gupta to be correct.

7. Shri S.B Gupta, however, contended that a sole surviving coparcener, who has a wife, does not have absolute rights in the property and since the deceased had a wife it should further be assumed that there is another partition between him and his wife and in that partition he should be deemed to have only half share in the property falling to his share on the deemed partition and in that manner it is only that half share of half, i.e., $\frac{1}{4}$ th of the whole that would pass on his death.

For this proposition he placed reliance on a judgment of the Hon'ble Patna High Court in CWT v. Pannalal Rastogi [1974] 96 ITR 110. That was a wealth-tax matter in which the question was whether when on the partition of a Hindu undivided family the property fell to the share of a coparcener, who had only a wife but no children, the said member was to be assessed as an individual or as an HUF. The Hon'ble High Court held that the separated coparcener having a wife constituted a joint family with the wife and was, therefore, entitled to be assessed as a Hindu undivided family. This authority, thus, deals with a different situation relating to assessment under the Wealth-tax Act, and deals with the concept of a joint family. Nowhere in this judgment it has been observed that in the circumstances, as aforesaid, the wife has any right whatsoever in the property.

8. The controversy that is now before us was the subject matter of decision by the Hon'ble Allahabad High Court in CED v. Smt. Kalawati Devi [1980] 125 ITR 762 and before the Hon'ble Madhya Pradesh High Court in Ramrattan v. CED [1983] 142 ITR 863 (MP) (FB). Both these were estate duty matters and the question was about the extent of the property that passes on the death of a person. In the case before the Allahabad High Court the question was about the property received by a person on partition of a Hindu undivided family. The deceased had no son but

only a wife and daughter. It was held that the individual is the absolute and exclusive owner of the property received on partition and, therefore, on his death the entire property passes. In the case before the Hon'ble Madhya Pradesh High Court the deceased had received certain property on the partition of an HUF. The deceased had no son and left behind him, as in the case before us, only a wife. It was held that the entire property passes on his death. Thus, with regard to the controversy that is now before us there are two judgments of the High Courts that directly govern the issue and support the view of the authorities below that it is the entire share of the deceased that passes on his death. It was contended that the Allahabad High Court had followed a judgment of the Patna High Court in *Hanumanmal Periwal v. CWT* [1968] 67 ITR 320, which was not followed by the Patna High Court itself in *Pannalal Kastogi's case* (supra). This, in our view, has no effect on the validity of the principle laid down by the judgment of the Allahabad High Court which has given its own reasons for the view and has only agreed with the view that was taken by the Patna High Court.

9. On behalf of the Revenue reliance was, inter alia placed on *V.V.S. Natarajan v. CIT* [1978] 111 ITR 539 (Mad.). In that case a single male coparcener effected a partition between himself and female members. The income-tax authorities refused to recognise such partition and the Hon'ble High Court upheld the view. It was held that the wife or minor daughters of a Hindu coparcener are not entitled to a share on a partition of the properties of the joint family and, therefore, there could be no partition between such coparcener and the female members.

This authority, thus, also supports the contention of the revenue.

10. The learned counsel for the assessee agreed that Smt. Pushpam Satakopan, the wife of the deceased had no right to claim partition qua the deceased and, therefore, in that sense she did not have a share in the joint family property. He, however, contended that the wife had a right to be maintained by the husband and that right which is a pre-existing right known as limited estate prior to the coming into force of Hindu Succession Act, 1956, By Section 14 of that Act, all such rights including preexisting rights have become full rights, and since therefore, in recognition of that right the wife should be deemed to have a share in the husband's

property and consequently when a partition is to be deemed to have taken place immediately before the death of the deceased, the wife should be deemed to have shared the property with the deceased and it is in this manner that Smt. Pushpam Satakopan got half share in the property leaving the deceased with only half i.e., 1/4th of the whole. He placed reliance on CED v. Smt. P.ledavathamna [1978] 112 ITR 739 (AP) in which the Hon We High Court held that the wife is not entitled to separate maintenance after the death of the deceased and 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. This authority, thus, does not support the argument raised on behalf of the Accountable Person and clearly negatives the same. The Hon'ble High Court observed as below :- This argument is based on an erroneous assumption that the wife had a choate or clear right against any particular property of the husband when he was alive. It is true that she was entitled to be maintained by her husband. But that does not mean that she can extend that right and fasten it to any particular portion or part of the property of her husband. It is true that if she filed a suit and got a decree with a charge for her maintenance on a particular portion of the property, that portion of the property is charged with her maintenance. But when her right does not take that concrete or choate shape or form, it cannot be said that the husband could not dispose of the property as he liked. It might be that the husband could maintain the wife through his own personal earnings.

It is well settled that the claim of a wife for maintenance or for that matter, even of a widow is not a charge upon the estate of her husband until it is fixed and charged upon the estate. We may usefully extract the following passage at page 610 of the 14th edition of Mulla's Hindu Law :- Maintenance not a charge - The claims even of a widow, for maintenance is not a charge upon the estate of her deceased husband, whether joint or separate, until it is fixed and charged upon the estate. This may be done by a decree of a court, or by an agreement between the widow and the holder of the estate, or by the will by which the property was bequeathed. Therefore, the widow's right is liable to be defeated by a transfer of the husband's property to a bona fide purchaser for value without notice of the widow's claim for maintenance. It is also liable to be defeated by a transfer to a purchaser for value even with notice of the claim, unless the transfer was made

with the intention of defeating the widow's right and the purchaser had notice of such intention. In fact, a widow's right to receive maintenance is one of an indefinite character which, unless made a charge upon the property, is enforceable only like any other liability in respect of which no charge exists.

11. A Hindu woman's right to maintenance is not an absolute right. It is a right of a inchoate character as described in the ruling aforesaid. This contingent nature of the right is evident from the provisions of the Hindu Adoptions and Maintenance Act, 1956. Section 18 of the said Act provides that a Hindu wife shall be entitled to be maintained by her husband during her life time. Section 23 deals with determination of the amount of maintenance that may be awarded to a wife. Sub-section (1) of Section 23 says that it shall be in the discretion of the court to determine whether any and, if so, what maintenance shall be awarded and in doing so the Court shall have due regard to the considerations set out in Sub-section (2) or (3).

Sub-clause (a) of subsection 2 requires the Court to take into consideration the value of the claimant's property and any income derived from such property or from the claimant's own earning or from any other source. Thus, if the claimant, i.e., the wife is having her own income from whatever source sufficient to maintain herself the court can refuse to grant her any maintenance from the husband. Under the Hindu Marriage Act the position is very much different and even a husband can claim maintenance from the wife if he has no sufficient means of livelihood and the wife is in a position to provide maintenance. This is clearly so stated in Sections 24 and 25 of the said Act, which deal with maintenance pendente lite and permanent alimony and maintenance respectively. Thus, as the law now stands it can be said that the wife has a right to claim a maintenance from the husband only and to the extent she is unable to maintain herself out of her own income and it would not be incorrect to say that a wife, who has income and means sufficient to maintain herself, has no right of maintenance against the husband so long as that state of affairs subsists. In any case, the wife's pre-existing right to maintenance gets enlarged into an absolute estate by operation of Section 14 of the Hindu Succession Act, only if a decree is passed charging it on any specific property, which is not the case here. As we discussed a little later the

latest judgment of the Supreme Court in the case of Thota Sesharathamma v. Thota Manikyamma Judgments Today 1991(3) SC 506 does not help the assessee's contention in any respect.

12. In the case before us the deceased had executed a will by which he gave all his movables to the accountable person and has made a specific averment that he had made sufficient arrangement for the maintenance of his wife. The correctness of that statement was not disputed by the learned counsel for the Accountable Person, who further informed us at the hearing that the wife, who is also the Accountable Person, has not made any claim for maintenance against the estate of the deceased.

Therefore, on the facts of the case it can be said that Smt. Pushpam Satakopan had been so well provided for and, therefore, she had a very unsustainable right to claim maintenance from the deceased or his estate.

13. Even if the wife had any such right, it could not be converted to a specific right much less to quantify it to half share in the immovable property. We enquired of the learned counsel for the accountable person as to how the right to maintenance can be taken to be equal to a right to claim partition and have a half share in the property of the deceased. He could not cite any opinion or authority in support of this contention. The inchoate and uncertain nature of a woman's right to maintenance has been amply demonstrated in the passage from Mulla's Principles of Hindu Law reproduced in Smt. P. Leelavathamma's case (supra). Therefore, a mere indefinite and uncertain right of maintenance cannot create any interest in property, what to say of a share capable of being obtained by partition. Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum [1981] 129 ITR 440 (SC) in which the effect of Explanation 1 to Section 6 of the Hindu Succession Act was considered and it was observed that the said Explanation 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. The 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. That was a case in which K, a member of the joint family, had died leaving behind him, his wife and two sons. The question was about the extent of the share of the wife on the death of her husband K. It was held that her share would be the share that would fall to her share on a partition between K and his sons and further a share from the property falling to the share of K on such partition. This authority too does not help the appellant in any manner because the deceased Satakopan had no son. The wife was not a coparcener and, therefore, she neither had a right in the property coming to the share of the deceased R. Satakopan nor could she claim a partition from her husband. *State of Maharashtra v. Narayan Rao Shyam Rao Deshmukh* [1987] 163 ITR 31 (SC), where the question was whether a Hindu Undivided family was in existence for the purposes of Maharashtra Agricultural Land (Ceiling on holdings) Act, 1961. The Hon'ble Supreme Court held that the proviso to Section 6 of the Hindu Succession Act only operated to fix the share of the female members in the joint Hindu family property and it did not separate the members of the family. Therefore, the family continued as such and was entitled to hold only one unit. The contention of the learned counsel for the Accountable Person, therefore, that a partition between the deceased and his wife should also be deemed to have taken place and that partition should be deemed as real and irrevocable, is not supported by any authority and is unacceptable.

16. Strong reliance was then placed on behalf of the appellant on a recent judgment of the Hon'ble Supreme Court in *Thota Sesharathamma's case* (supra), in which the question was about the effect of Sub-section (2) of Section 14 of the Hindu Succession Act. The cases that came to be decided by the Hon'ble Supreme Court in the aforesaid judgment related to wills under which prior to the commencement of the Hindu Succession Act, females were given a limited estate for their maintenance and the question was whether by virtue of Sub-section (2) of Section 14, the estate so granted remained a limited estate or became an absolute estate as provided in Sub-section (1) of Section 14.

The Hon'ble Supreme Court held that female heirs had a pre-existing right of maintenance and, therefore, if the limited estate was granted to a widow in

satisfaction of that right, the widow would become an absolute owner of the estate and Section 14(2) could not restrict the estate to a limited one. Hon'ble Justice K. Ramaswamy agreeing with the judgment of the Hon'ble Justice Kasliwal, discussed in details the rights of female heirs for maintenance, but no part of this judgment supports the contention of the present appellant that a female heir has such a right of maintenance that it can convert itself into a right to a share in the property of a male member so as to entitle the female even to claim partition. Therefore, in this ruling too there is nothing on the basis of which the contention of the appellant could be sustained.

17. Section 30 of the Hindu Succession Act grants to a coparcener the right to dispose of his share in the joint family property by will.

This is a new right as under the Shastrik Hindu Law, a coparcener could not dispose of his share by will. In case the wife or any other female members had any rights in the property of such coparcener by virtue of their alleged right to maintenance or otherwise, Section 30 would certainly have placed some restriction on the disposal of the property by the deceased to protect that right of the female members. It is because the female members have no such specific right in the property of the deceased that Section 30 gives absolute right of disposal by will to a coparcener.

18. In view of the above discussion we hold that on the death of the deceased R. Satakopan, his entire share in the aforesaid immovable property, which was half share, passed on his death within the meaning of Section 6 of the Estate Duty Act and that this issue was not correctly decided by this Tribunal in the Income-tax appeal of Murli Manohar. We, therefore, find no merit in this appeal and affirming the orders of the authorities below, we dismiss the same.

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