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Court : Delhi

Decided On : Oct-23-1975

Reported in : 1976RLR321

Judge : S.S. Chadha, J.

Acts : [Succession Act, 1925](#) - Sections 276; [Court fees Act, 1870](#) - Sections 19D

Appeal No. : Probate Case No. 2 of 1975

Appellant : Anil Kumar Mathur Etc.

Respondent : State

Advocate for Pet/Ap. : Inder Swaroop, Adv

Judgement :

S.S. Chadha, J.

(1) Petitioners father was in the Army. He died on 15.5.69 in field area. Thereafter petitioners mother died. They applied for Letters of Administration alleging that investment made by her was from the assets left by their father and she had so done for the benefit of joint Hindu family and since the mother held the property in trust. Court fees was not payable. After narrating above facts, Judgments proceeds :-

(2) A petition for the grant of probate or Letters of Administration is made under Sections 276 and 278 of the Indian [Succession Act, 1925](#). After the petition is made, the question of court-fee immediately springs up. Chapter 3-A of the Court-fees Act, 1870, relates to Probate, Letters of Administration and Certificate of Administration. Section 19-I of the Court-fees Act, 1870 provides for payment of court-fee in respect of probates and Letters of Administration. Schedule I of Article 11 provides for the rate of Court fees. In pursuance of the provisions of section 19-I of the Court-fees Act 1870 the petitioners have filed an affidavit of valuation of the property and credits of the deceased. The petitioners would not be entitled to the grant of the Letters of Administration until the petitioners have filed in Court, a valuation of the property in the form set forth in the IIIrd Schedule, and the Court is satisfied that the fee mentioned in No. 11 of the 1st Schedule has been paid on such valuation. Section 19-D of the Court-Pees Act is.-

(3) It would thus be seen that the aforesaid provision makes the probate declared valid as to trust property though not covered by court-fee. In other words, it exempts from the payment of Court fee the probate or the Letters of Administration regarding the property which the deceased was possessed or entitled, either wholly or partially as a trustee. This trust property is to be deducted from the valuation and is exempt from the payment of court-fee. The question whether the assets held by the deceased as a karta of the joint Hindu family or even in his own name but for the benefit of the joint Hindu family are included in the exemption provided in section 19-D of the Court-Fees Act was not free from difficulty. The words 'the deceased was possessed or entitled, either wholly or partially as a trustee' have been held to cover a case of a joint Hindu family property held by a Karta or a co-parcener for and on behalf of the joint Hindu family and thus impliedly in trust for the Joint Hindu family.

(4) In *Keshavlal Punjalal Sheth v. Collector of Ahmedabad*, A.I.R. 1924 Bom 228 decided by Full Bench, the question arose like this. One Sheth Punjalal Amritlal of Prantij died leaving two sons, Keshavlal and Kodarlal. During his life time they formed a joint family. On his death the joint estate survived to his two sons. The estate included certain shares in various companies registered under the Indian Companies Act, which were in the name of Punjalal. The sons subsequently

effected a partition of the whole estate and as a result divided among other things the beneficial interest in the shares. They applied for limited letters of administration, to the estate of their father relating to the said shares, as without such letters they could not be accepted as his legal representatives in respect of these shares. There was no dispute about the right to the letters of administration but there was a dispute as to their liability to pay the court-fee on the value of the shares. The question was referred to the Full Bench of the Bombay High Court in view of the then conflict of the judicial opinion It was held :-

'WE have considered the arguments urged on both sides, and my view is that S. 19-D has been correctly interpreted by this Court in *The Collector of Kaira v. Chunilal* and that even if there be a doubt as to the true meaning of the expression 'property whereof or whereto the deceased was possessed or entitled either wholly or partially as a trustee', or the expression 'property held in trust not beneficially or with a general power do confer a beneficial interest', the interpretation accepted in Calcutta so far back as 1896 and in Bombay so far back as 1904 and acquiesced in by the legislature should not be accepted as representing the true scope of the said expressions. First as regards the meaning of the expression in its application to joint family property with the incident of survivorship governed by the Mitakshara and the Mayaka in this Presidency, it must be remembered that while the holder, a member of the family in one sense is beneficially interested in the whole, the other members of the co-parcenary are also beneficially interested in the whole and the beneficial interest of the holder is limited by the extent of the interest of other members. Further, that interest disappears altogether on his death ; and the survivors become the sole beneficiaries in the estate which stands in the name of the deceased person. On his death what is called his estate is no estate of his ; and the legal title which still continues in the dead man is really the title of a man, whose beneficial interest in the property on his death is nothing As regards property of this character it could be properly said that the deceased died possessed of it or was entitled to it either wholly or partially as a trustee within the meaning of section 19-D.'

(5) The earlier judgment. *The Collector of Kaira v. Chunilal Harilal and others*, I.L.K. 29 Bom 161 relied upon by the Full Bench also considered a similar question

and it was held that such trust estates are not liable to the court-fee.

(6) The essence of co-parcenary under the mitakshara law is unity of ownership. There is a community of interest and unity of possession between all members of the family, and upon the death of any one of them the others take by survivorship that in which they had during the deceased's life time a common interest and a common possession.

(7) Thus the assets held by the deceased, if acquired and held by the deceased for and on behalf of the joint Hindu family, would be held in trust. He would have no power of bequeathing or devising it. There is no question of any succession opening on the death of such a co-parcener for which a probate or letters of administration could be granted. The interest of the deceased co-parcener only lapses to the co-parcenary. Thus any properties of the joint Hindu family held by the Karta or Manager or a Co-parcener, would continue to belong to the family, even if the said Karta, Manager or Co-parcener dies. The joint Hindu family always had and continues to have interest in such properties.

(8) MULLAS'S Hindu Law. 14th Edn. in Articles 34 and 229 states as under :-

'34.Devolution of property according to the Mitakshara Law,-In determining the mode in which the property of a Hindu male governed by the Mitakshara law devolves on his death, the following propositions are to be noted :- Where the deceased was, at the time of his death, a member of a joint and undivided family technically called coparcenary, his undivided interest in the coparcenary property devolves on his coparceners by survivorship. 229. Survivorship-Devolution of deceased coparcener's interest.-(1) On the death of a coparcener, his interest in the coparcenary property does not pass by succession to his heirs. It passes by survivorship to the other coparceners, subject to the rule that where the deceased coparcener leaves male issue, they represent his rights to a share on partition.....'

(9) No other authority to the contrary has been brought to my notice by the learned counsel for the petitioner. The standing counsel for the Delhi Administration has chosen not to put in appearance before me. I may, however, point out that the Allahabad High Court in the Goods of Lald Madho Prasad : AIR1935 All449 and

the Patna High Court in the matter of Rama Prasad Gupta V. Collector : AIR1939 Pat126 had taken a contrary view and according to them the coparcener interested in an undivided share of the whole of the joint family property cannot be called a trustee for the other members. All these authorities, were considered by a Full Bench of the Lahore High Court, Sir Ram V. Collector, Lahore, reported as A.I.R. 1942 Lah 173, where a similar question arose about the court-fee payable. The Full Bench noticed the controversy and conflict in various Courts wherein three divergent views had been taken. In that case the facts briefly were that one Lala Balak Ram was the karta of a joint Hindu family governed by Mitakshara, that in his lifetime he had purchased with the funds of the family certain shares in the Banks, but the purchases were made in his name alone, and that the shares stood in his name till his death. As the Banks declined to transfer the shares in the name of next Karta of joint Hindu family, a petition was moved for the grant of letters of administration. The main contention was that the shares belonged to the joint Hindu family and not to the deceased personally and were held by him in trust for the family and, therefore, no court-fee was payable under section 19-D of the Court-fees Act. The Full Bench after considering the various pronouncements came to the conclusion that the shares in Joint Stock Companies purchased with joint Hindu family funds but standing in the name of one of its members, was property held in trust by the deceased for the joint family and that no court-fee was payable on letters of administration, limited to such shares. It was held therein 'that the law was correctly laid down by the Calcutta High Court in Xxiii Calcutta 75 and the Bombay High Court in 48 Bombay 75 and following those cases I hold that the shares in question, having been held by the deceased in trust for the family, no duty is payable on the Letters of Administration in respect thereof.

(10) I am in respectful agreement with the reasons given and the view expressed by the Full Bench of the Bombay and Lahore High Courts, wherein they expounded the true meaning of the expression property whereof or where to the deceased was possessed or entitled either wholly or partially as a trustee' or the expression property held in trust not beneficially or with a general power to confer a beneficial interest'. The words have rightly been construed to cover the case of joint family property held by a coparcener for the joint benefit of himself and others and in which his beneficial interest ceased on his death, so that on the date of his

death his legal title or possession is without any beneficial interest therein.

(11) The question in the present case is whether the property held by the deceased at the time of her death was such properly. In para 5 of the petition, a specific averment has been made by the petitioners that 'the investment was made by the deceased for the benefit of the petitioners from the joint Hindu family assets left by the late father of the petitioners Lt. Col. U.N. Mathur, I.C. 269, who died on May 15, 1969 in the field area c/o 99 APO. The grant of these Letters of Administration is, therefore, exempted from stamp duty'. In the prayer clause, it is stated that the petitioners are entitled to the grant of Letters of Administration without payment of stamp duty. In the affidavit of the valuation of the property as required under section 19-I of the Court-fees Act, petitioner No. 1 has affirmed that he is the oldest son of the deceased and Karta of the joint Hindu family comprising of himself and the other two petitioners. In the statement made by Shri Anil Kumar Mathur, it was stated that he is the Karta of the joint Hindu Family constituted by him and his two brothers and that the property mentioned in the affidavit was created by his father and mother. In my order dated August 25, 1975 Phipson & Co, v. Gayco P. Ltd. I had pointed out that though the foundation had been laid for exemption of court-fee, but no evidence was led on the record to establish- ed that the assets held by the deceased belonged to the joint Hindu family. No court-fee would be livable on the property held by the deceased only if it is established on record that it was so held on behalf of the joint Hindu family and, therefore, in trust. Mr. Inder Swaroop, the learned counsel for the petitioners submits that since it was not dis- puted that the assets held by Mrs. Rajeshwari Devi Mathur, at the time of her death, be- longed to the joint Hindu family, he did not specifically lead any further evidence and merely kept content with the statement of Shri Anil Kumar Mathur stating that the property mentioned in the affidavit was created by his father and mother. In my opinion, this is' not sufficient evidence as the petitioners had to establish that the assets held by the deceased, at the time of her death, were held for and on behalf of the joint Hindu family and that the parties were governed by the Mitakshara School of Hindu Law under which the prope- rty passed on to the petitioners by survivorship. The learned counsel for the petitioners seeks an opportunity for leading additional evidence on this aspect. In the interest of justice, I grant opportunity to petitioners to lead such evidence which

they deem fit.

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