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Mrs. Monica Chanda Vs. Assistant Controller of Estate Duty.

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Court : Delhi

Decided On : Mar-07-1984

Reported in : [1984]10ITD412(Delhi)

Appeal No. : ED APPEAL NO. 19 (DELHI) OF 1984

Appellant : Mrs. Monica Chanda

Respondent : Assistant Controller of Estate Duty.

Judgement :
ORDER

Per Shri K. C. Srivastava, Accountant Member - The deceased, Shri A. K. Chanda, died on 25-10-1972. Earlier he was the Comptroller and Auditor General of India. He owned a flat No. 4 in Akash Deep at 5, Lower Rawdon Street, Calcutta. There is no dispute that this was a self-acquired property of the deceased. By a declaration made on 6-11-1967, the deceased threw this property in the common hotch pot of the HUF consisting of self, his wife, Mrs. Monica Chanda, and his two daughters, Mrs. Anjali Pal and Miss Malavika Chanda. It was also declared that the income from this property shall absolutely belong to the said HUF, of which he was the karta. After this declaration, income-tax assessments were made in the hands of the HUF. For the assessment year 1973-74, the ITO had assessed the income in the hands of legal heir, representing the deceased, as her individual income. Against this order revision petition was made before the Commissioner, who held that at the relevant time both the daughters were married

and they could not be a part of the HUF of Shri Chanda. The Commissioner held that up to the date of death of Shri Chanda the income from this property was taxable in the hands of the HUF consisting of Shri Chanda and Smt. Chanda and after that date it was to be assessed as the income of Smt. Chanda in her individual capacity.

2. In the estate duty return filed, the accountable person had claimed that only one-fourth of the value of this property had passed on the death of the deceased. According to this claim, there were four members in the HUF according to the declaration made by Shri Chanda and the deceased had only one-fourth share. The other three-fourth share belonged to the other three members, namely, the wife and the two daughters. The Assistant Controller did not accept this plea and he held that the deceased was governed by Dayabhaga law under which the foundation of the coparceners was laid on the death of the father and not before it. As Shri Chanda did not have any male issue, there was no question of his forming a coparcenary in respect of his self-acquired property. He made a reference to paragraph 227 of Mullas Principles of Hindu Law which deals with the self-acquired property being thrown into common stock. He found that the principle of blending or throwing into common stock applied to brothers living together and forming a joint family governed by the Dayabhaga law. According to the Assistant Controller, a HUF could not be formed by throwing self-acquired property into the common hotch pot of HUF consisting of himself, his wife and his daughters. The claim of the assessed was, thereforee, rejected and the whole value of the property was included in the estate of the deceased.

3. When the matter came before the Appellate Controller, strong reliance was placed on the observations made by the Supreme Court in the case of Surjit Lal Chhabda v. CIT : [1975]101ITR776(SC) . On the basis of these observations it was claimed that in Dayabhaga system also a Hindu could throw his self-acquired property into common hotch pot and, thereforee, on the date of death the property belonged to the HUF having four persons and the deceased has only one-fourth share in this property. The Appellate Controller, however, referred to Mullas Principles of Hindu Law, according to which, there is no coparcenary so long as the father is alive in Dayabhaga law. It is only on his death leaving two or more

male issues that coparcenary is formed. Where a male coparceners dies, his female heir can step in his shoes and in that situation a female can also be a coparcener along with males in a Dayabhaga family. However, even under the Dayabhaga law a coparcenary could not start with females and on the death of a person his wife and daughters could not constitute a coparcenary.

4. Next, the Appellate Controller further referred to the decision of the Supreme Court in the case of Surjit Lal Chhabda (supra) and quoted extensively from that decision. He particularly referred to the observation that the property put in the common stock may change its legal incidence on the birth of his son but until that event happened, the property belonged to him and he could deal with it as full owner unrestrained by any other considerations. He may sell it, mortgage it or make a gift of it. The Appellate Controller, thereforee, held that full value of the said property was to be included in the principal value of the estate of the deceased. This contention of the accountable person was, thereforee, rejected.

5. Before, the Tribunal, the learned counsel for the accountable person, Shri V. Gauri Shankar, submitted that he wished to press only the ground regarding the character of the property and the share of the deceased in it and he did not wish to make any submission regarding the valuation of this property. In the grounds taken by the assessed, a reference has again been made to the observations of the Supreme Court in the case of Surjit Lal Chhabda (supra) and on the basis of that decision, it is contended that only one-fourth of the value could be included in the principal value of the estate. In the course of hearing it transpired that at the relevant time prior to the death of the deceased, both the daughters had been married and they were not the members of the HUF of the deceased. After Realizing this position, the learned counsel for the accountable person was fair enough to restrict his claim on the basis that the property in question belonged to a HUF of the deceased and his wife at the time of death. He, thereforee, contended that one-half of the value of the property could alone be included in the property passing on the death of the deceased. We have now to consider this claim of the learned counsel.

6. The main argument advanced by the learned counsel for the accountable person was that the department has accepted the property in question as belonging to the HUF and income from this property has been assessed in the hands of the HUF up to the date of death of the deceased. In support, a copy of the assessment order for the assessment year 1968-69 as well as for the assessment year 1973-74 has been filed and reliance has been placed on the order of the Commissioner passed under section 264 of the Income-tax Act, 1961, by which he held that the income from the property belonging to the HUF could be liable to tax in the hands of the HUF up to the date of death and after that date the income was to be assessed in the hands of Smt. Chanda in her individual capacity. It was contended before us that under the Mitakshara school, female could not be a coparceners but the position was different in Dayabhaga school as it permitted the females to be coparceners in certain circumstances. He referred to the observations in paragraphs 277 and 278 of Mullas principles of Hindu Law, 15th edn., for the proposition that under the Dayabhaga law coparcenary property may consist of ancestral property, or of joint acquisitions or of property thrown into the common stock and accretions to such property. In paragraph 277 of the above commentary the following observation has been made :

'... On the death of any one of the coparceners, his heirs succeeded to his share in the coparcenary property, and they became members of the coparcenary. Such heirs, in default of male issue, could be his widow or widows, or his daughter or daughters. These two, though females, got into the coparcenary, representing the share of their husband or father as the case might be. A coparcenary under the Dayabhaga law could thus consist of males as well as females. Under the Mitakshara law, no female can be a coparceners with male coparceners. But even under the Dayabhaga law a coparcenary could not start with females ...' (p. 375)

Reference was also made to article 297 of the Hindu Law and Usage by Mayne, 10th edn. He submitted that under the Dayabhaga law the essence of coparcenary was unity of possession and not unity of ownership. In order to clarify the position of the coparcenary under the Dayabhaga law a reference was made to the decision of the Supreme Court in the case of CWT v. Bishwanath Chatterjee : [1976]103ITR536(SC) . In this case it was held that the properties of a Hindu male

governed by the Dayabhaga school of Hindu law, held on his death by his heirs, are not assessable to wealth-tax jointly in the status of HUF. It was so because the coparcenary formed on the death of a father has unity of possession but not unity of ownership on the property. Each coparceners took a defined share in the property and was owner of his share. Each such share thus belonged to the coparceners. The learned counsel submitted that once submitted that once the position is accepted that the property belonged to the HUF of the assessed and his wife, the conclusion will be that there was unity of possession and the deceased and his wife were tenants-in-common in respect of this property before the deceased's death.

7. The learned counsel in this connection referred to the provisions of section 14 of the Hindu Succession Act, 1956, which provides that any property possessed by a female Hindu shall be held by her as full owner thereof and not as a limited owner. According to the learned counsel, applying this section to the act of throwing the property in common hotch pot, the possession by Mrs. Chanda became that of full owner as far as her share was concerned. The learned counsel of the accountable person further submitted that in view of this section and Mrs. Chanda becoming full owner of her share in this property, the deceased could not be considered as the owner of the property at the time of death. He further contended that he could not dispose of the whole property but only his share at the time of his death. He also submitted that the Transfer of Property Act, 1882 restricted the power of transfer only to the interest of the transferor and did not extend to the whole of the property in this case.

8. The learned departmental representative submitted that under the Dayabhaga system nobody had any right in respect of any property till the father was alive and even where HUF was in existence the right would belong only to one person. He further submitted that the deceased had capacity to dispose of the property as it was the self-acquired property and he was the only coparceners at the time of death. Reliance was placed by him on the observations made in the case of Surjit Lal Chhabda (supra) and he submitted that following the ratio of that decision even the income should have been assessed in the hands of the deceased. He referred to the decision of the Full Bench of the Punjab and Haryana High Court in the case

of Pritam Singh v. ACED , particularly the observation made at page 676. This observation was that the Dayabhaga school recognizes only one rule of devolution of property, namely, succession and it does not recognize the rule of survivorship. A member of the Dayabhaga family holds a share in quasi-severalty. He also referred to the decision of the Andhra Pradesh High Court in the case of N. Krishna Prasad v. ACED : [1972]86ITR332(AP) . He, thereforee, supported the order of the Appellate Controller.

9. The question for our consideration is whether the full value of the property was to be included in the principal value of the estate of the deceased or it was only 50 per cent of its value which was to be so included. There is no other controversy in this case. For deciding this issue one has to see to the legal effect of throwing of the self-acquired property by the deceased into the common hotch pot of his HUF, which was governed by Dayabhaga system. There cannot be any doubt regarding the right of a Hindu belonging to the Dayabhaga system to throw his self-acquired property into the common hotch pot of a HUF. Such HUF need not consist of any other male and there can be a HUF consisting of only one male, the other members being female. It was held in the case of Gowli Buddanna v. CIT : [1966]60ITR293(SC) that the plea that there must be at least two male members to form HUF had no force. It was further held that the property of a joint family does not cease to belong to the family merely because the family is represented by a single coparceners, who possesses rights which an owner of a property may possess. In the case of N. V. Narendranath v. CWT : [1969]74ITR190(SC) , the Supreme Court held that when the coparceners having a wife and two minor daughters and no son receives his share of the joint family properties on partition, such property, in the hands of the coparceners, belongs to the HUF of himself, his wife and minor daughters and the same cannot be assessed as his individual property. From the above decisions it would be clear that there is no bar in the self-acquired property being impressed with the HUF consisting of the deceased, his wife and two daughters. In the present case the daughters were married and, hence, they have gone out of consideration. This will, thereforee, be a case where an individual impresses his self-acquired property as joint family property belonging to himself and his wife as an undivided family.

At this stage it is necessary to note the important decision in the case of Surjit Lal Chhabda (supra), which has been relied upon by the revenue authorities. That was a decision in the case of a Hindu belonging to the Mitakshara school. He had a wife and an unmarried daughter. He had thrown a self-acquired immovable property into family hotch pot in order to impress the property with a character of joint family property of which he was the karta. Their Lordships held that the assessed, his wife and his unmarried daughters were members of a HUF and the absence of an antecedent history of jointness between him and his ancestors was no impediment to the assessed, his wife and unmarried daughter forming a HUF. Their Lordship, however held that until the birth of a son the personal law of the assessed regarded him as the owner of the property and the income there from as his income even after the property was thrown into the family hotch pot. In view of this, the Court held that the income was chargeable to income-tax in the assesseds hand as an individual and not in the hands of the family. Certain observations made in the above decision have to be specially noted as they are of general importance. Their Lordships have observed as under :

'The appellant is governed by the Mitakshara school of Hindu law but that is not of any particular consequence for the purposes of this appeal. The differences between the Mitakshara and Dayabhaga schools on the birth-right of coparceners and the rule of inheritance have no bearing on the issue arising in this appeal, particularly on the question whether a single male can constitute a joint or undivided family with his wife and unmarried daughter. A joint Hindu family under the Dayabhaga is, like a Mitakshara family, normally joint in food, worship and estate. In both systems, the property of the joint family may consist of ancestral property, joint acquisitions and of self-acquisitions thrown into the common stock. In fact, whatever be the school of Hindu law by which a person is governed the basic concept of a Hindu undivided family in the sense of who can be its members is just the same.' (p. 781)

After pointing out that under the Income-tax Act a HUF, not coparcenary, is a taxable unit, their Lordships pointed out, that wife and daughter are also members of the joint family which may consist of persons lonely descending from a common ancestor and include their wives and unmarried daughters. Only after marriage a

daughter ceases to be a member of her fathers family and becomes a member of her husbands family. Their Lordships further observed that a joint Hindu family with all its incidents is a creature of law and cannot be create by act of parties except by adoption. Their Lordships further held that it was to necessary to have more than one coparceners to constitute a HUF. They further observed that it was not necessary to have an antecedent history of jointness for having a HUF. After considering the legal position, their Lordships came to the facts of the case and observed as under :

'Kathoke Lodge was not an asset of a pre-existing joint family of which the appellant was a member. It became an item of joint family property for the first time when the appellant threw what was his separate property into the family hotch pot. The appellant has no son. His wife and unmarried daughter were entitled to be maintained by him from out of the income of Kathoke Lodge while it was his separate property. Their rights in that property are not enlarged for the reason that the property was thrown into the family hotch pot. Not being coparceners of the appellant, they have neither a right by birth in the property nor the right to demand its partition nor indeed the right to restrain the appellant from alienating the property for any purpose whatsoever. Their prior right to be maintained out of the income of Kathoke Lodge remains what it was ever after the property was thrown into the family hotch pot : the right of maintenance, neither more nor less. Thus, Kathoke Lodge may be usefully described as the property of the family after it was thrown into the common stock, but it does not follow that in the eye of Hindu law it belongs to the family, as it would have, if the property were to devolve on the appellant as a sole surviving coparceners.' (p. 795)

On the basis of the above legal position, their Lordships held that since the personal law of the assessed regards him as the owner of the property, the income was chargeable in his individual hand. Certain commentators have expressed doubt about certain aspects of the above decision but were need not to go into that as at present the law laid down in the above case is the law to be followed and guidance has to be taken from the observations made there. One thing which becomes clear after considering the facts of the above case before the Supreme Court is that there can be no dispute that the property in question was a

property belonging to the family of the assessed and his wife in view of his throwing it in the family hotch pot. Their Lordships have further observed that the rights of the other members in the property have not been enlarged for the reason that the property was thrown into the family hotch pot. It was because the other members were not the coparceners of the assessed. Their prior right to be maintained out of the income of the property, remained what it was, even after the property was thrown into the family hotch pot. Their Lordships have also made it clear that even after the property being thrown into the common stock, the assessed can deal with it as a full owner.

10. The question which may arise is whether the position under the Dayabhaga law would be different from the position given in the case of Surjit Lal Chhabda (supra), which was under the Mitakshara law. The position does not appear to be different pointed out by the Supreme Court in that decision. In these respects the two laws were similar. If that is the position, then the property in question could be considered as a property of the family but it was held by the deceased in the circumstances of coparceners at that time. The wife of the deceased in the circumstances of the case, did not become a coparceners of the joint family consisting of the assessed and his wife. A female could become a coparceners if she steps into the shoes of a coparceners and not otherwise. In such a situation, one has to look into the legal effect of the provisions of the Estate Duty Act 1953 (the Act) for deciding the question of inclusion of the value of the property in the principal value of the estate of the deceased. Under the Act, duty is levied on the principal value of the estate which passes on the death of a person. Besides, what passes under the general law, the Act has deemed certain properties which are deemed to pass on the death of a person. Section 6 of the Act provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. A person shall be deemed competent to dispose of property if he has such an estate of interest therein or such general power as would enable him to dispose of the property. Thus, we have to see whether the property passed on the death or can be deemed to have passed on death in view of the above provisions. We are considering a property which belong to a HUF of which the deceased was the sole coparceners. It was his self-acquired property. The wife had no right in that property. After the property was thrown into

the common hotch pot the property came to belong to the joint family of the deceased and his wife but his right under the law did not end with this throwing into the common hotch pot. This would be clear from the observations made by the Supreme Court in the case of Surjit Lal Chhabda (supra). Apart from the above, it is an accepted legal position that the sole coparceners of a HUF has a right which is given even in respect of a self-acquired property. As far as the power of the sole coparceners is concerned, there is no difference between Dayabhaga and the Mitakshara laws. We may now refer to certain cases where the question of the sole coparceners of a HUF has been considered with reference to the Act.

11. In the case of CED v. Smt. Kalawati Devi : [1980]125ITR762(All) the Allahabad High Court has held that where the deceased had a family consisting of himself, his wife and his daughter and had received certain properties on the partition of a bigger HUF, the value of the property would pass on his death as he was the absolute and exclusive owner of the property and the entire property passed on his death. Their Lordships had considered the provisions of the Hindu Succession Act also while deciding the above case. This question has further been considered by the Full Bench of the Madhya Pradesh High Court in the case of Ramratan v. CED : [1983]142ITR863(MP) , where it was held that where the deceased was the sole coparceners, he had the disposing power under the Hindu law in respect of the entire property and under section 6 the entire property could be deemed to have passed on his death for purposes of estate duty. Their Lordships further held that the entire ownership of the property vested in the deceased and no part of it was shared by his wife, who was the only other member in the HUF. It was held that the entire property passed on the death deceased within the meaning of section 5 of the Act. Their Lordships had considered the decision of the Supreme Court in the cases of Gowli Buddanna (supra) and N. V. Narendranath (supra), while deciding the above case.

12. From the above decisions it would be clear that though the property in question belonged to the HUF of the deceased and his wife, the personal law of the deceased deemed him to be the owner of the property and the full value of the property passed on his death. The deceased being the sole coparceners in the family, had the full power to dispose of the property and not only 50 per cent of it

before his death. Thus, the value of the property was fully includible under the provisions of section 5 and 6.

13. The appeal is, thereforee, dismissed.

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