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Court : Kerala

Decided On : Dec-20-1967

Reported in : [1968]70ITR632(Ker)

Appeal No. : Income-tax Reference No. 8 of 1966

Appellant : P. K. Balachandran

Respondent : Controller of Estate Duty, Ernakulam.

Judgement :

RAGHAVAN J. - This reference is by the Central Board of Direct Taxes, New Delhi, under section 64(1) of the Estate Duty Act of 1953; and the question referred is :

'Whether, on the facts and in the circumstances of the case the properties devolving under the will of Sri P. K. Pillai, the predeceased husband of the deceased, were correctly included in the estate of the deceased as property passing on her death under the provisions of the Estate Duty Act, 1953 ?'

A person named P. K. Paillai died in 1935 leaving his widow, Parvathi Pillai Karthyayani Pillai, and six sons, one of whom is the applicant before us, one of the persons accountable. P. K. Pillai left a will (annexure 'C') dated 30th September, 1933, under which his widow obtained possession of the properties left by him, movable and immovable, in Travancore State. Regarding the properties of P. K. Pillai in Malaya there was another will dated 7th February, 1935 (annexure 'E')

with which we are not concerned in this reference. Karthyayani Pillai died on 27th October, 1955; and the revenue sought to assess the estate to estate duty under the Estate Duty Act. Before the Assistant Controller of Estate Duty cum Income-tax Officer, Ernakulam, the applicant contended on behalf of all the persons accountable that the estate of P. K. Pillai passed to them on his death in 1935 (before the Act.) Karthyayani Pillai being only a trustee for them; and that, in the alternative, the estate passed to Karthyayani Pillai and the six sons in equal shares as tenets-in-common on the death of P. K. Pillai, so that on the death of the widow that passed was only her seventh share. Both these contentions were rejected; and on appeal to the Central Board of Revenue, the order was confirmed. Thereafter on the motion of the applicant the question extracted above has been referred to this court.

The relevant provisions in the will of P. K. Pillai (annexure 'C') are clauses 3 to 7 thereof. Clause 3 provides that, after his death all his properties in Travancore, movable and immovable, for which there are separate accounts, shall devolve on his wife, Karthyayani Pillai, and his six sons then in existence (names of the sons are mentioned) and children that may thereafter be born to him and Karthyayani Pillai. This clause provides further that during the life of Karthyayani Pillai she will have full freedom to manage the properties; and that the six sons and the after-born children, if any, shall have no power to get the properties partitioned. Clause 4 recites that since the bulk of the immovable properties were taken in the name of the testator on mortgages, hypothecations, etc. for their collection and investment and consequential litigation for their realisation, Karthyayani Pillai shall have full freedom to do everything as the testator himself had. Then comes clause 5, which states that the properties and assets shall not be encumbered or alienated; and for all income and expenditure true accounts shall be maintained in continuation of the accounts kept by the testator himself. Clause 6 provides that after the death of Karthyayani Pillai, if necessity arises, the properties may be divided equally among the children; and that the properties so obtained on partition shall not be encumbered or alienated during their lives. Lastly, clause 7 directs that for all investments for the moneys realised, documents shall be taken only in the name of Karthyayani Pillai.

Three possible interpretations are pointed out by Sri K. V. Surianarayana Iyer on behalf of the applicant; one, Karthyayani Pillai was only a trustee and the entire estate passed to the six sons; two, the bequest was to the puthravakasam tavazhi of Karthyayani Pillai and her children, because her after-born children, who might include a daughter, were also beneficiaries; and three, the bequest was to the seven persons mentioned by names as tenants-in-common, the bequest to the unborn children being invalid. Though these three possibilities are pointed out, the counsel confines his arguments to the last.

The contention of the counsel of the revenue, on the other hand, is that the sons of P. K. Pillai had no right in the estate during the life of Karthyayani Pillai; in other words, the estate vested in Karthyayani Pillai alone on the death of her husband. Alternatively, he contends that Karthyayani Pillai had the enjoyment of the entire income of the properties during her lifetime, so that section 40 of the Act applies. Lastly, the counsel argues that if possession of the estate passed only on the death of Karthyayani Pillai in 1955 to the persons accountable, 'property passed' on her death and therefore, the estate was liable to duty. In support of this last contention the counsel relies on the decision of Purshottam Chatterjee J. of the Calcutta High Court in *Baidyanath Banerjee v. Assistant Controller of Estate Duty*.

In view of the attitude taken by Sri Surianarayana Iyer, we proceed to consider only the last contention raised by him. From the provisions of the will summarised above, it is clear that on the death of P. K. Pillai the estate vested in his widow and his six sons as tenants-in-common, and not in the widow alone exclusively. The right of the widow was only to manage the properties during her lifetime. This is clear from clauses 3 and 5. Clause 3 says that she shall have full freedom of management; and clause 5 makes it imperative that she shall keep true accounts for all income and expenditure in continuation of the accounts the testator himself maintained. The only restriction cast on the Sons was that they would not have the right to get their shares during the life of their mother. What clause 4 conferred on Karthyayani Pillai was again only the right to file suits, realise moneys and invest them in her name. The same is indicated by clause 7 also. Clause 6 allowed partition after the death of Karthyayani Pillai; and it also provided that the properties should not be alienated or encumbered during the lives of the sons.

These provisions clearly show that Karthyayai Pillai had no right to enjoy the entire income of the properties during her lifetime. There is no provision in the will conferring a right of enjoyment of the entire income on her.

It is argued by the counsel of the revenue that the three subsequent documents annexure 'D-1' of 20th October, 1954, annexure 'D-2' of 30th October, 1954, and annexure 'D-3' of 21 st October, 1955, indicate that Karthyayani Pillai and her children understood the will as conferring absolute title and enjoyment on Karthyayani Pillai during her lifetime. Annexure 'D-1' is a settlement executed by Karthyayani Pillai in favour of one of her sons giving him his share; annexure 'D-2' is another settlement executed by her in favour of two other sons; and annexure 'D-3' is yet another settlement executed by all the seven beneficiaries under the will, under which the three remaining sons also obtained their shares. These documents were executed while Karthyayani Pillai was Still alive; and they were all within two years prior to her death in 1955. Under these documents the enjoyment of the income of the properties was to remain with her during her lifetime.

In interpreting a will what we have to find out is intention of the testator, and if his intention was to give his estate equally to his wife and six sons as tenants-in-common and to retain the wife only as the manager of the entire estate during her life, the question how the wife and children understood that intention is not of any consequence. At the most, what can be said about annexures 'D-1' to 'D-3' is that under these documents the sons allowed the mother to enjoy the income of their shares also during her lifetime, probably in consideration that after her death they might get her share as well. (The mother had full right of disposal over her share, which she might dispose of or alienated in any manner during her lifetime or by will; and probably, the sons wanted to prevent that by allowing her to enjoy the income of their shares as well during her lifetime.) Therefore, annexures 'D-1' to 'D-3' serve no useful purpose. If at all annexures 'D-1' to D-3' created any interest in Karthyayani Pillai, it was life-estate, which, on her death, reverted to the sons; and in such a case, under section 24(1) of the Act, no property should be deemed to have passed on her death.

Since, under the will, the interest of Karthyayani Pillai over the properties did not extend to the whole of their income, section 40 has no application to the case. Again, since under the will, the entire estate did not pass to her on the death of her husband, what passed to her sons on her death was only her seventh share.

What remains to be considered is the decision of the Calcutta High Court relied on by the counsel of the revenue. In that case a Negendra Nath Banerjee died in 1930, leaving his widow, Sudhir Bala. Under the will left by him Sudhir Bala was appointed executrix; and a life-estate was conferred on her reserving the absolute estate to the petitioner. After the death of Sudhir Bala in 1960, the question arose whether the petitioner was liable to pay estate duty. It was urged on behalf of the petitioner that the absolute estate vested in him on the death of Nagendra Nath in 1930; and that no property passed to him on the death of Sudhir Bala. This argument was rejected by Purshottam Chatterjee-Sudhir Bala had a lifestate, which meant that she had an interest in the properties which extended to the whole of the income thereof. Naturally, section 40 of the Act applied; and therefore, on the death of Sudhir Bala the petitioner had to pay estate duty. This was what Purshottam Chaterjee J. held in that case.

But, there are some observations in that judgment, which may indicate that the expression 'Property passes' means possession of property passes ' and not 'title to property passes.' The learned judge has considered the decision in *Earl Cowley v. Commissioners of Inland Revenue*. In that case a property was mortgaged and there was also an annuity in favour of the father, the son having the remainder over. It was held that the settled property, which passed to the son on the fathers death, was only the equity of redemption; and that estate duty was payable only on the equity of redemption and not on the value of the property. This decision is authority for the position that 'property' does not mean mere 'possession of property' or mere 'title to property'. In the case before the Calcutta High Court, what Sudhir Bala had was not mere position, but possession and enjoyment of the entire income, of the properties. In the case before us, what Karthyani Pillai had was mere possession and management of the properties and not the enjoyment of the entire income thereof. In other words, Sudhir Balas interest in properties extended to the whole income, while Karthyayani pillais interest extended only to

her seventh share of the income. If Purshottam Chatterjee J. meant that the passing of mere possession of the properties without reference to the enjoyment of the income thereof was sufficient, we are afraid, with due respect to the learned judge. we cannot agree.

The result is that the answer to be given to the question referred is in the negative and against the revenue. However we pass no order regarding costs.

A copy of this judgment may be sent to the appropriate authority according to law.

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