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# State of Kerala Vs. K.P. Gopal

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**Court** : Kerala

**Decided On :** Feb-09-1987

**Reported in** : [1987]166ITR111(Ker)

**Judge** : T. Kochu Thommen,; P.C. Balakrishna Menon and; K.P. Radhakrishna Menon, JJ.

**Acts** : Kerala Agricultural Income Tax Act, 1950 - Sections 9(2)

**Appeal No.** : Income-tax Reference Nos. 378 and 379 of 1980

**Appellant** : State of Kerala

**Respondent** : K.P. Gopal

**Advocate for Def.** : K.S. Rajamony, Adv.

**Advocate for Pet/Ap.** : Government Pleader

**Judgement** :

**Kochu Thommen, J.**

1. The following two questions have been, at the instance of the Revenue, referred to us by the Kerala Agricultural Income-tax Appellate Tribunal, Additional Bench, Ernakulam :

'(i) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the assessee can effect a valid partition as karta of a Hindu undivided family even when there is no other coparcener in the family and that Section 9(2) of the Agricultural Income-tax Act has no application to the facts of the case ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in directing exclusion of the income from 24.37 acres of properties allotted to the three minor daughters in computing the agricultural income of the assessee ?'

2. The assessment years in question are 1975-76 and 1976-77. On August 23, 1974, that is, during the accounting year relevant to the assessment year 1975-76, exhibit P-4 was executed by the assessee together with his wife, the latter acting as the guardian of their five minor daughters.

3. This document is styled as a deed of partition whereunder certain properties were allotted amongst the assessee and his minor daughters. An extent of 24.37 acres of land was allotted to three minor daughters. Two other minor daughters were given cash instead of land. The remaining immovable properties were allotted to the father. In his returns filed under the Agricultural Income-tax Act, 1950, for the relevant assessment years, he excluded the income derived by the daughters from the assets allotted to them under exhibit P-4. His contention that he was not liable to be assessed in respect of such income was rejected by the assessing authority on the ground that the allotment of assets was hit by Section 9(2). The assessee appealed to the Appellate Assistant Commissioner, but without success. On further appeal by the assessee, the Tribunal held that the transaction evidenced by exhibit P-4 was not hit by Section 9(2), and that, in computing the total agricultural income of the assessee, the income derived from assets held by the minor daughters had to be excluded.

4. It is contended on behalf of the Revenue that exhibit P-4 purports to partition properties amongst persons who had no pre-existing right in those properties. Daughters of a Hindu undivided family are not coparceners and are, therefore, not entitled to any share of the ancestral properties. What was achieved by exhibit P-

4, counsel says, was a gift of the properties, thereby attracting the provisions of Section 9(2)(a)(iv) so as to make the income derived from the transferred assets includible in the computation of the total agricultural income of the assessee.

5. Section 9(2)(a)(iv) reads:

'(2) In computing the total agricultural income of any individual for the purpose of assessment there shall be included-

(a) so much of the agricultural income of a wife or minor child of such individual as arises directly or indirectly--......

(iv) from assets transferred directly or indirectly to the minor child not being a married daughter by such individual otherwise than for adequate consideration ; and........... '

6. The question is whether the properties allotted under exhibit P-4 had, in fact, been transferred to the minor unmarried daughters otherwise than for adequate consideration so as to attract the provisions of Section 9(2)(a)(iv). Exhibit P-4 would have to be regarded as a gift in favour of minor daughters if they did not have, as contended by the Revenue's counsel, any pre-existing right in those properties. But that is not the position in law.

7. The fallacy of the argument of the Revenue's counsel, in our view, lies in the assumption that unmarried daughters have no right which is enforceable against the properties belonging to a Hindu undivided family. That the Hindu undivided family can exist even if there is only one coparcener is not in doubt. That the widows and unmarried female members of such a family, although not coparceners, are entitled to certain rights is also not in doubt. The Hindu widow is entitled to maintenance in respect of which there is a charge on the ancestral properties. Likewise, unmarried female members are also entitled to maintenance as well as marriage expenses in respect of which they are entitled to a charge on the ancestral properties. In lieu of such maintenance and other expenses, the female members can be allotted shares at the time of partition so that the divided properties are free of the encumbrance : see Vaddeboyina Tulasamma v. Sesha

Reddi : [1977]3SCR261 ; State of Maharashtra v. Narayan Rao Sham Rao Deskmukh 1985 SCC 321; Gowli Buddanna v. CIT : [1966]60ITR293(SC) ; Attorney-General of Ceylon v. AR. Arunachalam Chettiar [1958] 34 ITR 42.

8. In the circumstances, the partition of the ancestral properties sought to be accomplished under exhibit P-4 must be seen as, among other things, a settlement of all the rights to which, in Hindu law, female members were entitled. Assets were allotted to them and they came into possession of them in lieu of maintenance arid expenses. They became the absolute owners of those assets (see Section 14(1) of the Hindu Succession Act, 1956). The Revenue has of course no case that the value of the assets allotted exceeded what was in law payable as maintenance or other expenses. In the circumstances, it cannot be said with any justification that the assets mentioned under exhibit P-4 were transferred by the assessee to his minor children otherwise than for adequate consideration so as to attract the provisions of Section 9(2)(a)(iv).

9. Accordingly, we answer question No. (ii) in the affirmative, that is, in favour of the assessee and against the Revenue. In the light of this answer, question No. (i) does not require to be answered. We decline to answer question No. (i).

10. We direct the parties to bear their respective costs in these tax referred cases.

11. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Kerala Agricultural Income-tax Appellate Tribunal, Additional Bench, Ernakulam.

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