P. Amirthavalli Vs. Controller of Estate Duty

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Court : Chennai

Decided On : Feb-04-1986

Reported in : [1987]164ITR63(Mad)

Judge : M.N. Chandurkar, C.J. and ;Venkataswami, J.

Acts : Estate Duty Act, 1953 - Sections 7(1)

Appeal No. : Tax Case No. 41 of 1978 (Reference No. 14 of 1978)

Appellant : P. Amirthavalli

Respondent : Controller of Estate Duty

Advocate for Def. : Nalini Chidambaram, Adv.

Advocate for Pet/Ap. : V. Ramachandran, Adv.

Judgement :

M.V. Chandurkar, C.J.

1. There was a partition in November, 1959, between one Ponnuswamy and his son, Thiagarajan. When Ponnuswamy died in February, 1973, he left behind his widow, four daughters and a separated son, Thiagarajan. In proceedings before the Assistant Controller of Estate Duty, the accountable person, i.e., the widow of Ponnuswamy, contended that under section 7(1) of the Estate Duty Act, 1953, the only interest that would cease on the death of Ponnuswamy would be half

because in the hands of Ponnuswamy, the property was joint family property and she being a member of the Hindu undivided family, she was entitled to a half share in the Hindu undivided family property. This contention was rejected by the Assistant Controller, the Appellate Controller as well as the Tribunal. The authorities including the Tribunal consistently took the view that Ponnuswamy was a single surviving coparcener and, therefore, there was no coparcenary in existence and the wife did not have any independent right of partition and, therefore, under section 7(1), the cesser of interest would be to the extent of the whole of the property received by Ponnuswamy at partition. The correctness of this view is put in issue in the question which has been referred, which reads as follows :

'Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the cesser of interest under section 7(1) of the Estate Duty Act, 1953, would extend to the entire joint family property and not to a half share thereof ?'

2. Mr. Ramachandran, appearing on behalf of the accountable person, has contended that the widow of the deceased, i.e., the accountable person, had a right of maintenance in the joint family property and she was, therefore, entitled to be allotted half share in the joint family property when the partition took place between Ponnuswany and his son, Thiagarajan. Therefore, according to learned counsel, for the purpose of section 7, only half of the interest in the joint family property must be held as ceasing on the death of the deceased. This argument, in our view, is liable to be rejected straightaway. When the partition between Ponnuswamy and his son took place in 1959, Ponnuswamy's wife had no right to be allotted any share in the joint family property. Admittedly, in the joint family, the members were only Ponnuswamy, his wife and one unmarried daughter. Neither the unmarried daughter nor the wife had during the lifetime of Ponnuswamy any right to demand a partition. It would be only on Ponnuswamy's death that the entire estate would devolve on his heirs including the widow. There being only a sole coparcener in the coparcenary, no partition was ever possible during the lifetime of Ponnuswamy and, therefore, the entire interest of Ponnuswamy would pass on his death in 1973. This position of law is in our view well-established. In a

Full Bench decision of the Madhya Pradesh High Court in Ramratan v. CED : [1983]142ITR863(MP) , it has been observed that female members in a Hindu undivided family have no ownership in the property belonging to the family and the ownership of such property is held by a smaller body called the coparcenary and in case there is only one coparcener, it is he alone who owns the entire property. In CED v. Smt. Kalawati Devi : [1980]125ITR762(All) , the Allahabad High Court has held that the assets that are received on partition by a member of a Hindu undivided family, who has no male issue at the time, belong to him absolutely although they are capable of being owned by a Hindu undivided family, consisting of himself and his son or sons that may be born or adopted subsequently. In that case, the family of the deceased consisted of himself, his wife and daughter. The deceased had received certain properties on the partition of a bigger Hindu undivided family. On the death of the deceased, it was held that the deceased was the absolute and exclusive owner of the property and the entire property passed on his death. In view of the fact that the position in law is so well-settled, we need not further elaborate on this position. In our view, the Tribunal was clearly right when it took the view that the cesser of interest under section 7(1) would extend to the entire joint family property. Accordingly, the question referred to this court is answered in the affirmative and against the accountable person. The accountable person would pay the costs of this reference. Costs Rs. 500.