

K.V. Kishore and Another Vs. Appropriate Authority and Others Overruled

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Overruled by : [Appropriate Authority & Commissioner Income Tax v. Smt. Varshaben Bharatbhai Shah & Ors. \(2001\)4SCC1](#)

SooperKanoon Citation : sooperkanoon.com/793467

Court : Chennai

Decided On : Mar-15-1990

Reported in : [1991]189ITR264(Mad)

Judge : S. Ramalingam, J.

Acts : Hindu Succession Act; [Income Tax Act, 1961](#) - Sections 269, 269UC and 269UD; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition Nos.4537 and 15951 of 1988

Appellant : K.V. Kishore and Another

Respondent : Appropriate Authority and Others Overruled

Advocate for Def. : Mr. P. S. Raman

Advocate for Pet/Ap. : K. Doraiswami, Adv.

Judgement :

S. Ramalingam, J.

1. In or about the year 1957, the City Improvement Trust Board, Bangalore, allotted a plot measuring 83' x 120' (total 9,960 sq. ft.) in Jaya Nagar, Bangalore,

in favour of one A. Srinivasan. He died in the year 1962 leaving behind as his heirs under the Hindu Succession Act, his wife, a son and three daughters. When succession was opened by the demise of the father, each one of the aforesaid class 1 heirs secured a quantified share in the property left behind by A. Srinivasan. On April 8, 1987, a family arrangement was entered into under the terms of which it was agreed that the son (4th respondent herein) would take 26%, the wife (5th respondent) 23% and each one of the daughters (respondents Nos. 6 to 8) 17% out of the aforesaid property.

2. The petitioner in W.P. No. 15951 of 1988, the father and the petitioner in W.P. No. 4537 of 1988 who is his son, approached respondents Nos. 4 to 8 with an offer to purchase, and an agreement was entered into between these two petitioners and respondents Nos. 4 to 8 on January 28, 1988. Some of the relevant terms of this agreement have to be noticed for the purpose of deciding the point in issue in these writ petitions. After narrating that, under the family arrangement, each one of respondents Nos. 4 to 8 obtained definite shares out of this property, the agreement states that the vendors had agreed to sell his/her respective undivided interest in the property for a sale consideration as narrated hereunder :

Rs.S. Ranganathan (4th respondent): 5,20,000S. Komala (5th respondent): 4,60,000R. Padma (6th respondent): 3,40,000Jambaga Ramakrishnan (7th respondent): 3,40,000S. Hema (8th respondent): 3,40,000

3. All these respective sale considerations have been totalled up and that is indicated as Rs. 20,00,000. The agreement also states that, in respect of conveyance of the respective shares to the purchasers, Ranganathan (4th respondent) received an advance of Rs. 1,90,000, S. Komala (5th respondent) received an advance of Rs. 75,000, R. Padma (6th respondent) received an advance of Rs. 85,000, Jambaga Ramakrishnan (7th respondent) received an advance of Rs. 75,000 and S. Hema (8th respondent) received an advance of Rs. 75,000, totalling a sum of Rs. 5,00,000. The agreement further states as follows : Although the transactions hereby entered into are separate and independent, the vendors had agreed to the execution of a single sale deed as a matter of

convenience. However, the agreement states that 'although, in law, each transaction is less than Rs. 10 lakhs', since under Chapter XX-C of the Income-tax Act, any transaction in immovable property exceeding in value the sum of Rs. 10,00,000 has to be reduced into writing in the form of an agreement and the same submitted to the appropriate authority nominated in that behalf, the vendors will take steps to apply to the income-tax authorities under Chapter XXC for necessary clearance from acquisition. In the schedule to the agreement, the property conveyed is 'all that undivided interest in the piece and parcel of property, site bearing No. 6/104. . .'

4. In the annexure to Form No. 37-I furnished to the appropriate authority under section 269UC of other Income-tax Act under the heading 'Particulars of consideration for transfer', it was indicated that the undivided interest of each one of respondents Nos. 4 to 8, the value of which already referred to, would be conveyed.

5. The appropriate authority, the first respondent therein, by the impugned orders dated March 28, 1988, after referring to the recitals in the agreement and without questioning the truth or correctness of the recitals contained therein, passed the following order :

'After going through the particulars of the agreement, after considering all the relevant facts and circumstances and after inspecting the property, we formed an opinion that the said property is fit for purchase by the Central Government at an amount equal to the apparent consideration. Therefore, in exercise of the powers vested in us under sub-section (1) of section 269UD of the Income-tax Act, 1961, we order the purchase of the said immovable property by the Central Government for a sum of Rs. 20,00,000 (Rupees twenty lakhs only) which is the amount of the apparent consideration mentioned in the statement in Form No. 37-I.'

6. In challenging the said impugned order, though the petitioners have raised certain contentions in the affidavit questioning the constitutional validity of Chapter XXC of the Income-tax Act, at the time of arguments, learned counsel for the petitioners does not press that contention on the plea that one of the petitioners has filed a separate writ petitions, raising that ground and that is pending.

Therefore, in these writ petition, learned counsel would restrict his submissions only to the following contentions, namely, that the provisions of Chapter XX-C of the Income-tax Act are not attracted when an immovable property of value less than twenty lakhs rupees is to be transferred by way of conveyance and, in the instant case, the agreement should be understood as one under which the quantified undivided share in the immovable property is being sold by the individual owners thereof and the sale consideration for such conveyance of the individual shares being less than Rs. 10,00,000, the impugned order made under Chapter XX-C of the Act cannot be sustained.

7. To state more elaborately, the contention of the petitioner is that, on the death of A. Srinivasan, respondents Nos. 4 to 8 being the heirs under the Hindu Succession Act, their shares became fixed and quantified on the date of the demise of their father and it is in that backdrop, they entered into a family arrangement under which each one was allotted a definite share in this immovable property thereby meaning that each one has become the absolute owner of the undivided share. It is further contended that each such sharer is entitled to deal with such share without any restraint or co-operation or consent from other sharers. Nothing can prevent each individual sharer from conveying his/own share. It is the contention of the petitioners that, in effect and in law, though one single agreement had been entered into, respondents Nos. 4 to 8 were individual parties and, under that agreement, each one of the respondents had agreed to convey his/her absolute interest in the immovable property and the conveyance should be understood as conveyances by each one of the sharers. If viewed from that angle, the value of the share so conveyed being less than Rs. 10,00,000, the provisions of Chapter XX-C of the Income-tax Act would not be attracted.

8. In answer to this contention, Mrs. Nalini Chidambaram, learned senior counsel appearing for the Income-tax Department, would submit that even a cursory reading of the agreement would show that the sale consideration of the property is described as Rs. 20,00,000 which is more than Rs. 10,00,000 and, consequently, Chapter XX-C would be attracted. Secondly, it is submitted that respondents Nos. 4 to 8 rightly understood that their transaction would require clearance from the Income-tax Department and that is why they applied under Chapter XX-C and it is

not permissible for them to turn around and contend that there was no need or necessity to obtain clearance from the Income-tax Department. It is further submitted that in Form No. 37-I, the respondents had admitted that the total apparent consideration for the transfer of the above property is Rs. 20,00,000 and, therefore, there is an admission on the part of the respondents that the sale consideration is above Rs. 10,00,000. It is also submitted that the order of the first respondent does not contain any error of law apparent on the face of the records warranting issue of a writ of certiorari. It is submitted that at the most the question whether the individual undivided shares are transferred or whether the property commonly owned by them had been compositely sold or not, is a debatable question and a view has been taken on such a debatable question by the Competent Authority under the Income-tax Act that would not call for any interference in certiorari. Lastly, it is submitted that the mandamus prayed for in this writ petition has become infructuous in view of the fact that the property has already been order to be acquired by the impugned orders dated March 28, 1988.

9. Mr. P. S. Raman, appearing for respondents Nos. 5 to 8, would submit that they had entered into an agreement of sale bona fide and the transaction should be nullified by taking proceedings under Chapter XX-C of the Act.

10. After giving deep consideration to these rival submissions, the following facts would clinchingly establish the case in favour of the petitioners. It is not denied or it is not disputed that the original allottee, A. Srinivasan, died in the year 1962. He being a Hindu, governed by the Hindu Succession Act, on his death, his wife and children acquired a vested right to the definite quantified shares in the property left behind by him. As owners of their respective shares, they were competent to enter into a family arrangement which they did on April 8, 1987, under the terms of which, each one of respondents Nos. 4 to 8 were allotted a definite share in the property. After April 8, 1987, they were individual owners of definite shares in the property. Each one could deal with only his respective share and he cannot deal with the share of another. The property which so fell to the share of each individual will come definitely within the definition of the words 'immovable property.' Such a sharer was entitled to transfer his immovable property to a third person. Merely because a plurality of such individual owners joined together to enter into one

single agreement to transfer their respective shares in favour of one or more persons, that would not make any difference to the main issue that what each transferred is his definite share in the property. Viewed from that perspective, the agreement entered into between the petitioners and respondents Nos. 4 to 8 is to be understood only as an agreement to convey the respective undivided shares of respondents Nos. 4 to 8. It is not in dispute that the value of each such share is less than Rs. 10,00,000. The recitals in the agreement in more than one place refer to the fact that what is sold, is the individual undivided share in the property. Consequently, the impugned order made under Chapter XX-C of the Act taking the total consideration, the collective shares, cannot be sustained (sic). Both the writ petitions are, accordingly, allowed. No costs.

11. Counsel for the Income-tax Department prays that the amount paid by the Department during pendency of the writ petitions to respondents Nos. 4 to 8 will have to be refunded by them. Since the petitioners have already agreed to purchase the property, they are bound by law to pay the price agreed upon and in this view, the petitioners herein will reimburse the Income-tax Department the amount which the Department has already parted with. The petitioners will have time till the end of May, 1990, for payment.