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Ramaswamy and Another Vs. Commissioner of Wealth-tax

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Court : Chennai

Decided On : Mar-09-1995

Reported in : [1996]220ITR205(Mad)

Judge : K.A. Thanikkachalam and ;T. Jayarama Chouta, JJ.

Acts : Income Tax Act, 1961 - Sections 148 and 171; Wealth Tax Act, 1957 - Sections 5(1), 20, 20(1), 20(2) and 27(1)

Appeal No. : Tax Cases Nos. 324 to 328 of 1983 (Reference Nos. 154 to 158 of 1983)

Appellant : Ramaswamy and Another

Respondent : Commissioner of Wealth-tax

Advocate for Def. : C.V. Rajan, Adv.

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

Judgement :

Thanikkachalam, J.

1. At the instance of the assessee, the Tribunal referred the following two questions of law said to arise out of the common order of the Tribunal for the assessment years 1967-68 to 1971-72 for our opinion under section 27(1) of the

Wealth-tax Act, 1957 :

'(1) Whether the Tribunal was right in holding that the partition of the family took place on November 18, 1974, and not on January 10, 1967, as contended by the applicant?

(2) Whether the Tribunal was right in holding that the requirement of section 20 of the Wealth-tax Act is not satisfied?'

2. The assessees are the legal heirs of the late B. Muthukumarappa Reddiar. Muthukumarappa Reddiar's brother, Purushothamma Reddiar, filed a suit for partition in C.S. No. 14 of 1967 on the file of the High Court at Madras in respect of various items of properties on January 10, 1967, claiming partition of his 50 per cent. share in the properties. A preliminary decree was passed in the suit on November 6, 1968. The heirs of Muthukumarappa Reddiar filed an appeal against the preliminary decree. In the appeal proceedings a compromise decree was passed on November 18, 1974, by allotting 44 per cent. share in favour of Purushothama Reddiar and some other family properties were allotted to his share. The value of the properties allotted to Purushothama Reddiar is the subject matter in the Wealth-tax proceedings. Before the Wealth-tax Officer, the assessee filed an application under section 20 of the Wealth-tax Act in the assessment year 1967-68 to recognise the partition and required the Wealth-tax Officer to hold that there was partition in the family with effect from January 10, 1967. The Wealth-tax Officer held that there was no partition in the Hindu undivided family during the previous year relevant to the assessment years in question and that there was actually a partition which took place by metes and bounds only on November 18, 1974. In the said partition, properties were allotted to the sharers by consent of parties which were incorporated in the final decree. Aggrieved by this order, the assessee filed appeals before the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner, the assessee submitted that there was a partition on January 10, 1967, in view of the decision of the Supreme Court in A. Raghavamma v. A. Chenchamma, : [1964]2SCR933 . Reliance was also placed upon a decision of the Calcutta High Court in the case of Bijoy Kumar Burman v. ITO : [1972]84ITR71(Cal) . However, the Appellate Assistant Commissioner

refused to accept the contention put forward by the assessee. The Appellate Assistant Commissioner relied on a decision of the Madras High Court reported in Arunachala Mudaliar v. CIT : [1961]41ITR432(Mad) and held that there was no partition which took place on January 10, 1967, as per the provisions contained under section 20 of the Wealth-tax Act. Accordingly, the Appellate Assistant Commissioner confirmed the order passed by the Wealth-tax Officer in all the assessment years under consideration.

3. Aggrieved, the assessee filed a second appeal before the Appellate Tribunal. The Tribunal also held that there was no partition in the Hindu undivided family as submitted by the assessee on January 10, 1967, as per the provisions of section 20 of the Wealth-tax Act. Accordingly, the appeals filed by the assessee were dismissed.

4. Before this court, learned counsel appearing for the assessee submitted that on January 10, 1967, a suit for partition was filed and a preliminary decree was passed by the trial court. As against the preliminary decree passed by the trial court, appeal was preferred. In the appeal a decree was passed in terms of the compromise memo filed by the parties on November 18, 1974. In the said appeal proceedings, the appellate court has passed a decree declaring the shares of the parties. According to learned counsel appearing for the assessee, the decree passed by the appellate court on November 18, 1974, would relate back to the date on which the plaint was filed on January 10, 1967. Therefore, the partition took place from January 10, 1967, and not on November 18, 1974, as contended by the Department. Learned counsel further submitted that when the plaint was filed on January 10, 1967, there was a disruption in the Hindu undivided family and there was also a partition in the family with effect from the date of the filing of the plaint. Learned counsel also contended that under section 20 of the Wealth-tax Act, there is no Explanation as stated under section 171 of the Income-tax Act, 1961. Therefore, partition means a partition by metes and bounds would not be applicable in the wealth-tax proceedings. According to learned counsel, section 20 of the Wealth-tax Act is only a machinery provision and, therefore, there cannot be a partition as per the provisions of section 20 of the Wealth-tax Act. In order to support his contentions, learned counsel appearing for the assessee relied upon a

decision of the Supreme Court in the case of A. Raghavamma v. A. Chenchamma, : [1964]2SCR933 and a decision of the Calcutta High Court in the case of Bijoy Kumar Burman v. ITO : [1972]84ITR71(Cal) .

5. On the other hand, learned standing counsel appearing for the Department submitted that the Explanation as could be seen under section 171 of the Income-tax Act does not find a place under section 20 of the Wealth-tax Act. What is contemplated under the Explanation to section 171 of the Income-tax Act is incorporated in section 20 of the Wealth-tax Act itself. Therefore, according to learned standing counsel, 'partition' for the purpose of wealth-tax proceedings means partition by metes and bounds. A mere passing of a preliminary decree is not sufficient to show that there was a partition as per the provisions contained in section 20 of the Wealth-tax Act. Learned standing counsel further submitted that the doctrine of relation back as stated in the decision of the Supreme Court in A. Raghavamma v. A. Chenchamma, : [1964]2SCR933 would be applicable only in the matter of disruption of the family and it does not apply to a final decree passed in the partition suit. The concept of disruption in the Hindu joint family as contemplated under the Hindu law would not be applicable under the wealth-tax proceedings for the purpose of holding that there is a complete partition with regard to the shares of the members of the Hindu undivided family. Therefore, according to learned standing counsel, a complete partition as contemplated under section 20 of the Wealth-tax took place in the present case from November 18, 1974, when the appeal proceedings ended in a compromise decree allotting 44 per cent. share with certain other properties in favour of Purushothama Reddiar. In order to support his contentions, learned standing counsel relied upon the decisions reported in Kalloomal Tapeswari Prasad (HUF) v. CIT : [1982]133ITR690(SC) ; Goswami Brijratanlalji Maharaj v. CWT : [1971]79ITR373(Guj) ; CWT v. Tatavarthi Rajah and Satyanarayana Murthy : [1983]143ITR441(AP) ; Kaniram Hazarimal v. CWT : [1974]96ITR661(Cal) and Joint Receivers of the Estate of Dewan Bahadur C. Arunachala Mudaliar v. CIT : [1961]41ITR432(Mad) .

6. We have heard the rival submissions. The point for consideration in these tax cases is whether the partition in the family took place on January 10, 1967, as

contended by the assessee or only on November 18, 1974, as was decided by the Department. We have already set out the facts in detail. A suit was filed in C.S. No. 14 of 1967 claiming partition with regard to 50 per cent. share in the suit properties by one Purushothama Reddiar. A preliminary decree for partition was passed on November 6, 1968. Thereafter, an appeal in O.S.A. No. 45 of 1972 was filed as against the preliminary decree for partition passed on November 6, 1968. The appeal proceedings ended in a compromise. In terms of the compromise memo, a decree was passed, allotting 44 per cent. share in the immovable properties in favour of Purushothama Reddiar along with some other properties. The assessee contended that the partition took place from January 10, 1967, when the plaint was filed in the suit. But the Department contended that the partition as per the provisions of section 20 of the Wealth-tax Act took place only on November 18, 1974, and not on January 10, 1967. Section 20(1) of the Wealth-tax Act states as under :

'20. (1) Where, at the time of making an assessment, it is brought to the notice of the Assessing Officer that a partition has taken place among the members of a Hindu undivided family, and the Assessing Officer, after inquiry, is satisfied that the joint family property has been partitioned as a whole among the various members or groups of members in definite portions, he shall record an order to that effect and shall make assessments on the net wealth or the undivided family as such for the assessment year or years, including the year relevant to the previous year in which the partition has taken place, if the partition has taken place on the last day of the previous year and each member or group of members shall be liable jointly and severally for the tax assessed on the net wealth of the joint family as such.'

7. A plain reading of the abovesaid provision would go to show that a complete partition by metes and bounds as stated in the Explanation to section 171 of the Income-tax Act, 1961, is incorporated in section 20 of the Wealth-tax Act, 1957. Section 20 is a machinery section. Unless the assessee satisfied the conditions prescribed under section 20 of the Wealth-tax Act, it is not possible for the assessee to contend that there was a partition under the Wealth-tax Act in accordance with section 20 of the said Act. Section 20 of the Wealth-tax Act came

up for consideration before the Supreme Court in the case of Kalloomal Tapeswari Prasad (HUF) v. CIT : [1982]133ITR690(SC) , wherein while considering the provisions of section 171 of the Income-tax Act, 1961, the Supreme Court held as under (headnote) :

'Though under the Hindu law an item of property need not in every case be partitioned by metes and bounds of physically into different portions in order to effect a partition, and disruption of status can be brought about by one of several modes, income-tax law introduces certain conditions of its own to give effect to the partition under section 171 of the Act. The Income-tax Officer can record a finding that a partition has taken place only if the partition in question satisfies the definition of the expression 'partition' found in the Explanation to section 171. A transaction can be recognised as a partition under section 171 only if, where the property admits of a physical division, a physical division of the property has taken place. In such a case a mere physical division of the income without a physical division of the property producing the income cannot be treated as a partition. Even where the property does not admit of a physical division, such division, as the property admits of, should take place to satisfy the test of a partition under section 171. Mere proof of severance of status under Hindu law is not sufficient to treat such a transaction as a partition. If a transaction does not satisfy the above additional conditions, it cannot be treated as a partition under the Income-tax Act even though under Hindu law there has been a partition - total or partial.'

8. The Gujarat High Court had an occasion to consider the provisions contained in section 20 of the Wealth-tax Act, 1957, in the case of Goswami Brijratanlalji Maharaj v. CWT : [1971]79ITR373(Guj) , wherein the Gujarat High Court held as under (page 386) :

'In our opinion, on a close reading of section 20, it becomes clear that the Wealth-tax Officer is called upon to make an inquiry, if at the time of making the assessment, it is brought to the notice of that officer that a partition has taken place amongst the members of the Hindu undivided family. If after such inquiry, as is referred to in section 20(1), the Wealth-tax Officer is satisfied that the joint family property has been partitioned as a whole amongst the various members or groups

of members in definite portions, he has to record an order to that effect and then he has to proceed to make assessment on the net wealth of the Hindu undivided family as provided in that sub-section. Where the Wealth-tax Officer is not so satisfied, he has to declare by an order that, under sub-section (2) of section 20, the said family shall be deemed for the purposes of the Act to have continued as Hindu undivided family, liable to be assessed as such.'

9. In the abovesaid decision, it was further held as follows (page 387) :

'Therefore, at any time when a Wealth-tax Officer is making the assessment, to contention is raised or is sought to be raised before him that a partition has taken place amongst the members of the Hindu undivided family, he has to enter upon an inquiry and satisfy himself whether there has been partition by metes and bounds. If he is not so satisfied about the joint family properties having been partitioned by metes and bounds amongst the various members, he has to declare under sub-section (2) of section 20 that such family shall be deemed for the purposes of the Act to continue to be a Hindu undivided family liable to be assessed as such. Once that declaration under section 20(2) is made, it becomes clear that, even for the purposes of section 5(1)(ii) of the Act, the interest of any individual member of the joint family in coparcenary property of any Hindu undivided family of which he is a member can be safely excluded. The words 'for the purposes of this Act' occurring in section 20(2) would include within their ambit section 5(1)(ii) as well and so long as the satisfaction about the properties of the joint family having been partitioned by metes and bounds is not reached by the Wealth-tax Officer, he has to declare that such family for the purposes of the Act shall continue to be a Hindu undivided family liable to be assessed as such. Once such a declaration is made, even though there may be a notional partition, and even though for the purposes of Hindu law there is disruption of the joint family, for the purposes of the Wealth-tax Act, the family is deemed to continue to be a Hindu undivided family liable to be assessed as such. Therefore, the undivided share or interest of an individual member of such Hindu undivided family will continue to be assessed as part of the property of the Hindu undivided family and will not be includible in the net wealth of that individual member.'

10. A similar question came up for consideration before the Andhra Pradesh High Court in the case of CWT v. Tatavarthi Rajah and Satyanarayana Murthy : [1983]143ITR441(AP) , wherein the Andhra Pradesh High Court held as under (headnote) :

'Under section 20(1) of the Wealth-tax Act, 1957, if it is brought to the notice of the Wealth-tax Officer that a partition has taken place among the members of a Hindu undivided family, it is open to the authority to record the same, provided he is satisfied that the partition took place among the various members in definite portions. The postulate made in section 20(1) of the Act as regards division of the properties by definite portions is very significant, the intention of Parliament being that the property should necessarily be assessed either in the hands of the Hindu undivided family or a member of the Hindu undivided family. If a division in status is also construed as a partition within the meaning of section 20 of the Act - which of course is not permissible - it leads to anomalies because the Hindu undivided family as such cannot be assessed to by virtue of division in status and the members cannot be assessed in individual status as the property is not divided in definite portions. Unless the Hindu undivided family properties are divided in definite portions among the members of the Hindu undivided family, the properties have to be assessed in the hands of the Hindu undivided family only. The division in status that comes about under the personal law of Hindus by or any such other notional division would have no effect on the continuance of the Hindu undivided family status of the family for the purposes of assessment under the Wealth-tax Act.'

11. A similar view was also taken by the Andhra Pradesh High Court in the case of Tatavarthi Raja and Satyanarayanamurthy v. CIT : [1983]143ITR451(AP) .

12assessee, the order to support his contention that if once a final decree was passed that would relate back to the date of the filing of the suit, relied upon a decision of the Supreme Court in A. Raghavamma v. A. Chenchamma, CIT : [1961]41ITR432(Mad) , this court while considering the provisions of sections 9(3), 25A and 41 of the Indian Income-tax Act, 1922, held as under (headnote) :

'(iii) That the provisions of section 9(3) of the Act had relevance to a case where two or more persons acquired a property jointly and their shares therein were definite and ascertainable. The section was not attracted to the case of a mere severance of status of the members by partition in a joint Hindu family. So long as there was no partition in definite portions, the Hindu undivided family was the owner of the property for the purposes of assessment to tax of the income of the property. Section 9(3) could not override the special provision relating to the Hindu undivided family in section 25A.'

13. However, learned counsel appearing for the [1964]2SCR933 , wherein the Supreme Court, while considering the principles of Hindu law - joint family, held that (headnote) :

'When once the knowledge of the expression of intention to separate is brought home to the persons affected it relates back to the date when the intention was formed and expressed. But between the two dates, the person expressing the intention may lose his interest in the family property; he may withdraw his intention to divide; he may die before his intention to divide is conveyed to the other members of the family, with the result that his interest survives to the other members.'

14. Therefore, according to this decision, what would relate back is only the intention to separate from the joint family. This decision is not an authority for the proposition that when the final decree was passed in a partition suit that will take effect from the date of the filing of the suit. Therefore, this decision would not render any assistance to the assessee to contend that the partition in the present case took place from the date on which the plaint was filed.

15. Learned counsel for the assessee also relied upon a decision of the Calcutta High Court in the case of Bijoy Kumar Burman v. ITO : [1972]84ITR71(Cal) . According to the facts arising in that case one Raja Burman died some time in 1923 leaving considerable properties to his sons, including his son, Narayandas Burman, the father of the petitioner. The said Narayandas Burman died in 1939 leaving again considerable properties to his wife and three sons including the petitioner. They constituted a joint Hindu undivided family. On January 27, 1949, a

partition suit was filed. Thereafter, it appears that a receiver was appointed by the Calcutta High Court over the said properties. On July 11, 1949, the Calcutta High Court in the said partition suit, passed a preliminary decree declaring, inter alia, that Shri Bijoy Kumar Burman, being the petitioner herein, was entitled to one equal fourth part or share of the joint family properties and the other members of the family were also each entitled to one-fourth part or share thereof. Thereafter, for the assessment years 1950-51 to 1959-60, the petitioner was assessed as an individual with one-fourth share income of the property. It has been stated that on April 13, 1957, a partition by metes and bounds of the said properties took place among the coparceners and the other partition was finalised on March 24, 1970. For the assessment years 1960-61 to 1964-65, the said one-fourth share income of the house property was assessed in the status of the Hindu undivided family consisting of the petitioner and his wife and sons since the petitioner is governed by the Mitakshara school of Hindu law. On February 27, 1965, notices were issued in the name of Bijoy Kumar Burman and others under section 148 of the Income-tax Act, 1961, for the assessment years 1960-61 to 1963-64. On March 23, 1965, notices were issued under section 148 of the Income-tax Act, 1961, for the assessment years 1956-57 to 1959-60. The said notices were the subject-matter of the challenge in the writ petition filed under article 226 of the Constitution. On behalf of the assessee, it was contended that at the relevant point of time, the Hindu undivided family had disrupted and the notices after the institution of the suit for petition could not be issued to the Hindu undivided family. The Hindu undivided family consisting of the heirs of Narayandas Burman had never been assessed to any income-tax at any point of time. While deciding the issue arising in this case, the Calcutta High Court held that (headnote) :

'The law being well-settled by the decision of the Supreme Court that the disruption of a Hindu undivided family takes place on the institution of a suit for partition and the joint status comes to an end, it must be held that since there was no evidence or grounds to believe that the suit was filed mala fide or as a colourable device, it could not be said that during the relevant assessment years there was this joint Hindu family or that there were any grounds for holding such a belief. The Department seemed to have proceeded on the basis that the joint status continued until there was an actual division or partition by metes and

bounds and that was an erroneous point of view.'

16. The Calcutta High Court had an occasion to explain the decision rendered in Bijoy Kumar Burman v. ITO : [1972]84ITR71(Cal) in the case the Kaniram Hazarimal v. CWT : [1974]96ITR661(Cal) in the following manner (page 664) :

'As mentioned hereinbefore, the assessee had not been subjected to wealth-tax before as the Wealth-tax Act came into existence from the 1st of April, 1957. It has been held by the decision of this court in the case of Srilal Bagri v. CWT : [1970]77ITR901(Cal) , that section 20 of the Wealth-tax Act was only a machinery section directed towards assessment, where at the time the liability to pay wealth-tax arose the family was joint but it had disrupted at the time of the assessment. It was further held that the section did not empower assessment of a Hindu undivided family which had ceased to be a Hindu undivided family prior to the relevant valuation date according to the Hindu law. Where the family had never been assessed as a Hindu undivided family and a preliminary decree had been passed, section 20 did not authorise assessment of the members of the family as a Hindu undivided family after the preliminary decree. Similar position was also reiterated in the decision of this court in the case of Bijoy Kumar Burman v. ITO : [1972]84ITR71(Cal) . Therefore, the relevant question for determination in this case is whether on the valuation date, that is to say, on the 2nd of November, 1956, the Hindu undivided family was in existence or not.'

17. Therefore, the decision reported in Bijoy Kumar Burman v. ITO : [1972]84ITR71(Cal) would also render no assistance to the assessee to contend that the final decree passed in a partition suit would take effect from the date when the plaint was filed in the suit.

18. Thus, the facts arising in the present case would go to show that even though the suit C.S. No. 14 of 1967 was filed on January 10, 1967, a decree declaring the rights of the parties by metes and bounds was passed on November 18, 1974. A plain reading of the provisions contained in section 20 of the Wealth-tax Act, 1957, would go to show that a duty is cast upon the Wealth-tax Officer to conduct an enquiry to ascertain whether there has been a partition in the joint family as a whole among the various members and groups of members in definite portions.

Unless the Wealth-tax Officer is satisfied with regard to the partition and the allotment of shares to the members of the joint family by metes and bounds, it is not possible for the Wealth-tax Officer to accept the partition pleaded by an assessee under section 20 of the Wealth-tax Act. The partition as contemplated under section 20(1) of the Wealth-tax Act took place, according to the facts arising in this case, only on November 18, 1974, when a final decree was passed declaring the shares of the members of the joint family by metes and bounds. Thus, considering the facts arising in this case, on a plain reading of section 20(1) of the Wealth-tax Act, 1957, in the light of the judicial pronouncements cited supra, we hold that the Tribunal was correct in coming to the conclusion that the partition as per the provisions of section 20(1) of the Wealth-tax Act took place only on November 18, 1974, and not on January 10, 1967. In that view of the matter, we answer the questions referred to us in the affirmative and against the assessee. However, there will be no order as to costs.

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