

S. Parthasarathy

Vs

Commissioner of Income-Tax, Madras

Civil Appeal No. 2325 of 1966

(J. C. Shah, K. S. Hegde JJ)

01.12.1969

JUDGMENT

HEGDE J. –

The question that arises for decision in this appeal by certificate is whether the house concerned in these proceedings is the individual property of the assessee or the property of his family.

The Income-tax Officer, the Appellate Assistant Commissioner, the Income-tax Appellate Tribunal, as well as the High Court have concurrently come to the conclusion that it is the absolute property of the assessee. The assessee is contesting that finding.

It is established that the assessee's father purchased a vacant land comprising twenty and odd grounds in Cathedral Road, Madras, on November 7, 1930. That site was purchased out of his private funds. On that site the assessee's father constructed eleven houses. Out of these eleven houses, he gifted eight houses to his four daughters, two houses to each one of them. Out of the remaining three houses, he kept one for himself and gave the other two to his sons, the assessee and his brother, Ramaswami, one each. It is not the case of the assessee that any family funds had been invested either in purchasing the site or in constructing the houses.

The father of the assessee gave the two houses to his sons as per the deed dated July 12, 1959 (marked as annexure "B"). Though that deed styles itself as a partition deed, it is clear from its terms that it is a gift deed. It is stated therein clear terms that the property belonged to Sri Srinivasachariar, the father of the assessee, and that it is he who had put up the foundations of the houses therein. The document further stipulates, that if the assessee or his brother desires to alienate the property given to them, they should give preference to the other brother for purchasing the same at the prevailing market price. Reading the document as a whole, there is hardly any doubt that the property dealt with under that document was the individual property of Srinivasachariar. That being so, the property got under that document by the assessee became his individual property. It is not the case of the assessee that he had surrendered that property to the family.

In our opinion the High Court was fully justified in holding that the income obtained from that property is the individual income of the assessee.

In the result this appeal fails and the same is dismissed - no order as to costs in this appeal.

Appeal dismissed.

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