

Controller of Estate Duty, Gujarat

Vs

Hussainbhai Mohamedbhai Badri

Civil Appeal No. 1096 of 1970

(K.S. Hegde, H.R. Khanna JJ)

30.04.1973

JUDGMENT

HEGDE J. -

This appeal by certificate arises from the decision of the High Court of Gujarat in a reference under section 64(1) of the Estate Duty Act (to be hereinafter referred to as the Act). Therein, the Tribunal referred, partly at the instance of the department and partly at the instance of the accountable person, three questions of law said to arise from its order, for the decision of the High Court. The accountable person at whose instance the last question was referred informed the High Court that he does not desire to have any answer to that question; consequently, the High Court did not answer that question. The High Court answered the first question in favor of the accountable person. In view of that answer, it thought it unnecessary to answer the second question. The only question calling for decision is question No. 1, which reads :

"Whether, on the facts and in the circumstances of the case, the whole of the trust estate was to be included in the assessment or only a portion thereof and, if so, what portion ?"

Herein, we are concerned with the estate of Bai Safiabai (the widow of Eusufalli Badri), who died on October 6, 1955. The High Court opined that only one-third of the trust estate of which the deceased was one of the trustees "passed" on her death. The correctness of that conclusion is challenged by the department. According to the department, the entire trust estate "passed" on the death of the deceased.

The material facts of the case may now be stated. One Eusufalli Ebrahimji settled upon trust certain immovable properties and lease hold lands by an indenture dated July 15, 1938. Under that deed three trustees were appointed. They were Eusufalli (the settlor), his wife, Bai Safiabai (the deceased) and their eldest son, Mohamedbhai, the accountable person. Under the terms of the trust deed, the settlor was entitled to the net income of the trust properties during his lifetime. After his death, the income of those properties was to be divided into three equal shares; one-third of the income was to be appropriated by Bai Safiabai during her lifetime. Out of the remaining two-thirds, one-third was to be paid to Mohamedbhai and the remaining one-third was to be entrusted to Mohamedbhai for being utilised for the maintenance of the two wives and the children of the settlor's youngest son, Salebhai, who had died before the trust deed was executed. The settlor prescribed in the trust deed that after the death of Safiabai :

"The trustees divide the trust properties in such a manner that one equal share, i.e.,

half share, shall be given to my eldest son, Mohamedbhai, and if he had died before that, then, that share shall be given to his children and wife and that division shall be made according to the dictates of my religion and the other half share shall be given to the wife and children of Salebhai in such manner that the two annas share shall be given to each of his two wives and the remaining twelve annas shall be distributed amongst his (Salebhai's) children according to the dictates of my religion and after doing so their trust shall come to end."

(The remaining clause in the trust deed are not relevant).

Safiabi, as mentioned earlier, died on October 6, 1955. The value of the estate left by her was determined by the Assistant Controller at Rs. 4,15,000. According to the Assistant Controller the estate left by the deceased consisted of two items (a) of her individual properties and (b) one-third of the trust properties.

The accountable person objected to the inclusion of the value of the one-third share in the trust properties in the computation of the value of estate that "passed" on the death of Safiabai. But that objection was overruled by the Assistant Controller.

Aggrieved by that decision, the accountable person went up in appeal to the Appellate Controller. But, later on, the accountable person sought to withdraw the appeal. The Appellate Controller refused to give him permission to withdraw the appeal. Further, he gave him notice requiring him to show cause why the entire value of the trust estate should not be included in the computation of the value of the estate that "passed" on the death of Safiabai. The accountable person contended that the trust property did not belong to the deceased and, as such, the same cannot be said to have "passed" on her death. That contention was rejected and the entire trust property was considered as the property that "passed" on the death of the deceased. Consequently, the valuation made by the Assistant Controller was enhanced by Rs. 5,73,000.

Against the order of the Appellate Controller, the accountable person went up in appeal to the Appellate Tribunal. The Tribunal set aside the order of the Appellate Tribunal. The Tribunal set aside the order of the Appellate Controller and restored that of the Assistant Controller. It held that only one-third of the trust estate "passed" on the death of the deceased. Thereafter, at the instance of the department, the question set out earlier was submitted to the High Court seeking its opinion thereon. The High Court opined that under section 5 of the Act only the beneficial interest of the deceased in the trust estate "passed" on her death. It further held that the circumstance that the legal title to the estate passed from the trustees to beneficiaries after the death of the deceased was not a material circumstance. Before us it was contended on behalf of the department that the title to the trust properties vested in the trustees till the death of the deceased. That title "passed" to the beneficiaries immediately the deceased in respect of the entire trust property and, therefore, we must hold that the value of the entire trust property should be taken into consideration in computing the value of the estate that passed on the death of the contended on behalf of the accountable person that the deceased had only one-third interest in the trust property and that alone "passed" on her death. According to him, the deceased's position as a trustee, which came to an end on her death cannot be considered as property passing on her death.

To decide the controversy between the parties, it is necessary to find the scope of section 5 (1) of the Act. That section reads :

"In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as herein after provided of all property, settled or not settled, including agricultural land situate in the territories which immediately before the 1st November, 1956, were comprised in the States specified in the First Schedule to this Act, which passes on the death of such person, a duty called 'estate duty' at the rates fixed in accordance with section 35."

(The remaining portion of the section is not relevant).

At this stage we may also refer to sections 2 (15) and 2 (16) of the Act. Section 2(15) says :

"'property' includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment, for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method."

(The Explanations to this section are not relevant). Section 2 (16) defines the expression "property passing on the death". That provision runs thus :

"'property passing on the death' includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and 'on the death' includes 'at a period ascertainable only by reference to the death'."

This definition is only an inclusive definition. It does not bring out the meaning of the expression "property passing on the death".

The expression "property passing on death" is not a technical expression. In other words, it is not a term of law. The word "passes" means "changes hands". To ascertain whether property has passed, comparison must be made between the persons beneficially interested the moment before the death and the persons so interested the moment after the death-see the observations of Lord Russell of Killowen in *Scott and Coutts and Co. v. Inland Revenue Commissioners* . It is observed in *Green's Death Duties*, at page 34 :

"If, after such a comparison, it appears that the beneficial enjoyment of the property (or a definable part thereof) was, in substance and in events, unaffected by the death, the property (or that part thereof) did not pass on the death merely because, as a matter of terminology, one set of limitations then ceased to have effect and another became operative."

It is further observed therein :

".... to the extent that there is no change or beneficial enjoyment defeat, property does not pass merely because the exact nature or extent of the beneficial interests after the death was not ascertainable until that event occurred; or because the beneficiary was entitled to income only before the death and to capital thereafter."

Proceeding further, the learned author says :

"Moreover estate duty is not payable under section 1 [corresponding to our section 5] by reason only of a change to title, where the same person was entitled as of right to the possession or income of the property both before and after the death, without interruption. This is so, even if before the death he had only a defeasible right to the income and after the death he has an indefeasible right to the capital."

From the facts mentioned earlier, it is seen that ever since the death of the settlor, the beneficial interest in two-thirds of the income of the trust property vested in persons other than the deceased. The deceased was entitled only to an one-third share in the income of the trust property. In substance, only one-third interest in the trust property passed on her death. It is true, that after the death of the deceased, the accountable person as well as the other heirs of the settlor who had only a beneficial interest in the income of the trust property became the legal owners of the trust property. This change in the nature of the rights possessed by some of the beneficiaries under the trust deed does not enlarge either the extent or value of the property that "passed" on the death of the deceased.

The meaning of the expression "property passing on the death of the deceased" found in the corresponding English Act was considered by the King's Bench in *In re Thomas Townsend (Deceased)*. In that case a testator who died before the commencement of the Finance Act, 1894, by his will, bequeathed his real and personal estate to trustees for sale and investment, and for payment out of the annual income thereof of an annuity to his wife, and, subject to the annuity, to his eight children equally, and after the death of his wife to divide the trust fund among the children in equal shares; but if the fund exceeded a certain specified sum, then to divide eight-ninths of such excess among the children, and to pay the remaining ninth to certain into operation. The court held that the estate duty was only payable on the one-ninth share of the excess of the trust fund over the specified sum and on the benefit which accrued to the children by the cesser of the annuity, since that was the only property passing on the death of the wife. Dealing with the question of law arising for decision, Kennedy J. observed :

"There is no question that, looking to the substance of the disposition which is in question, as to 9,600 in British Pounds, the children took an interest on the death of the testator which was qua that sum a definite ascertained profit which vested in them, and as to which each of the eight children got his eighth share. Of course the whole estate was subject to the annuity, but the only uncertainty in case of the residue was as regards the amount of anything beyond 9,600 in British Pounds. It is not until the death of the widow that the residue over] 9, 600 in British Pounds passes to the children and the grand-children in the way provided for by the will. Therefore, if it does not pass until then, it cannot be ascertained until then, for it cannot be known until then that there will be any such residue. Otherwise the matter seems quite clear. The property as regards the 9,600 in British Pounds was property which passed on the death of the testator, and not on the death of the testator's widow, and, therefore, is not liable to this claim to the extent of the eight-ninths."

A similar view was expressed by Phillimore J. He observed :

"It seems to me obvious that, as regards the legacies and as regard eight-ninths of the residue, or, as the legacies go to the same people, we may say as regards eight-ninths of the property, it passed at once to the children subject to the burden of the annuity; and if Mr. Thomas Townsend had died in the year of grace 1900 or 1901, and these had been, not children, but nephews or great-nephews liable to pay legacy duty, I do

not think the Inland Revenue officials would willingly have accepted the suggestion that legacy duty would not become payable until after the death of his widow."

The rule laid down in Townsend's case (K. B.) is equally applicable to the facts of the present case. In our opinion what is relevant in determining the scope of the expression "property passing on the death of the deceased" is the change in the beneficial interest and not title. This conclusion of ours receives support from the decision of this court in Mahandra Rambhai Patel v. Controller of Estate Duty. Therein, by a deed of trust dated June 28, 1941, one Rambhai settled 160 fully paid up shares in a company in trust for the benefit of his sons, Manubhai and Mahendra, in equal shares. The trustees were to stand possessed of the shares until each of the beneficiaries completed the age of 25 years and apply in their discretion the whole or part of the profits arising there from for the maintenance and advancement of the beneficiaries and to invest the surplus. If and when each of the beneficiaries completed the age of 25 years the trustees were to transfer out of the 160 shares his portion of the shares and the accumulations or any other investment in lieu thereof to him absolutely. If any of the beneficiaries should die before completing the age of 25 years, the shares settled on him (but not the accumulated surplus income) were to devolve on certain persons. The beneficiaries had no right to mortgage or create any incumbrance or sell it until each of them completed the age of 25 years. Manubhai died on June 7, 1954, a minor and unmarried, and the principal value of his interest in the settled property was brought to estate duty in hands of his brother. The accountable person challenged the validity of the levy. He contended that no property passed on the death of his brother, Manubhai. This contention was rejected both by the High Court and this court. This court held that though the shares were not to be delivered to Manubhai until he attained the age of 25 years, the shares belonged to him since the execution of the trust deed and he was also beneficiary entitled to the income from those shares. In the course of his judgment, Shah J. (as he then was), speaking for the court, observed at page 649 :

"The interest of Manubhai in the shares and in the accumulated income was 'property' within the meaning of section 2 (15). That property did, as we have already pointed out, vest in ownership in Manubhai immediately on the execution of the deed of trust. On Manubhai dying unmarried, the property as to the shares under clause 7 of the deed and as to the accumulated income under the law of inheritance developed on his brother, Mahendra. On Manubhai's death, there was under the deed of trust a change in the person who was beneficially interested in the shares.

This decision clearly lays down that in determining whether a particular property "passed" on the death of a deceased what has to be seen is whether that deceased had any beneficial interest in that property and whether that interest "passed" to someone on his death. The deceased Safiabai had only one-third share in the income of the trust property. That interest undoubtedly passed on her death. In the remaining two-thirds income, she had no interest and the same did not pass on her death. Her title to the property as a trustee was purely a personal right. It had no value in terms of money. It conferred no right on her. It had no value in terms of money. Such a right cannot be considered as "property".

For the reasons mentioned above, we entirely agree with the conclusions reached by the High Court.

In the result this appeal fails and it is dismissed with costs.

Appeal dismissed.

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