

The Controller of Estate Duty, Karnataka, Bangalore

Vs

Umesh Rudra

Special Leave Petition (Civil) No. 6311 of 1978

(P. N. Bhagwati, D. A. Desai, A. D. Koshal JJ)

15.01.1979

ORDER

1. This petition for special leave to appeal against an order of the High Court of Karnataka raises a question of interpretation of Section 10 of the Estate Duty Act, 1953. The deceased made a gift of his residential property to his wife on November 27, 1957 and on his death which occurred on August 2, 1963, the question arose whether the value of the residential property was liable to be included in the principal value of the estate passing on the death of the deceased under Section 10. The argument of the Revenue was that even after the gift, the deceased continued to reside with the wife and, therefore, it could not be said that the wife retained possession and enjoyment of the residential property to the entire exclusion of the deceased and hence Section 10 was attracted. Now there can be no doubt that on a proper interpretation of Section 10, the donee must retain possession and enjoyment of the property gifted to the entire exclusion of the donor, in order to repel the applicability of the section. But we do not see how in the present case it can at all be said that the wife did not retain possession and enjoyment of the residential house to the exclusion of the deceased, merely because the deceased in his capacity as husband continued to reside with the wife. Section 10 cannot possibly be construed in a manner which would require the husband who has gifted residential house to the wife to live separately from her, if he wants to escape from the mischief of the section. Such an interpretation would subvert family life and social order and would be contrary to morality and good sense. When the residential house is gifted to the wife and she obtains possession and remains in enjoyment of it, it cannot be said that the husband who resides with the wife, as in a happy family life every husband would be expected to do, is, on that account, in possession of the residential house or in enjoyment of it. It is the wife who is in possession and enjoyment of the residential house and the husband, by reason of the marital ties, continues to reside with the wife. We do not think that Section 10 would at all be attracted in such a case.

2. We find that this view has been taken by the Calcutta High Court in *Mrs. Shamsun Nehar Mansur v. Controller of Estate Duty*, W. B. (71 ITR 301 : AIR 1969 Cal 139) and *Sunil Roy v. Controller of Estate Duty*, Calcutta (77 ITR 668 : AIR 1970 Cal 542), the Andhra Pradesh High Court in *Mohammed Bhai v. Controller of Estate Duty*, A. P. ((1968) 69 ITR 770 (AP HC)), the Madras High Court in *Controller of Estate Duty v. Kamala Pandalai* ((1976) 105 ITR 531 (Mad HC)) and the Karnataka High Court in the judgment under appeal and it commends itself to us. We think that these High Courts rightly refused to apply Section 10 to a case like the present where the husband has gifted the residential house to the wife and thereafter continued to reside with the wife in the residential house. The contrary view taken by the Allahabad High Court in *Bibi Ahmedi Begum v. Controller of Estate Duty*, U. P. (83 ITR 303 (All HC) : 1972 Tax LR 429) must be held to be erroneous.

3. We accordingly reject the special leave petition.

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