

Controller of Estate Duty, Bihar

Vs

Mahant Umesh Narain Puri (Dead) Represented By Mahant Sher Nandan Puri

Civil Appeals Nos. 739-740 of 1971

(R. S. Pathak, A. N. Sen, V. D. Tulzapurkar JJ)

17.03.1982

JUDGMENT

AMARENDRA NATH SEN, J. -

1. These two appeals by certificate granted by the Patna High Court are against the common judgment and order of the High Court passed on August 12, 1969. The common judgment was passed by the High Court in a reference under Section 64(1) of the Estate Duty Act (being Tax Case No. 73 of 1966) and also in the writ petition filed by the assessee in the High Court (bearing No. C.W.J.C. No. 104 of 1967). The question which was referred to the High Court in the reference under Section 64(1) of the Estate Duty Act, hereinafter referred to as 'the Act' is as follows :

Whether, on the facts and in the circumstances of the case, the properties comprised in the estate known as Madra Math properties have rightly been assessed to Estate Duty under the provisions of the Estate Duty Act, 1953.

In the writ petition, the validity of imposition of penalty was challenged.

2. The principal question which falls for consideration in these two appeals is whether on the death of Mahant Surinder Nath Puri, any estate duty could be levied on the properties comprised in the estate known as Madra Math properties.

3. On the determination of this question, naturally hangs the fate of the writ petition.

4. As both the matters were disposed of by the High Court by a common judgment, and these two appeals have been preferred with certificate granted by the High Court against the common judgment, this judgment will dispose of both the appeals.

5. On the death of Mahant Surinder Nath Puri of Madra Math on June 4, 1954, the Assistant Controller of Estate Duty, Patna finding that no accountable person had filed any return, prepared a draft computation of the estate duty leviable in respect of what he considered to be the estate of the deceased Mahant and he called upon the accountable person to file objections, if any. The reply given by the accountable person was that Mahant Surinder Nath Puri was a mere trustee in respect of the estate which belonged to the Math and in the reply the valuation was also disputed. Since the accountable person who happened to be Mahant, elected by the disciple of the deceased Mahant, did not produce any material in respect of his claim after opportunities given to him, the Assistant Controller finalised the assessment on June 19, 1958 holding that the deceased Mahant was not a mere trustee of the properties of the Math and the deceased Mahant was the sole proprietor of the

properties. Against the order of the Assistant Controller, the accountable person Mahant Omesh Narain Puri preferred an appeal to the Central Board of Revenue. In the appeal it was contended on behalf of the accountable person that the deceased Mahant Surinder Nath Puri was merely a trustee of the properties of the Math and so estate duty could, therefore, be levied on the properties of the Math of which the deceased Mahant was only incharge as trustee. The Board came to the conclusion that the status of the deceased Mahant had already been declared by the District Judge of Gaya in Title Suit No. 1 of 1932. The Board further held that in view of the said decision of the District Judge in Title Suit No. 1 of 1932 and in view of the further fact that the deceased Mahant had disposed of some of the properties during his lifetime, the estate duty was leviable on the properties and the Board dismissed the appeal. On the question of computation of estate duty, the Board held that there were no justifiable grounds for interfering with the order of the Assistant Controller. Thereupon the accountable person filed a petition before the Board for referring a number of questions of law for the opinion of the High Court. None of the question suggested by the accountable person were accepted by the Board as legitimate. The Board, however, referred the question which we have earlier set out, to the High Court.

6. The High Court on a consideration of the various arguments advanced and the materials on record held that the properties comprised in the estate known as Madra Math were trust properties and no estate duty could be levied on the said properties on the death of Mahant Surinder Nath Puri.

7. The correctness of the said decision of the High Court in the Tax Reference has been challenged by the Controller of Estate Duty. In view of the decision of the High Court in the Tax Reference, the writ petition was also allowed by the High Court and the order imposing the penalty was also quashed. Hence, the other appeal has been filed and the fate of this appeal from the order in the writ petition will naturally depend on the result of the appeal from the judgment in the Tax Appeal.

8. The learned counsel for the appellant has very properly addressed his arguments in the appeal from the judgment in the Tax Reference.

9. Before we proceed to consider the arguments advanced by the learned counsel for the appellant, it will be appropriate to state certain facts relevant for the purpose of this appeal and material for proper appreciation of the arguments advanced.

10. The estate which is said to have passed on the death of Mahant Surinder Nath Puri, consists of properties which were granted by Emperor Shan Alam II by a firman. The grant was by way of madad-e-mash to Mahant Ayodhya Puri. The nature of the grant and also the nature of the interest of the parties and also of the Math came to be considered in civil suit being Title Suit No. 1 of 1932 in the Court of District Judge, Gaya. The District Judge came to the conclusion that the properties were not the personal properties of the Mahant and the properties belonged to the Math and in that sense they are the subject of a trust. The further finding is that under the firman by which the grant has been made, the properties cannot be disposed of, sold or transferred. The High Court in its judgment has referred to the grant and the findings of the District Judge. It further appears that some of these properties had been disposed of by the deceased Mahant. The other important fact to be noticed is that the properties which are found to be the properties of the Math do not pass to the heirs of the Mahant and the person who is to become the Mahant to hold charge of the Math and the properties, is selected by election to the office of the Mahant, according to the custom of the asthal.

11. On the basis of the firman and the judgment of the District Judge, the High Court was of the opinion that the properties in question were trust properties which did not pass by succession or

inheritance and the properties came under the charge as trustee of the Mahant, elected according to custom; and no estate could be said to pass on the death of the Mahant and as no estate passed on his death, no estate duty could be levied.

12. Mr Manchanda, learned counsel for the appellant, has raised two principal contentions. The first contention urged by him is that there is a finding by the Central Board of Revenue that the properties were the personal properties of the deceased Mahant. It is his contention that this finding is a finding of fact by the ultimate fact-finding body and the High Court was not justified in taking the view that the properties were the personal properties of the deceased Mahant and were trust properties, particularly in the absence of any specific question raised challenging the validity of the finding. He has argued that in view of the nature of the question referred to to the High Court, the High Court was not competent to go into the findings of fact and could not interfere with the same. It is his argument that when the question referred speaks of "facts and circumstances of the case" it means the facts and circumstances found by the tribunal and not facts that may be found by the High Court on a reappraisal of the evidence. In support of this argument Mr Manchanda has relied on the decisions of this Court in the case of *Karnani Properties Ltd. v. C.I.T.* ((1971) 82 ITR 547 : (1971) 3 SCC 568 : AIR 1972 SC 2315 : 1972 Tax LR 356), and also in the case of *C.I.T. v. Manna Ramji & Co.* ((1972) 86 ITR 29 : (1973) 3 SCC 43 : 1973 SCC (Tax) 93 : 1973 Tax LR 362). We are not impressed by this argument of the learned counsel. It is true that in the absence of a specific question raised with regard to the correctness of any finding of fact, the High Court in a reference is not to interfere with the finding of fact by the tribunal and the High Court has to proceed to answer the question on the facts found by the tribunal. The finding of the Central Board of Revenue in the instant case that the properties are the personal properties of the deceased Mahant, cannot in the facts and circumstances of this case, be considered to be a finding of fact. The Central Board of Revenue in coming to its conclusion that the properties were the personal properties of the deceased Mahant had considered the nature of the grant by the firman and also the judgment of the District Judge in the Title Suit. The conclusion of the Board of Revenue that the properties are the personal properties of the Mahant on interpretation of the grant and on consideration of the judgment of the District Judge is not a pure finding of fact. Any conclusion as to the true character or nature of the properties on the interpretation of the firman and on taking into consideration the judgment of the District Judge in the Title Suit is a finding on a mixed question of law and fact. The mere fact that the deceased Mahant had disposed of some of the properties does not in any way materially affect the question of consideration of the true nature and character of the properties and does not, in any way, affect the true nature or character thereof. It may, in this connection, be noted that it is not known under what circumstances any of the properties came to be disposed of by the deceased Mahant. There is no sale deed on record and no sale deed was made available to the High Court or to this Court. The true nature and the character of the properties have to be determined on a proper interpretation of the firman. In our opinion, the High Court in the instant case has correctly come to the conclusion that the properties belonged to the Math and are trust properties relying on the firman and the judgment of the District Judge in civil suit.

13. The next contention urged by Mr Manchanda is that even assuming that the properties were trust properties, the deceased had a beneficial life interest in the properties and the beneficial interest of the deceased Mahant must be deemed to have passed on to the next disciple or issue or farzand by virtue of the provisions contained in Section 7 of the Act.

14. This argument has no merit. Section 6 and Section 7 of the Act are in the following terms :

6. Property which the deceased was at the time of his death competent to dispose of

shall be deemed to pass on his death.

7. (1) Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (1) shall apply with respect to the interest of the deceased in the coparcenary property only -

(a) if the deceased had completed his eighteenth year at the time of his death, or

(b) where he had not completed his eighteenth year at the time of his death, if his father or other male ascendant in the male line was not a coparcener of the same family at the time of his death.

Explanation. - Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary.

(3) If a member of any tarwad or tavazhi governed by the Marumakkattayam rule of inheritance or a member of a kutumba or kavaru governed by the Aliyasantana rule of inheritance dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the property of the tarwad, tavazhi, kutumba or kavaru, as the case may be, unless the deceased had completed his eighteenth year.

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefit of a charity, or as a corporation sole.

Explanation. - For the removal of doubts, it is hereby declared that the holder of a Sthanam is neither the holder of an officer nor a corporation sole within the meaning of this sub-section.

On a consideration of the facts and circumstances of this case including the firman and the judgment of the District Judge, the High Court has correctly come to the conclusion that the Mahant had no property which he was competent to dispose of and the only interest the Mahant had was common enjoyment of the trust properties of the Math, with the disciples of the Math. The deceased Mahant had no particular or specific beneficial interest in the property and no benefit would accrue or arise to anyone by the cesser of the interest of common enjoyment of the property by the deceased Mahant to any other person, as the deceased Mahant had no property at the time of his death which he was competent to dispose of; and no benefit accrued or arose to the Mahant who came to be elected as Mahant according to custom on the demise of the Mahant or to any other disciple of the Math on the death of the Mahant. No interest, therefore, could be deemed to have passed on the death of the Mahant.

15. Section 2(16) of the Act provides :

'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'.

16. In the instant case, the interest of the Mahant who is elected to be the incharge of the property and who is in enjoyment of the property in common with the disciples of the Math comes to an end on his death and his interest on enjoyment in common with other disciples whatever may be nature of such interest does not pass at any point of time to any other person. After the death of the Mahant duly elected, the right to be the incharge of the property vests in the person who is thereafter elected as Mahant and the right of the deceased Mahant to enjoy the property in common with the other disciples of the Math completely ceases and does not pass to anybody else. In the instant case, therefore, no interest of the Mahant passes to anybody else and the provisions of the Act are, therefore, not attracted.

17. We are, therefore, of the opinion that the High Court in the instant case was right in its answer to the question referred to it. The appeal against the judgment in the Tax Reference, therefore, fails. The appeal from the orders in the writ petition, therefore, necessarily fails. The appeals are, hereby dismissed.

18. As nobody has appeared on behalf of the respondent in the appeals before us, we do not make any order as to costs.

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