Controller of Estate Duty

Vs

N. Shankaran

Controller of Estate Duty

Vs

N. Krishnan

Civil Appeal No. 1204 of 1979

(N. D. Ojha, Smt. M. S. Fathima Beevi JJ)

01.11.1991

JUDGMENT

RANGANATHAN J. -

1. Both these matters raise the same question, viz., whether the act of a member of joint family by which he impresses his individual property with character of the joint family property or "throws" it into the hotchpotch of the family or "blends" it with the joint family property is a "disposition" within the meaning of the Estate Duty Act, 1953 ("the Act", for short).

Civil Appeal No. 1204 of 1979 is an appeal from an order of the High Court declining to call upon the Income-tax Appellate Tribunal to refer the above question for the decision of the High Court in view of certain earlier decision of the court. The Madras High Court also decline to direct a reference on the above issue in T. C. P. No. 478 of 1977 and that is the subject-matter of S. L. P. (Civil) No. 335 of 1979. In view of the of the pendency of Civil Appeal No. 1204 of 1979, we grant special leave in S. l. P. (Civil) No. 335 of 1979 also.

Before discussing the correctness of the above conclusion, it may be convenient to set out the background of facts in Civil Appeal No. 1204 of 1979. That appeal arises out of the estate duty assessment consequent on the death of one Natesan Chetty who died on March 1, 1972. He was the karta of a Hindu undivided family consisting of him self and his four sons. he was also the owner, in his individual capacity, of five house properties in Madras. On June 18, 1970 and September 16, 1970, he made declarations by which he impressed the above mentioned properties with the character of joint family properties and declared that they would thereafter belong to the Hindu undivided family of which he was the karta. Subsequently, a partition was effected in the family in March, 1971, in which two of the abovementioned properties came to the share of the deceased. Sri Natesan Chetty had also borrowed a sum of Rs. 46,800 from the Hindu undivided family out of the rental income from the above mentioned properties for being invested in the business carried on by him. These borrowing were made between March, 1970, and April, 1971, and they were repaid in April, 1971.

In completing the assessment to estate duty of the estate passing on the death of Natesan Chetty, the

Assistant Controller of Estate Duty held that the declaration made by the deceased on June 18, 1970, and September 16, 1970, were "dispositions" within the meaning of the said expression as defined in the second Explanation to section 2 (15) of the Act. These dispositions having been made for no consideration within the meaning of section 27 (1) amounted, according to him, to gifts and since the gifts had been made within two years of the date of death, the subject matter of the gift was liable to be assessed as part of the estate passing on death under section 9 of the Act.

As already mentioned, two of the properties had been allotted to the share of the deceased in the partition of 1971 and it is common ground that they passed on the death of the deceased as they belonged to him on the date of his death. The question, however, was whether the other three properties which went to the other members of the family as a result of the declarations and partition were also liable to be included as part of the estate deemed to pass on the death of the deceased by the application of section 9 read with section 27 (1) and section 2 (15) of the Act. The Assistant Controller answered this question in the affirmative and included their value, taken at Rs. 1,22,500, in the principal value of the estate. As a consequence of his conclusion that the properties were liable to be included in the estate, the Officer also took the view that the sum of Rs. 46,800 being the loan taken by the deceased from the Hindu undivided family and discharged within two years prior to the death should be added back in computing the principal value of the estate by reason of the provisions of section 46 (2) of the Act. It is not in dispute before us that though two points were thus involved in the assessment-one regarding the inclusion of the value of three items of property as part of the estate of the deceased and passing on his death and the other regarding the addition or disallowance of the debt of Rs. 46,800 - they are interconnected and that, if the first question is answered in favour of the assessee, the second question will also stand answered likewise.

Dissatisfied with the conclusion of the Assistant Controller, the accountable person preferred an appeal to the Appellate Controller of Estate Duty which was successful. Thereupon the Department preferred an appeal to the Tribunal which, following a decision of the Madras High Court in A. N. K. Rajamani Ammal v. CED [1972] 84 ITR 790, held that the sum of Rs. 1,22,500 could not be included in the value of the estate passing on the death and consequentially, that the add back of Rs. 46,800 was also not justified. Thereupon, the Controller of Estate Duty applied under section 64 (1) of the Act for a reference to the Madras High Court for its decision, of the following two questions :

> "1. Whether, on the facts and in the circumstances of the case, that Appellate Tribunal was right in holding that the transaction by which a Hindu impressed his separate properties [as] with joint family character could not be considered as a disposition under the second Explanation to section 2 (15) and section 27 of the Estate Duty Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the addition of Rs. 1,22,500 made under section 9 and Rs. 46,800 made under section 46 (2) could not be sustained in the case of the deceased ?"

The Madras High Court was of the opinion that the basic question at issue was covered by the earlier decisions of the court in A. N. K. Rajamani Ammal v. CED [1972] 84 ITR 790 as well as a subsequent decision in CED v. Smt Mookammal [1977] 119 ITR 581 (Mad). The court found no substance in the attempt, on behalf of the Revenue, to distinguish the above decisions on the strength of the decision of the court in Ranganayaki Ammal (P.) v. CED [1973] 88 ITR 96 (Mad) which had been confirmed by the Supreme Court in CED v. Kantilal Trikamlal [1976] 105 ITR 92.

In this view of the matter, the High Court declined to call for a reference on the two questions mentioned above and dismissed the application for reference. Hence, the present civil appeal. It is not necessary to set out the facts in S. L. P. No. 335 of 1979, where the question involved is the same except that there was no subsequent portion after the blending and no question regarding the deductibility of debts also arose in this case.

It will be seen that these appeals are directed against the orders of the High Court declining to call for a reference. It is fairly clear that the questions whether Rajamani Ammal [1972] 84 ITR 190 (Mad) was rightly decided and whether, if so, it needed reconsideration in the light of Kantilal Trikamlal [1976] 105 ITR 92 (SC) are questions of law. But, in view of the long lapse of time, we have considered the issues on merits and since we are satisfied that the High Court's conclusion was correct, we dispose of the appeals straightway without going through the formality of asking the Tribunal to make a reference to the High Court and then awaiting the High Court's decision on the question of law referred.

The Estate Duty Act, 1953, has ceased to be enforceable since March 16, 1985. In the circumstances, we need not elaborately set out the provisions of the Act and the principles behind them. An outline of the provisions necessary for the determination of the issue before us will suffice. The Act levies a duty on the aggregate market value of the properties passing on the death of any person (statutorily termed the "principal value of the estate"). It is manifest that the statute could be easily circumvented if duty were restricted only to properties which actually pass on a death, for, various kinds of devices could be thought of by which the property of such person could ostensibly be transferred to others some time before the death, although it continues to be really under the domain and control of the deceased till the time of his death. The statute, therefore, contains elaborate provisions deeming certain properties to pass on death even though their beneficial enjoyment may not actually change hands at the time of his death. One such item of properties which are deemed to pass on the death of a person is that which formed the subject-matter of a gift made by him within a specified period proceeding his death. Section 9 of the Act which contains this deeming provision reads thus :

> "9. Gifts within a certain period before death. - (1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or more before the death of the deceased shall be deemed to pass on the death".

In short, the provision enabled the Revenue to ignore any gift of property made by the deceased within two years of his death by creating a stationary fiction that properties so gifted passed on the death of the deceased, although, in fact and in law, they ceased to be his a short time before his death. This is the first fiction.

The Legislature next proceeded to enact a second fiction. This was in order to bring into the net of taxation transactions which may not be comprehended within the legal concept of a gift because they are ostensibly made for some consideration. It provided in section 27 that :

> "27. (1) Dispositions in favour of relatives. - Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of this Act as a gift unless -

(a) the disposition was made on the part of the deceased for full consideration in money's worth paid to him for his own use or benefit; or...

and references to a gift in this Act shall be construed accordingly :...."

Resort to this provision in the present case is needed for a purpose. Admittedly, the deceased received no consideration for impressing the property with the character of joint family property. If this amounted to a transfer, then section 9 alone would be sufficient to bring the properties within the net of taxation. But it could be argued that a gift involves a "transfer" without consideration but the act of blending does not constitute a "transfer" [vide CIT v. Stremann [1965] 56 ITR 62 (SC) and a host of other cases under the Income-tax Act]. Section 27 helps the Department in the present case only in that it uses a much wider word, "disposition", and treats dispositions in favour of relatives as gifts.

The statute had to make a provision for a third fiction as well, as it could still be contended that the word "disposition" would not be sufficient to comprehend certain types of transactions. To be on the safe side, therefore, the statue proceeded to enact a special definition of the word "disposition" in section 2 (15) of the Act wide enough to rope in various kinds of acts in respect of property. This provision, in so far as it is material for our present purposes, reads as follows :

"2 (15) '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;

Explanation 1. - The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression 'property' shall include the debt or right created.

Explanation 2. - The extinguishment at the expense of the deceased of a dent or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression 'property' shall include the benefit conferred by the extinguishment of the debt or right."

The short case of the Department now is this : The deceased in these cases was the full and exclusive owner of the immovable properties in question. By the act of blending, he has converted them into Hindu undivided family properties. The properties no longer belong to him as an individual; they belong to the family thereafter with certain rights qua them for the other members of the Hindu undivided family. In other words, there has been an extinguishment, at the expense of the deceased, of a part, at least, of his rights in the properties with a corresponding benefit to the others. There has also been the creation, by the deceased, of a right is the others enforceable against the deceased and the properties, e.g., the right to demand a partition. The deceased, therefore, has made a disposition in favour of his relatives for no consideration within two years of his death. The value of the properties in respect of which he made the disposition in favour of the family is, therefore, liable to be included in the principal value of the estate passing on his death under section 9 read with section 27 and read with the Explanations to section 2 (15). This is quite apart from the fact that the value of the two properties which subsequently fell to be share of the deceased at the

partition in March, 1971, are liable to be included as his own property actually passing on his death. The question that we have to consider is, therefore, whether the legal incidence of the act of blending can be brought within the four corners of the two Explanations to section 2 (15) of the Act.

It was precisely this question which had been considered by the Madras High Court earlier in A. N. K. Rajamani Ammal v. CED [1972] 84 ITR 790. In deciding the issue, the High Court had the benefit of two earlier decisions of this court in Goli Eswariah v. CGT [1970] 76 ITR 675 and CGT v. N. S. Getti Chettiar [1971] 82 ITR 599, where this court had held, in the context of the Gift-tax Act, that the act of blending and the act of a coparcener receiving, on partition of a Hindu undivided family, less than the share he was entitled to receive would not constitute gift. The details of this decision need to be set out at some length.

Three contentions had been urged in Rajamani Ammal [1972] 84 ITR 790 (Mad), (a) The first was that the act of blending constituted a "disposition" within the general meaning of that word. Repelling this contention, the court observed (p. 796) :

> "The learned counsel for the Revenue placed strong reliance on the word 'disposition' in section 27 (1) of the Act and contended that even an act of throwing of the self-acquired property into the common stock of a joint Hindu family is included in that expression. In a case arising under the Gift-tax Act, the word 'disposition' came up for consideration in the decision in Goli Eswariah v. CGT [1970] 76 ITR 675 (SC). The Supreme Court approves the decision of this court in CGT v. P. Rangaswami Naidu [1970] 76 ITR 315 (Mad) [FB]. It is true that these decisions are under the Gift-tax Act. It is also true that the word 'disposition' was considered in these decisions, with particular reference to the definition of 'transfer of property' under that Act. We are of the view that the word 'disposition'. In section 27 (1) of the Estate Duty Act also refers to a bilateral or multilateral act. The section refers to a disposition by the deceased in favour of a relative and also speaks of partial failure of consideration. Section 9 also refers to property 'taken under a disposition'. Therefore, in our opinion the word 'disposition' in section 27 (1), however wide its ambit may be would not include the unilateral act of a person by which throws his self-acquired property into the common stock of the joint family."

It had been next contended on behalf of the Revenue that by throwing the self-acquired properties into the common stock of the joint family, the deceased has created a right enforceable against him in favour of the sons or the other coparceners, viz., the right to demand partition of the properties in question which they could not have exercised earlier. This contention was rejected by the learned judges by applying the principle enunciated in an earlier Full Bench decision of the court in CGT v. P. Rangaswami Naidu [1970] 76 ITR 315, where a similar contention had been repelled in the context of the Gift-tax Act. The court had there observed at (p. 797 of 84 ITR) :

> "With the father having absolute power of disposition inter vivas or testamentary in respect of his self-acquisition and with no power in the son to interdict any alienation or disposition or call for partition, the son's interest is next to nothing. But the right is real. It lies dormant. It is this dormant right which the undivided sons have in their father's property that entitles them to take the self-acquired property of the father as coparceners to the exclusion of a divided son. Juridically, it must be this dormant birth-right that enables the father at his pleasure, without formalities to deny to himself, his independent power or predominant interest and look upon the property

as the property of the family...

In our view, it is this birth-right imperfect and subordinate to the special power and predominant interest of the father that comes into play and makes the interest of the son real and an interest in praesenti, which the father chooses to waive his rights. At his pleasure and without reference to his son, if the father abundance or determines once for all not to exercise his independent power over the property, the son's interest therein becomes a real and full-fledged coparcenary right. There is no vesting of rights here by the father on the son, but what is dormant springs to life but irrevocably at the pleasure of the father."

(c) A third contention raised on behalf of the Revenue was that throwing the self-acquired property into the common stock of the joint family would amount to 'extinguishment at the expense of the deceased of a debt or other right' within the meaning of Explanation 2 in section 2 (15). This contention was also repelled by the learned judges. They observed at (p. 797) :

"We are also of the opinion that throwing the self-acquired property into the common stock of the joint family will not amount to 'extinguishment at the expense of the deceased of a debt or other right which the meaning of Explanation 2 in section 2 (15). As seen from the judgments cited above, after the act of throwing into the common stock, it is the joint family or the coparcenary that owns the property. The person who converted his individual property into joint family property is a member of the Hindu joint family or the coparcenary and continues to be a member of the joint family. His interest in the erstwhile separate property would extend to the whole of the property even as of the other coparceners, for the interest of every coparcener extends over the whole of joint family property. There is community of interest and unity of possession between all the coparceners. On the death of any one of the coparceners the others take the property by survivorship. It may be that the ultimate survivor is the person who threw the self-acquired property into the common stock. It, therefore, follows that there was no extinguishment of the right of the deceased and creation of a right in favour of another, in the case of throwing the self-acquired properties into the common stock. The decision in S. P. Valliammai Achi v. CED [1969] 73 ITR 806 (Mad), relied on by the learned counsel for the Revenue, and the decision in Kantilal Trikamlal v. CED [1969] 74 ITR 353 (Guj), relied on by learned counsel for the accountable person, related to what we may term as 'unequal partitions'. They do not deal with cases of throwing the self-acquired properties into the common stock. We are not concerned with the case as to whether an unequal partition would amount to an extinguishment of a right and creation of a benefit within the meaning of Explanation 2 to section 2 (15), which was the point that was considered in those cases."

The above decision is clearly against the Revenue. The Revenue, however, strongly calls upon a inter decision of the same High Court in Ranganayaki Ammal v. CED [1973] 88 ITR 96 (Mad). It is submitted that Ranganayaki Ammal [1973] 88 ITR 96 has been affirmed by the court in CED v. Kantilal Trikamlal [1976] 105 ITR 92 - a common judgment reversing Kantilal Trikamlal v. CED [1969] 74 ITR 253 (Guj) and affirming Ranganayaki Ammal [1972] 84 ITR 790 (Mad) is no longer good law it is there was somewhat different.

In Ranganayaki Ammal [1976] 105 ITR 92 (SC), the deceased Beema Naidu and his widow and

children constituted a Hindu undivided family. A little within the period of two years prior to the death of the deceased, a partition was effected of the joint family properties and, in that partition, he took a smaller share instead of the legal half share benefiting the other to the extent of the difference. The same thing had happened in the case of Kantilal Trikamlal [1976] 105 ITR 92 (SC) also. Trikamlal Vadilal and the son, Kantilal contributed a Hindu undivided family. On November 16, 1953, an instrument applied as a "release deed" was executed between the two persons. Under this instrument a sum of rupees one lakh out of the joint family properties was taken by the deceased in live of his share in the joint family properties and he relinquished his interest in the remaining properties of the joint family which were declared to belong to Kantilal as his sole and absolute properties and Kantilal also relinquished the interest in the deceased was the sole and absolute owner of the said amount. Trikamlal Vadilal died on June 3, 1955, that is within two years of the release dead. The Assistant Controller found that, as on November 16, 1953, the deceased was entitled to a one half share in the joint family properties the value of which 3,44,058 but had relinquished his interest in the joint family properties by receiving only a sum of rupees one lakh. The Officer, therefore, held that the difference between Rs. 3,44,058 and Rs. 1,06,724 (being the amount received by the deceased together with interest) was includible in the principal value of the estate of the deceased, being the value of a disposition by the deceased in favour of relative for partial consideration. This assessment was upheld eventually by the Supreme Court. Both these decisions, thus, raised the question whether there was a "gift" within the meaning of the section 9 read with section 27 and read with the Explanations to section 2 (15) of the Estate Duty Act where a coparcener in a Hindu undivided family, at the family partition, voluntarily agrees to accept properties of a value less than what he is entitled to claim, as a matter of right, at such partition. This Court - as did the Madras High Court in Ranganayaki Ammal [1973] 88 ITR 96, the Andhra Pradesh decision in Cherukuri Eswaramma v. CED [1968] 69 ITR 109 and the Punjab and Haryana High Court judgment in CED v. Jai Gopal Mehra [1972] 85 ITR 175 [FB] - answered the question in the affirmative. This court distinguished Goli Eswarih [1970] 76 ITR 675 (SC) and Getti Chettiar [1971] 82 ITR 599 (SC), on the ground that the definition of "disposition" in Explanation 2 to section 2 (15) of the Estate Duty Act is much vider than the scope of that expression used in the Gift- tax Act. We do not consider it necessary to set out here the full and detailed reasoning if this court in Kantilal Trikamlal's case [1976] 105 ITR 92.

Before Proceeding further, we may refer to a few later decisions of High Courts relevant to the issue before us. The Allahabad High Court, in CED v. Laxmi Bai [1980] 126 ITR 73, a decision rendered after Kantilal Trikamlal [1976] 105 ITR 92, though that act of blending would not be a "disposition" within the meaning of the Estate Duty Act. In CED v. Babubhai T. Panchal [1982] 133 ITR 455, the Gujarat High Court had occasion to consider the question whether a transaction of release by a member of a Hindu undivided family, within a period of two years of his death, of his interest in the family properties would amount to a " disposition "within the meaning of Explanation 2 to section 2 (15) of the Estate Duty Act. The question was answered in the negative. In CED v. Satyanarayan Babulal Chourasia [1983] 140 ITR 158, the Bombay High Court, without touching the issue in detail, merely held, applying Goli Eswariah v. DGT [1970] 76 ITR 675 (SC), that the act of blending dose not involve a transfer.

The question that falls for our consideration now is whether, despite the extended definition in section 2 (15) of the Act, as explained in Kantilal Trikamal [1976] 105 ITR 92 (SC) the act of blending, unlike the voluntary acceptance of an unequal partition, falls outside the purview of the deeming part of the definition contained in the Explanations. We think the answer to this question has to be in the affirmative. Reverting once again to the contentions of the revenue, in Rajamani Ammal [1972] 84 ITR 790 (Mad) (which are also the contentions reiterated before us for the

revenue), it will be remembered that Rajamani Ammal [1972] 84 ITR 790 (Mad), specifically dealt with the language of the two Explanations to section 2 (15) and that its decision rested on three grounds :

> (i) a "disposition", as held in Goli Eswariah [1970] 76 ITR 675 (SC), has to be a "bilateral" or "multilateral" act or transaction, but not a unilateral act;
>
> (ii) the act of blending dose not create any right enforceable against the blender or his property but only brings to the surface right already latent and inherent in the others; and
>
> (iii) the act of blending dose not result in the extinguishment of any right of the blender with a correlative conferral of benefit on others.

In our view, Kantilal Trikamlal [1976] 105 ITR 92 (SC), dose not affect the validity of the three grounds set out above. So far as the first round is concerned, it does not touch upon the reasoning of Goli Eswariah [1970] 76 ITR 675 (SC), not say doubt it or dissent from it. It refers to CED v. Kancharla Kesava Rao [1973] 89 ITR 261 (SC) - hinting at a possible distinction - and to Getti Chettiar [1971] 82 ITR 599 (SC) (but without any hint of dissent) and point out that "the conventional construction of 'disposition ' has to submit to the larger sweep of hypothetical extension by definition" and that, unlike under the Gift-tax Act, "there is no limitation, environmental or by the society of words, warranting the whittling down of the unusually wide range of Explanation 2 to section 2 (15)". In other words, the cumulative effect of Goli Eswariah, [1970] 76 ITR 675 (SC), Getti Chettiar [1971] 82 ITR 599 (SC). and Kantilal Trikamlal [1976] 105 ITR 92 (sic), is that "blending" or "partition" will not be a "disposition" within the ordinary connotation of the expression but will be one if either of the Explanations to section 2 (15) are attracted. This takes us to the other two contentions dealt with in Rajamani Ammal [1972] 84 ITR 790 (Mad) as to the scope of the two Explanations. On this aspect, Rajamani Ammal [1972] 84 ITR 790 (Mad), has held that, unlike an unequal partition, the act of blending will not amount to a "disposition" attracting section 9 and 27 of the act it distinguished cases of unequal partition dealt with in Valliammai Achi v. CED [1969] 73 ITR 806 (Mad) and the Gujarat High Court's decision in Kantilal Trikamlal [1969] 74 ITR 353 cited before it which have now received the imprimatur of this court in Kantilal Trikamlal [1976] 105 ITR 92 (SC). We are inclined to think that the Distinction has been made on sound lines. We do not consider it necessary to repeat or elaborate the reasoning in Rajamani Ammal [1972] 84 ITR 790 (Mad) on these two points as it succinctly epitomises the well-settled principles of Hindu law. suffice it to say that we endorse this reasoning and think that the High Court was right in holding, in the present cases, that the act of blending did not result in the "Gift" of immovable properties within the meaning of the statute and the Rajamani Ammal [1972] 84 ITR 790 (Mad), required no reconsideration because of Ranganayaki Ammal/Trikamlal [1976] 105 ITR 92 (SC).

This disposes of the question sought to be referred in these cases. We would, however, like to advert to another aspect which may arises for consideration at some future date. It may, perhaps, be possible to contend that though a declaration of blending dose not amount to a "gift", where the act of blending is followed by a subsequent partition, the two transactions taken together do result in the extinguishment, at the expense of the deceased, of his rights in the properties which go to the share of other coparceners at the subsequent partition and that, if the two can be treated as parts of the same transaction, Explanation 2 to section 2 (15) may be attracted. But this, apart from being a totally new question of law not raised at any stage and debated before us, would also require not

only a closer look from the legal angle but also investigation into facts, particularly as to whether the act of blending and the subsequent partition can be treated, in law and on facts, as parts of a single transaction. We therefore, express no opinion on this issue.

For the reasons discussed above, these appeals fail and are dismissed. But we make no order regarding costs.

Appeals dismissed.

</html