ANDHRA PRADESH HIGH COURT

Denabai Boman Shah

Vs

Controller of Estate Duty

(Jaganmohan Reddy C.J.)

12.09.1966

JUDGMENT

Jaganmohan Reddy C.J.

1. The following two question have been referred to us by the Central Board of Revenue, New Delhi, for our opinion, viz. :

> "(1) Whether, on the facts and in the circumstances of the case the house property described as 134, Park Lane Secunderabad was correctly included in the estate of deceased as property passing or deemed to pass on his death under the Estate Duty Act, 1953 ? and (2) Whether, on the facts and in the circumstances of the case, the Board were justified in holding that the sum of Rs. 31,640 being the value of the N. G. P. Notes with accrued interest should be included in the Estate of the deceased as property deemed to pass under section 13 of the Estate Duty Act, 1953 ?"

The relevant facts necessary for determining the above questions may be stated as follows : One Boman Shah Manekji (hereinafter referred to as "the deceased") died on February 14, 1956, leaving behind his wife, 3 daughters, a daughter-in-law and grandchildren by his deceased son, Hoshang Boman Shah. The deceased in his lifetime, in 1938, purchased a house, bearing No. 134, Park Lane, Secunderabad, in the name of the son, who was then a minor. In the sale deed in favour of his son, he got if recited that he as the father of the vendee, wanted house No. 134, purchased in the name of the vendee, as a gift to him. It was also recited that the sum of Rs. 21,000 the consideration money, was paid by the vendee the son, to the vendor. The Estate Duty Officer held that the subsequent conduct of the deceased in appropriating the rents to himself, in purchasing National Saving Certificates from the accumulations thereof in his own name, and not giving possession of the house to the son after he became a major coupled with a recital in paragraph 4 of the will that he eventually intended to make a gift of the house to his son which was purchased in the name of the son, showed that it was benami in the name of his son and was

part of the estate of the deceased. The deceased had also purchased certain N. G. P. Notes in his own name and lodged them in the Central Bank of the India and direct the Central Bank of India to hold the N. G. P. Notes in three saving accounts, one in the name of the himself, his wife, Dinabhai and his daughter, Ratanbai, the second in the name of himself, his wife and the second daughter, Khorshedbanoo, and the third, in the name of the himself, his wife and his other daughter Sherbanoo. All these three accounts were to be payable to any one of the survivor or survivors of them. The total of these N. G. P. Notes together with interest etc., so distributed, amounted to Rs. 31,640. This amount was also treated by the Estate Duty Officer as part of the Estate of the deceased.Taking the last point first, there is absolutely no doubt that these promissory notes, which are in the name of the deceased, and which according to the directions of the deceased, were held in the joint names of himself, his wife and daughters belonged to the deceased and that he died possessed of the same. Section 13 of the Estate Duty Act, which deals with joint investments, reads as follows :

> "Whether a person, having been absolutely entitled to any property or to the funds with which any property was purchased has caused it to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, either by himself, alone or in correct or by arrangement with any other person so that the beneficial interest in some part of that property a passes or accrues by survivorship on his death to the other person, the whole of that the property shall be deemed to pass on the death".

The provisions of the above section admit of little difficulty in their application to the facts of this case. As we have stated earlier, the N. G. P. Notes were purchased in the name of the deceased and the only interest thereon was being credited to three joint accounts, which in themselves were payable to any one of the survivor or survivors of them. But this did not mean that the ownership of the fund was divested by the deceased in his life time. As long as the deceased has an interest in his account jointly with other and as long as it is not claimed that the funds belonged to some one else other than the deceased is deemed to have died possessed of the same. In an unreported decision of this court in *Neol Henry Crawshaw v. Thera John Robert*[1], dated December 2, 1965, to which one of us was a party the nature of a joint account and as to the legal title there to, was considered. We had observed in that case : "It may be stated generally that, whatever may be the position of law as exists in England in respect of the theory of advancement it has been held on the high authority of the Privy Council that no such principle is applicable to India where the conditions which attach to family life are different and where the social relationships are of an essentially different character." After noticing the cases of Kerwick v. Kerwick, Guram Ditta v. Ram Ditta, Shambhu Nath v. Pushkar Nath and Nagarajamma v. State Bank of India, it was held by the Bench that, when a deposit is made in the joint account of two persons payable to either or survivor, there is no presumption of advancement in favour of the other person and that there is a

resulting trust in favour of the person who made the deposit in the absence of proof of contrary intention; that the doctrine of advancement is in applicable in India and that the deposit which was treated as the absolute property of the deceased depositor should be paid to his heirs.It is our view, clear, on the principles narrated, that the amount standing in the joint accounts of the deceased, his wife and his daughters, are the property of the deceased, there being nothing contrary to show that any one of the joint holders contributed funds either for the purchase of the N. G. P. Notes or had a claim to the amounts in the joint accounts. Mr. Shankar Rao tried to contend that one of the accounts was closed by the time the deceased died and, therefore, a sum of Rs. 3,000 and odd ought not to be included in the sum of Rs. 31,640. We cannot allow him to agitate this question before us, because he had not asked the Tribunal to deduct that amount nor any specific question has been referred to us in respect of this amount.In so far as the first question is concerned that is governed by an authority of this court which has held that, not with standing the fact that property which was purchased in the name of a wife and which was subsequently declared by the deceased as his own property in the wealth-tax returns filed by him, that property cannot be held to be the property of the deceased for the purpose of its inclusion in the estate of the deceased. In Smt. Shantabai Jadhav v. Controller of Estate Duty, a Bench of this court, consisting of Chandra Reddy C.J. and Narasimham J., was dealing with a case where the deceased who died on October 9, 1956, had left garden at Toli Chowki which was purchased in the name of his wife for Rs. 35,000 and which the deceased, subsequently after the purchase, had shown in his wealth-tax return as his wealth. Several question fell for decision; but we are not concerned with those questions. The only question that is relevant for our purpose is the one which dealt with the inclusion of the amount of Rs. 35,000 in the estate of the deceased. Answering this question the Bench held that the decision of the Assistant Controller that the widow failed to establish that the sale price came out of her stridhana property and that she had no ostensible resources for the purchase of the property, and that her husband treated this property as his own in the statements of wealth, are conclusive of the matter, when the property stands in the name of his wife, that even assuming that the money for the purchase was found by her husband, it does not mean that he had a beneficial interest in the property; that normally a husband takes a sale in the name of the his wife either to make a provision for her or to screen the property from creditors, i.e., to keep it beyond the reach of the creditors; that whatever might be the motive, so long as the deed stands in the name of the another person, it could not be said that it was competent for the deceased to dispose of the property in as much as section 6 of the Estate Duty Act exacts that property, which thedeceased was at the time of his death competent to dispose of shall be deemed to pass on his death. It is manifest, as the Bench held, that estate duty could be levied in respect of properties which could be disposed of by the deceased at the time of his death, and that since the deceased could not dispose of the garden, as it was in the name of his wife, that property cannot be said to form part of the estate of the deceased. No

doubt it was argued before that Bench that the wife herself could not have alienated the property by herself; and that any disposition by her would not pass title to the purchaser, having regard to the fact that it was open to the husband to in each the sale sometime later on the ground that the beneficial interest always vested in him, the consideration having been paid by him. But that argument was repelled, having regard to section 41 of the Transfer of Property Act. It may be stated that section 41 of the Transfer of Property Act deals with ostensible owners, and is as follows :

> "Where, with the consent express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfer the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it : provided that the transfer after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

After considering the legal aspect of the matter the learned Chief Justice observed :

> "..... so long as the document stands in the name of his wife, he could not dispose of the property. It is true that it was open to him to have obtained a declaration that he was the beneficial owner thereof notwithstanding the fact that his wife was the ostensible owner. But, so long as the husband does not have any recourse to those proceedings for obtaining such a relief, he would not have been in a position to dispose of the property standing in the name of the third person as his own. This proposition is not contested on behalf of the Central Board of Revenue."

The argument of the learned advocate for the department based on section 3(1)(b) of the Estate Duty Act was also repelled; nor, it was stated, section 9 of the Act rendered any assistance to the Central Board of Revenue. In this view, the Bench held that the garden did not form part of the estate of the deceased. The facts which we have narrated in the reference before us are similar in nature. The recital in the sale deed shows that the deceased wanted house No. 134 purchased in the name of the vendee, his son, as a gift to him and it is obvious that with that object he advanced the money to him which was paid by or on behalf of him (the son). The gift was, therefore, complete. It is also worthy of note that this transaction took place at a time when there were no taxing laws in the State of Hyderabad and there could be no presumption or suspicion that the transaction was one entered into by the deceased with a view to circumvent any laws. The subsequent conduct of the deceased does not in any way affect a transaction, which is perfectly legal on the face of it. As it happened, the son died and the widow and the minor children were living away from him. In those circumstances, the deceased probably wanted to have control over this property and only gave the proceeds for their maintains. In fact, in the statement of the case it is observed that money orders by the deceased from the rents of the house

were produced by the widow of Hoshang. Even under the will, rents of this house were stated to have been paid to the grandchildren. Even the accumulated rents from which he purchased the National Saving Certificates were equated under the will in favour of his grandchildren, who were the heirs of Hoshang, the predeceased son. Whatever may be the subsequent conduct of the deceased, the property, i.e., house No. 134, Park Lane, Secunderabad, did not stand in the name of the deceased nor did the deceased have any disposing power over the property. He could neither sell, mortgage or alienate it. Only the widow of the deceased son and his sons had title to it. The recital in the will that he eventually wanted to gift, did not mean that he had not in fact given it to the son. The recital in the sale deed belies this. In the Bench decision to which we have referred, it may be noticed that the deceased had in fact declared the property as his own. Notwithstanding it the Bench held that it did not form part of his estate. In these circumstances, applying the decision of the Bench of this court, we hold that the house bearing No. 134 Park Lane, Secunderabad, does not form part of the estate of the deceased. In this view, our answer to the first question is that it was not correctly included in the estate of the deceased, and as such in the negative and against the department. The second question must be answered in the affirmative and in favour of the department. There will be no order as to costs. Advocate fee Rs. 250.

Cases Referred

1C. C. C. A. No. 15 of 1960