

PUNJAB AND HARYANA HIGH COURT

Controller of Estate Duty

Vs

M.L. Manchanda, Faridabad Township

Estate Duty Reference No. 1 of 1970

(D.K. Mahajan and Prem Chand Jain, JJ.)

24.01.1972

JUDGMENT

D.K. Mahajan, J.

1. This reference has arisen under the Estate Duty Act, 1953 (Act No. 34 of 1953) (hereinafter to be referred to as the Act). The Income Tax Appellate Tribunal Delhi Bench 'C' has referred the following question of law for our opinion :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in excluding the value of the property in question from the assessment holding that the deceased was not competent to dispose of the same and that it did not pass on her death ?"

2. So far as the facts are concerned, there is no dispute, though the learned counsel for the accountable person sought to contend that there was some controversy as to facts. The dispute relates to the estate of Savitri Devi. She died on the 17th of November, 1963. On the date of her death, there were two properties which stood in her name. These properties were evaluated at Rs. 1,63,200/- by the Assistant Controller of Estate Duty.

3. The accountable person is the husband of the deceased, Shri M.L. Manchanda. The property is situate at Faridabad. Initially, it consisted of the plots, Nos. 5-C/1 and 5-C/2 measuring 800 square yards. These plots were allotted to the husband subject to the approval of the Development Board. The allotment was approved by the Board. Later on, the accountable person requested the Faridabad Development Board to transfer the said plots to his wife. This request was accepted subject to the condition that the sum of Rs. 1408/3/- be first deposited. This amount was so deposited and by his letter, dated 30th April, 1956, the accountable person requested that the said plots be transferred in the name of his wife. Later on, the Assistant Settlement Officer addressed a communication to the lady if she wanted the leasehold rights to be converted into freehold rights. This communication was accepted and the amount demanded was paid by the accountable person, who, later on, with his own money constructed a house of which only the ground floor portion was initially put up. This building was then let out to the Oriental Bank of Commerce Ltd. at a rent of Rs. 600/- per month by the accountable person and with the amounts so

recovered, it is stated that the accountable person constructed the upper storey as well. The income of rent was also taxed in the hands of the accountable person for the assessment years 1961-62 and onwards. There is also a declaration by the accountable-person dated 1st of November, 1963, to the effect that he is the owner of the plots as well as the house, though they stood in the name of his wife. This declaration is signed by the wife and also the son. On the basis of this declaration some moneys were advanced by the Bank.

4. On the death of the wife, as already stated, the property which stood in her name and of which admittedly the owner was the husband was sought to be included in the estate of the deceased for purposes of the levy of estate duty under section 5 of the Act. The plea of the husband that he was the real owner of the property and the wife was a mere *benamidar* and so the property could not be treated of the wife was rejected on the basis of section 6 of the Act which is in the following terms :-

"Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death."

5. An appeal by the accountable person to the Zonal Appellate Controller of Estate Duty met with no success. A further appeal was filed to the Income Tax Appellate Tribunal under section 63 of the Act. The Tribunal allowed the appeal and held that the case did not fall under section 6 of the Act. An application was made to the Tribunal for a statement of the case to this Court under section 64(1) of the Act. This application was granted and the question of law already referred to has been referred.

6. The contention of the learned counsel for the Department is that the Tribunal has gone wrong in holding that the property in dispute is not to be deemed to be the property of the deceased under section 6 of the Act inasmuch as the deceased was not the real owner of the property. It was the husband of the deceased who was the owner. The learned counsel for the Department does not challenge the finding of fact recorded by the Tribunal, namely that :

"This evidence, in our opinion, proves to the hilt that the accountable person purchased the two plots in question with his own money in the *benami* of his wife and that he thereafter constructed a building thereon with his own money. We, therefore, hold that the accountable person is the real owner of this property."

What emerges from this finding is that the wife is a *benamidar* inasmuch as the property was acquired in her name and the husband is the real owner, for the entire money for acquiring the property as well as for constructing the building on the plot emanated from his pocket. However, the question has to be settled on the language of section 6.

7. It will be proper at this stage to refer to the contention of the learned counsel for the accountable person that the wife was not a *benamidar* at all and at no point of time any title in the property passed to the wife. Curiously enough, this was not a case which was ever set up before the Assistant Controller or the Zonal Appellate Controller or the Tribunal. The case proceeded on the short ground that the property had been acquired in the name of the wife but the consideration for the same had proceeded from the husband and thus the husband was the

real owner of the property, and the wife was merely a *Benamidar*. We also proceed on this short basis.

8. To say the least, the matter is not *res integra*. There are three direct decisions bearing on the point but only one was cited before the Tribunal. The one that was cited before the Tribunal is *Smt. Shantabai Jadhav v. Controller of Estate Duty*¹,.. The other two are, *Smt. Denabai Boman Shah v. Controller of Estate Duty*², and *Aloke Mitra v. Controller of Estate Duty*³, In all these cases, the property was acquired *benami* and yet in the hands of the *benamidar* it was treated as his estate on death. This was done particularly in view of the clear language of section 6 of the Act. Reference may also be made to the decision of the Supreme Court in *Sree Meenakshi Mills Ltd. v. Commissioner of Income Tax*,⁴ , wherein their Lordships, while comparing a *benami* transaction with a *sham* transaction observed as follows :-

"The fundamental difference between these two classes of transactions is that whereas in the former there is an operative transfer resulting in the vesting of title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed."

9. This also highlights the fact that a *benamidar* for all intents and purposes is an owner of property and his ownership is only subject to the overriding title of the true owner. He can pass title to a third person and if that third person has no knowledge of the *benami* nature of his title, he acquires a good title even against the real owner. Therefore, in the light of the observations above, one has to examine the validity of the reasoning of the Tribunal.

10. The Tribunal while deciding against the Department and reversing the decision of the Assistant Controller as well as of the Zonal Appellate Controller observed as follows :-

"The question that now arises for our consideration is whether the value of this property is liable to be included in the estate of deceased simply because the allotments of the two vacant plots were made in the name of his wife. The question for our ultimate decision is whether the deceased can be said to have the power to dispose of this property during her life-time simply because the property stood in her name. The learned Advocate for the accountable person argued that it was impossible to contend that the deceased had power to dispose of the property simply because the property was allotted or stood in her name. He referred to the time-honoured dictum of law that a person cannot transfer title to a property which he did not possess. When the deceased did not hold any right, title or interest in this property, he argued how she could have disposed of the said property and even if she executed a sale deed or any other deed in respect thereof how she could have transferred a valid title thereunder. He pointed out that the power of owner of a property to transfer the property does not depend upon the property having been purchased in his name or the property standing in his name but depend upon his ownership of the property. According to him, there is no provision or principle of law which disqualifies the real owner of property from disposing of the property simply because it does not stand in his name or it has not been acquired in his name. Similarly, he argued that there is no

provision or principle of law which authorises a *benamidar* to pass a valid title with reference to a property simply because the property has been purchased in his name or that the property stands in his name. We are not at all impressed by the contention of the revenue that the deceased had power to dispose of the property because the allotments were made in her favour or that the property stood in her name in Government record. As she did not possess any title to the property, she could not have passed any title to the purchaser. Even if she had executed any sale deed it would not have found the real owner of the property. It is in the circumstances impossible to hold that she had the power to dispose of this property during her lifetime."

11. As already observed, if the legal propositions that have been set out above and which are backed by the opinion of the Supreme Court, are kept in view, the falsity of the reasoning of the Tribunal would become apparent.

12. This brings us to the examination of the language of section 6. All that this section says is that the property which the deceased at the time of his death was competent to dispose of shall be deemed to pass on his death. Irrespective of the fact that the husband was the true owner of the property there was nothing to prevent the wife a minute before her death to transfer the property. The legal title against the entire world excepting the true owner, vested in her and she had thus the right to dispose of that right, and once that right is conceded, the property shall be deemed to pass on her death and would, therefore, be liable to the levy of estate duty under section 5 of the Act. From this conclusion, there is no possible escape.

13. For the reasons recorded above, we answer the question referred to us in the negative, that is, in favour of the Department and against the assessee. However, we propose to make no order as to costs.

Order accordingly.

Cases Referred.

151 I.T.R. Estate Duty Supp

2A.P., 66 I.T.R. 385

382 I.T.R. 430

4AIR 1957 SC 49