(1973) 06 KL CK 0041

High Court Of Kerala

Case No: Income Tax R. No. 125 of 1971

The Commissioner of Agricultural Income Tax		APPELLANT
	Vs	
Vamban Abdul Kader		RESPONDENT

Date of Decision: June 28, 1973

Acts Referred:

- Kerala Agricultural Income Tax Act, 1950 - Section 2(kkk)

Citation: (1973) KLJ 649

Hon'ble Judges: P. Govindan Nair, Acting C.J.; George Vadakkel, J

Bench: Division Bench

Judgement

George Vadakkel, J.
At the instance of the Revenue, the following question has been referred to this Court under S. 60(1) of the Agricultural income tax Act, 1950:

On the facts and circumstances of the case what is the correct status to be assigned to the assessee viz., individual, Hindu Undivided Family, Association of persons or Tenants- in-common.

The question is very wide, and is so worded as if asking for an advice. We have therefore resettled the question as:

Whether on the facts and in the circumstances of the case the Tribunal is correct in holding that the assessee is to be assigned the status of a tenant-in-common.

2. The assessments in question are those for the years 1962 63 to 1965 66 (both inclusive). The Agricultural income tax Officer and the Appellate Assistant Commissioner were of the view that the assessee is to be assigned the status of individual. Before the Appellate Assistant Commissioner the assessee produced a gift deed dated 21.11.1955 and claimed on that basis that he be assigned the status of ''Undivided Marumakkathayam Tarwad''. This claim was rejected by the Appellate

Assistant Commissioner on the ground that the gift deed is a sham one. On further appeal, the Tribunal held that "the gift deed is not sham and directed that the assessee be assigned the status of a tenant-in-common.

3. The learned counsel for the Revenue took us through the document. The gift is in favour of the donor''s wife and children. The assessee is one of the children of the donor. The assesses is described in the deed as (***) the documents says some of the properties which are the subject-matter of the gift were acquired by the donor himself, and others by himself and his nephew Anthru Haji jointly. The clause that is relevant in this case is the clause that states that the assessee is to manage the properties as (***) consisting of the donees, and children to be born in future to the donor and his wife. Then it is also provided that others are to succeed to management of properties in the order of seniority by age, on the death of prior incumbent.

4. The question is, without anything more, solely on the basis of this deed can we say that the properties gifted belong to an ''Undivided Marumakkathayam Tarwad'' or ''Tavazhi'' which is as per the inclusive definition of a ''Hindu Undivided Family'' under S. 2(kkk) of the Agricultural income tax Act, 1950. There is the authority of this Court to hold that a Mohammedan family governed by Marumakkathayam law will also fall within the definition of ''Hindu undivided Family'' in S. 2 of the Act. See V. K. P. ABDUL KADER HAJI Vs. AGRICULTURAL Income Tax OFFICER., . But in order that properties which are gifted might acquire the character of Puthravakasam properties, and thereby the incidents of Tarwad or Tavazhi properties, the parties to the transaction must be persons following Marumakkathayam law. There is no material in this case which will go to show that parties are followers of Marumakkathayam law. Even the gift deed is silent as to what system of law the parties follow. Therefore we cannot but hold that the contention that the donees constitute a Puthravakasom Tavazhi has not been established. The assessee cannot therefore be assigned the status of Hindu Undivided Family (Marumakkathayam Tarwad).

5. Under Muslim law ''where land is given to several persons and it is not stated in what shares they are to take, each takes an equal undivided share, and on the death of each his share devolves on his heirs''. See Tyabji on Muslim Law, 4th Edn. page 319. The gift deed does not say in what shares the donees take the properties. So the above quoted rule governs. The donees take the properties in equal shares as tenant-in-common. The Tribunal held so correctly. Our answer to the question is in the affirmative that is, in favour of the assessee and against the Revenue. There will be no order as to costs.

A copy of this judgment shall be sent under the seal of this Court and the signature of the Registrar to the Appellate Tribunal.

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