

(1989) 08 CAL CK 0033

Calcutta High Court

Case No: Income-tax Reference No. 25 of 1984

COMMISSIONER OF WEALTH-TAX

APPELLANT

Vs

SMT. SAVITRI DEVI MUNDRA.

RESPONDENT

Date of Decision: Aug. 10, 1989

Acts Referred:

- Wealth Tax Act, 1957 - Section 27(3)

Citation: (1992) 93 CTR 73 : (1991) 93 CTR 73 : (1992) 193 ITR 420 : (1992) 55 TAXMAN 355 :
(1991) 55 TAXMAN 355

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Benerjee, J; Bhagabati Prasad Banerjee, J

Bench: Full Bench

Judgement

BHAGABATI PRASAD BENERJEE J. - The following question of law u/s 27 (3) of the Wealth-tax Act, 1957, has been referred to this court by the Tribunal :

"Whether the alleged right of the assessee in respect of the premises was an asset in the eye of law under the Wealth-tax Act, 1957 ?"

The relevant assessment year is the assessment year 1975-76 for which the period of account is the year ending on March 31, 1975.

The relevant facts of this case are as follows :

"The assessee had entered into an agreement in writing to execute a lease deed for a period of 65 years in respect of the ground floor of 26, P. K. Tagore Street, Calcutta. No registered deed, however, was executed for this purpose. The assessee, after taking the above property on lease, had let it out to others and was deriving income from it. The Wealth-tax Officer held that this was a long-term lease and, therefore, its value had to be included in the hands of the assessee. He also found that the property was giving an income of Rs. 13,000 to the assessee and he valued the property by adopting a multiple of 18.1818 and determined the value of Rs.

2,72,727.

The assessee carried the matter before the Appellate Assistant Commissioner and it was contended on behalf of the assessee that there was no regular lease deed and, therefore, there was not valid lease in respect of this property. Under the Transfer of Property Act, every lease deed for a period of more than one year has to be registered and if it is not so registered, it cannot have legal effect as a lease deed. The Appellate Assistant Commissioner found that the assessee had not made any improvement to the property but it was provided in the agreement that the property would be let out at a rent of Rs. 1,600 per month with effect from July 7, 1968, for a tenants. The Appellate Assistant Commissioner was of the view that it had law. He, therefore, held that the value of the lease had to be included as an asset in the hands of the assessee. He, however, allowed some relief in the valuation of this leasehold property."

Being dissatisfied with the order of the Appellate Assistant Commissioner, the assessee came in appeal before the Tribunal held as follows :

"We have considered the facts of the case and we agree with the contention of learned counsel for the assessee that there was on valid lease in the eye of law. It is necessary for all such lease agreements to be registered and, in the absence of registration, the agreement was not valid as lease. In the absence of any valid lease agreement, the arrangement could at best be considered to be a month to month tenancy. This can be terminated at any time in accordance with law. No value would, therefore, attach to the rights of a monthly tenancy. We, therefore, hold that the inclusion the value of the lease property was not valid and we, therefore, direct this value to be excluded for both the years. As we are excluding the value of the property as such, there is no question of entering into the question of valuation of the above property."

Admittedly, in the instant case, there was an agreement for entering into a deed of lease for 65 years in respect of the premises in question but no formal deed of lease was executed and registered. Pursuant to the agreement, the assessee was put into possession of the property. Section 53A of the Transfer of Property Act, 1882, provided as follows :

"Part performance. - Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

So, if the provisions of section 53A are invoked, in that event, the transferor had no right to eject the transferee by virtue of the protection given by the aforesaid provisions. In this particular case, after taking possession pursuant to the agreement in question, the assessee had sublet the property and was deriving income from the lease property. This aspect of the matter as to whether, in the facts and in the circumstances of this case, the assessee had a right to the property in view of section 53A and whether the property in the hands of the assessee could be regarded as an asset within the meaning and in the light of the provisions of section 53A or not, has not been considered by the Tribunal.

In our view, the Tribunal has failed to consider this aspect of the matter. The matter is thus remanded to the Tribunal for fresh consideration of the case on the basis of the facts read with the provisions of section 53A.

The reference is thus disposed of finally as above.

There will be no order as to costs.

SUHAS CHANDRA SEN J. - I agree.