

(1988) 08 CAL CK 0023

Calcutta High Court

Case No: Income-tax Reference No. 7 of 1978

COMMISSIONER OF Income Tax

APPELLANT

Vs

MANSUKHRAI MORE.

RESPONDENT

Date of Decision: Aug. 1, 1988

Citation: (1989) 75 CTR 101 : (1988) 75 CTR 101 : (1988) 174 ITR 703 : (1989) 42 TAXMAN 160

Hon'ble Judges: K. M. Yusuf, J; Ajit K. Sengupta, J

Bench: Full Bench

Judgement

AJIT K. SENGUPTA J. - In this reference u/s 256(2) of the Income Tax Act, 1961, the following question of law has been referred to this court for the assessment year 1962-63 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the property at No. 159, Chittaranjan Avenue, Calcutta, was transferred by the assessee for adequate consideration and as such the income arising from the said property was not includible in the computation of the total income of the assessee u/s 64 of the Income Tax Act, 1961 ?"

The facts of this case, shortly, are that the assessee, an individual, was the real owner of the property at No. 159, Chittaranjan Avenue, Calcutta, though it was nominally purchased under a sale deed dated June 10, 1940, in the name of his first wife, Bhagwan Devi, who died on January 2, 1953, leaving three sons and five daughters. After the death of the first wife, the assessee married one Kusumlata, daughter of Srimati Lakshmi Devi of Benaras, on December 2, 1954. It was the case of the assessee that prior to the marriage, there were negotiations between the assessee and Srimati Lakshmi Devi and there was a pre-nuptial agreement under which the assessee agreed, inter alia, to create a trust in respect of the property at No. 159, Chittaranjan Avenue, Calcutta, for the sole benefit of the children which Kusumlata might give birth to after her marriage with the assessee.

By a letter dated October 3, 1954, Srimati Lakshmi Devi intimated to the assessee her willingness to give her daughter in marriage to the assessee subject to fulfilment of certain conditions mentioned therein. The marriage negotiations culminating in the pre-nuptial agreement were said to have taken place in the presence of two mediators, namely, Sri Anantram Poddar and Sri Keshordeo Sangarnia. By a letter dated November 5, 1954, the assessee was stated to have given his consent to the terms that were agreed upon. By about the year 1960, Kusumlata had borne to the assessee three sons. In fulfilment of the pre-nuptial agreement, the assessee claimed to have executed a trust deed dated August, 10, 1960, conveying the property at No. 159, Chittaranjan Avenue, Calcutta, in favour of the two trustees, Sri Radha Kissen More and Srimati Kusumlata More, for the benefit of the three sons of the assessee by his second wife, the said Kusumlata.

In the course of the assessment for the preceding assessment year 1961-62, the Income Tax Officer applied the provisions of section 16(3) of the Indian Income Tax Act, 1922, and assessed the income from the aforesaid trust property in the hands of the assessee. He rejected the contention that the pre-nuptial agreement was an adequate consideration for the transfer of the property in trust for the benefit of the unborn children and that the provisions of section 16 (3) had no application. In the appeal before the Appellate Assistant Commissioner, the assessee relied upon the affidavits of Srimati Lakshmi Devi, Srimati Kusumlata More and the affidavits of the two mediators, Sri Anantram Poddar and Sri Keshordeo Sangarnia. The Appellate Assistant Commissioner held that the pre-nuptial agreement set up by the assessee sounded incredible in spite of the affidavits of several parties. The Appellate Assistant Commissioner having confirmed the above finding of the Income Tax Officer, the assessee carried the matter in further appeal to the Tribunal. The Tribunal disposed of the said appeal for the assessment year 1961-62 by its order dated March 9, 1971. On a consideration of the material on record, the Tribunal believed the pre-nuptial agreement pleaded by the assessee and held that it was in fulfilment of the pre-nuptial agreement that the assessee conveyed the property in trust for the benefit of the minor children. The Tribunal further held that this was a case of transfer of property, not out of love or natural affection, but in fulfilment of obligations undertaken under a pre-nuptial agreement and that Srimati Lakshmi Devi agreeing to give her daughter in marriage to the assessee, who was then a widower aged 57 years, was adequate consideration for the transfer and, therefore, the provisions of section 16 (3) had no application. In that view, the Tribunal directed the exclusion of the income from the property at No. 159, Chittaranjan Avenue, from the assessment for the assessment year 1961-62.

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In the assessment for the following assessment year 1962-63, now under reference, the Income Tax Officer again included in the assessee's total income the income from the property at No. 159, Chittaranjan Avenue, Calcutta, applying the

corresponding provisions (section 64) of the Income Tax Act, 1961, which came into force during that assessment year. On appeal by the assessee, the Appellate Assistant Commissioner upheld the aforesaid action of the Income Tax Officer. On further appeal by the assessee, the Tribunal, following its earlier order in the assessee's appeal for the assessment year 1961-62, upheld the assessee's contention and directed the exclusion of the income from the property at No. 159, Chittaranjan Avenue, Calcutta, from the assessee's total income.

The question which has been referred to this court is whether the income arising out of the said property being premises No. 159, Chittaranjan Avenue, Calcutta, was includible in the computation of the total income u/s 64 of the Income Tax Act, 1961. The answer to this question will depend on the fact whether the transfer was made by the assessee for adequate consideration. Section 64 (iv) of the Act will apply only if the assets are transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration. It is, therefore, necessary to advert to the facts. The first question that calls for determination is whether there was any pre-nuptial agreement. If so, whether that agreement was genuine as held by the Tribunal. The property in dispute was purchased on June 10, 1940, out of the assessee's self-acquired funds in the name of his first wife, Bhagwan Devi. She died on January 2, 1953, leaving three sons and five daughters. There is no dispute that the first wife of the assessee was only a nominal owner of the property.

The assessee approached one Smt. Lakshmi Devi of Benaras to give her daughter, named Kusumlata, aged then about 19 years in marriage to him as his second wife. He was then 57 years of age.

Lakshmi Devi's husband had deserted her and the family. She was obviously not willing to give her daughter who was, it is said, good looking and in her teens, to the assessee who was 57, and a widower with eight children. On October 31, 1954, she wrote a letter in Hindi. In that letter, she referred to his assurance given during the negotiations that he would give her daughter gradually and according to his time and convenience Rs. 10 lakhs approximately. She has added in the letter :

"Further you have also assured me by giving your word of honour that after the said marriage of my daughter with you, whatever issues will be borne of her, you will make a settlement on trust in respect of your property at No. 159, Chittaranjan Avenue, Calcutta, in favour, and for the

sole benefit of her children for their maintenance, education and bringing up and that the said issues of my daughter will be entitled to take such rents and profits thereof in equal shares."

She has referred to the said negotiation in the presence of Keshordeo Sangarnia and Anantram Poddar. She wanted his written consent for those terms, which the petitioner gave by his letter dated November 5, 1954. The marriage took place on December 2, 1954. Three sons were born out of the marriage by about 1960 and a

settlement was executed on August 10, 1960, by the assessee. The deed of settlement refers to the prenuptial pledge and assurances. The trust is for the benefit of three minor sons. The trustees are Radha Kissen More and Smt. Kusumlata More. The property settled upon trust is 159, Chittaranjan Avenue, Calcutta.

In the appeal for the assessment year 1961-62, the Tribunal examined the genuineness of the agreement as such. Anantram Poddar and Keshordeo Sangarnia filed affidavits. The Appellate Assistant Commissioner did not cross-examine them nor did he ask the Income Tax Officer to examine them. The averments made in the said affidavits remain uncontroverted and uncontradicted. There was no suggestion that they were close relatives or otherwise interested in the assessee so as to be tainted with any bias. There is no presumption that persons swearing the affidavits are acting falsely to their oath. Both of them stated that during the marriage negotiations, the assessee gave assurances to permanently settle his house property at 159, Chittaranjan Avenue, Calcutta, for the exclusive benefit of the child or children born of her and give her about Rs. 10 lakhs or assets, ornaments, etc., being equivalent thereto. The existence of the pre-nuptial agreement cannot, therefore, be disputed.

Lakshmi Devi was not examined either. The insistence of Lakshmi Devi on proper provision being made for her daughter of 19 and children to be born is quite natural and probable having regard to the age of the assessee, who was then 57 with eight children. The mother of the assessee's wife wanted security for her daughter, the marriage being one to an aged person, a widower with five sons and three daughters. On these facts, the Tribunal was justified in accepting the existence and genuineness of the pre-nuptial agreement.

The next question is whether there was any adequate consideration. The Supreme Court, in the case of [Tulsidas Kilachand Vs. The Commissioner of Income Tax, Bombay City I](#), held that the expression "adequate consideration" occurring in section 16(3)(b) of the 1922 Act denotes consideration other than love and affection. The word "adequate" means, equal to the need, fully sufficient and proportionate. According to Black's Law Dictionary (15th Edition), adequate consideration means such consideration which is equal, or reasonably proportioned to the value of that for which it is, given. It, therefore,

postulates that it is measurable in terms of money. Consideration must be equal or nearly equal in magnitude or extent to what has been transferred. Love and affection not being measurable in terms of money or otherwise, cannot be put on the balance for testing the adequacy of consideration. What is good consideration may not be adequate consideration. Natural love and affection cannot be regarded as adequate consideration. Lakshmi Devi contemplated payment of Rs. 10 lakhs in cash, shares, ornaments, dresses, etc., to Kusumlata and also a trust being declared in respect of the Chittaranjan Avenue property for the benefit of Kusumlata's

children. The assessee, as indicated earlier, agreed to all the terms and undertook to give effect to the terms in due course. In this letter of acceptance, the words used are "Mai Samay Aur Subidha Ke Anusar Pura Karunga". These show the obligation to create a trust of the property. The assessee had already undertaken this obligation before marriage in 1954. He was required to carry out that undertaking. This is not a case of transfer for love and affection. This is a case of carrying out and executing an obligation. The property transferred is identical with the property in respect whereof the assessee had undertaken to create a trust for the benefit of the second wife and her children. The consideration was, therefore, adequate.

Mr. Moitra, learned advocate appearing on behalf of the Revenue, relied on a decision of the Bombay High Court in [Yogindraprasad N. Mafatlal Vs. Commissioner of Income Tax, Bombay City-I](#), . There, the Bombay High Court was concerned with the words "immediate or deferred" occurring in section 64(v) of the 1961 Act. This decision has no relevance to the facts of this case.

Mr. Moitra has also relied on a decision of the Supreme Court in [Philip John Plasket Thomas Vs. Commissioner of Income Tax Calcutta](#), . There, the Supreme Court held that in order to attract the application of section 16(3)(a)(iii) of the Indian Income Tax Act, 1922, the relationship of husband and wife must subsist not only at the time of the accrual of income from the assets but also when the transfer of assets is made. The words "wife" and "husband" in section 16(3)(a) must be taken in their primary sense which is clearly indicative of a marital relationship. This decision is also not relevant to the facts of this case. In the instant case, the question before us is whether the transfer made by the assessee to his wife was for adequate consideration or not.

For the reasons aforesaid, we answer the question in this reference in the affirmative and in favour of the assessee.

There will be no order as to costs.

K. M. YUSUF J. - I agree.