(1976) 01 CAL CK 0019

Calcutta High Court

Case No: Matter No. 158 of 1969

G.D. Bhattar, Executor to The Estate of Chiman-Lal Bhartia		APPELLANT
	Vs	
Controller of Estate Duty, West Bengal		RESPONDENT

Date of Decision: Jan. 28, 1976

Acts Referred:

- Estate Duty Act, 1953 - Section 10, 12, 12(1), 12(1), 2(15)

Citation: 80 CWN 626

Hon'ble Judges: S.C. Deb, J; D.K. Sen, J

Bench: Division Bench

Advocate: Pranah Pal and S. Pal, for the Appellant;Suhas Sen and Ajit Sengnpta, for the Respondent

Judgement

S.C. Deb, J.

This reference, u/s 64(1) of the Estate Duty Act, 1953, relates to two immovable properties settled in trust for pious purposes by Sri Chinianlal Bhartia, since deceased. The deed of trust dated 22nd January, 1949, executed by him, reads, inter alia, as follows: -

Whereas the settlor is absolutely seized and possessed of or otherwise well and sufficiently entitled to all those messuage, tenements, house, land hereditaments and premises situate, lying at and being premises No. 32 and 32 1, Upper Circular Road, in the town of Calcutta fully described in the Schedule hereunder as estate of inheritance in fee simple in possession or an estate equivalent thereto free from encumbrances.

Now this Indenture witnesseth as follows : -

1. That in effectuating his said desire the Settlor as beneficial owner hereby grants, transfers and conveys unto the trustee all that: the messuage, tenements and houses situate, lying at and being premises Nos. 32 and 3211, Upper Circular Road (7|1, 7|2, Hyat Khan Lane) in the town of Calcutta fully described in the schedule hereunder written (hereinafter referred to as the trust properties) together with all buildings, outhouses, erections, fixture, courtyard, drain, ways, passage light, liberties easements and appurtenances to the same belonging or appertaining and all the estate right title interest claim and demand of the settlor therein or thereto.

10. It shall always be lawful for the Settlor at any time or times or from time to time during his life time, and he hereby reserves to himself its absolute power by any deed or deeds under the hands and seal of the Settlor absolutely to revoke make void or alter or vary the trust declared by these presents of and concerning the said trust properties.

Though Chimanlal was the karta of a Mitakshara joint family consisting of himself and his adopted son Baijnnath at the time of execution of this deed, it is nowhere stated in this deed nor does it show that it was executed by him as the karta of the said family. The said joint family came to an and on March 26, 1950 by partition between Chimanlal and Baijnath. The settled properties were not included in the sa;d partition, for the trust was not revoked by Chimanlal during his life time. On June 27, 1958, Chimanlal varied certain objects of the trust with which we are not concerned in this reference.

Prior to its disruption, the joint family was assessed to income tax in the status of a Hindu Undivided Family. From the assessment year 1952-53 and until his death, which took place on January 24, 1961, Chimanlal was assessed to income tax as an individual. On his death, his half share in the settled properties has been included in his estate for the purpose of assessment under the Act by the Assistant Controller of Estate Duties. The Appellate Authorities have dismissed the appeals filed by the accountable person. The Appellate Tribunal has rejected the contentions of the accountable person in the following terms : -

It was also urged that Section 12 would not have any application with reference to a document executed by the karta of a joint family which is the settlor and not Sri Chimanlal, the deceased. The language of Section 12 appears to us to make no difference between the settlement made by the karta in his capacity as such or as an individual. An H.U.F. has to act through the human agency which is the karta. In such a case, the settlement has to be taken as having been made by Sri Chimanlal himself. Chimanlal could not have declaimed the authorship Though he executed the document in his capacity as a karta, still as far Section 12 is concerned, the settlement has been made by him. This is a case where the property has passed under a settlement made by the deceased by a deed. The capacity in which he made the deed does not appear to be relevant. The language of section 12 is apt to cover a case like this." Thereafter, the Tribunal has referred the following question to this

Court:

Whether, on the facts and in the circumstances of the case and on a proper interpretation of An-nexure A and B and of section 12 of the Estate Duty Act, the half share of the value of the premises Nos. 32 and 3211, Upper Circular Road, Calcutta was liable to be included in the estate of the deceased for the purpose of assessment under the Estate Duty?

2. The learned Counsel Mr. Pranab Pal, appearing for the accountable person, has made the following submissions before us : the settled properties were the coparcenary properties at the time of their settlement and therefore Chimanlal was not the full owner of these properties; this trust was made by the joint family through its karta Chimanlal; section 12(1) of the Act contemplates a settlement made by the full owner of the settled property; such owner must be a natural person, and not an artificial person in view of the word "deceased" used in this section; a karta of a joint family is an artificial person; and therefore for all these reasons the second limb of section 12(1) of the Act does not apply in the present case.

3. It is also the submission of Mr. Pal that the expression "property passing under any settlement made by the deceased," used in section 12(1) of the Act, is confined solely to the absolute interest of the settlor in the settled property and that splitting up of such absolute interest is not envisaged by this section, as observed in a case to which reference will be made later on, and therefore even if Chimanlal had revoked this trust, the absolute beneficial interest in the settled properties would have reverted not to Chimanlal but to the said coparceners because the family remained joint for the purposes of the settled properties inasmuch as they were left out of the partition and hence the half share of Chimanlal in the settled properties cannot be included in the assessment for the purpose of the estate duty under the second limb of section 12(1) of the Act.

4. It is to be noted here that Mr. Pal has not questioned the validity of this settlement and has admitted that the property in these two properties has passed to the trustee under this settlement. He has also admitted that the right to revoke this trust was reserved by Chimanlal under clause 10 of the deed. Now, section 12(1) of the Act reads as follows : -

Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor''s death.

5. The opening word of this section is "property". This word has been defined in section 2 (15) of the Act. It "includes any interest in property, movable or

immovable."

This definition is of the widest amplitude and includes all kinds of interests recognised by law and equity. The term "property passing on the death", as stated in section 2(16) of the Act, "includes property passing either immediately on the death or after any interval, either certainly or contingently." Section 3(1) (a) of the Act provides that a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property. Section 5(1) of the Act imposes a charge upon the principal value of all properties, settled or unsettled, which passes on the death of a person. Section 6 provides that a property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on Irs death.

6. The joint family was not disrupted when these two properties were settled by Chimanlal. Therefore at that time Chimanlal and Baijnath had unspecified or unascertained interests in these two properties. Hence, the said interest of Chimanlal in these two properties must be held to be a property within the meaning of section 2(15) of the Act. Accordingly, the expression "property passing under any settlement made by the deceased by deed", used in section 12(1) of the Act, must also include the said interest of Chimanlal, though unspecified or unascertained, in these two properties.

7. The word "deceased" means a natural person who is no longer alive. A karta of a Joint Hindu Family is not an artificial but a natural person. He is clothed with certain rights and powers by the Hindu Law. A coparcener has no specific share in the coparcenary property, but he has an interest in it. Though his interest in the coparcenary property is unspecified and indefinite during the continuance of the joint family, broadly speaking his interest in it crystalizes into a specific and definite share on the disruption of the joint family.

8. The joint family was disrupted prior to the death of Chimanlal. These two properties were not included in the partition, because this trust was not revoked by Chimanlal. It is a revocable trust and if it was revoked by Chimanlal after the partition, Chimanlal and Baijnath would have become the co-sharers and not coperceners in respect of these two properties, each having equal share in these two properties at the time of such revocation, because the joint family was no longer in existence even for the purpose of these two properties.

9. Mr. Pal has cited the case of Khatizabai Mohomed Ibrahim Vs. Controller of Estate Duty, Bombay, , in support of his contention already noted. It was a case on the first limb of section 12 (1) of the Act and, at page 74 of the report, Mr. Justice S. T. Desai observed as follows: -

It is lastly urged by Mr. Pal-khivala that even if it be held that the provisions of section 12 govern the case before us and the broad general principle enunciated by him is not applicable to it we must hold that in this case there is both actual passing

and deemed passing of property. It is said that there is nothing in the Act to prevent any such principle being accepted by the court. The argument has been that we must first give effect to what is described as ''actual passing of property'' viz. 621/2 per cent interest of Aishabai and then after carying it out we should take the view that the remaining 371/2 per cent passed on the death of Aishabai by operation of the legal fiction enacted in section 12. It has been stressed in support of this argument that there is no difference between sections 10 and 12. Here also we may observe that the argument ignores the real nature of the wakf before us. But furthermore, the, argument goes counter to the express language of section 12. Section 12 states in terms express and explicit that in any case within its Purview, it is the absolute interest of the settlor which was the subject-matter of the settlement that is to be deemed to pass on the settlor''s death and not only the reserved interest. It is very difficult for us to see how we can introduce in the relevant provisions of the Act any idea of splitting up of the entire absolute interest of the settlor, the subject-matter of the trust, which in its entirety is deemed to pass on the settlor''s death. There is no- room for any such division.This contention also must, therefore, be negative.

10. Mr. Pal has relied on the portions underlined by me in support of his said contention, but the definition of the word "property", as already stated, includes not only the property itself but also an interest in it and therefore there is no merits in the contention of Mr. Pal. Further, it is net permissible to cite a line or two from any judgment "divorced from its context" and to rely on it "as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment", as said by Mr. Justice Shah, (as he then was), in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, of the report.

11. Moreover, the first line of the underlined portion of the observation relied on by Mr. Pal must be read and understood in the context and in the light of the contentions made in that case. The contention was whether the properties comprised in the settlement or the interest reserved by the settlor for herself in the settled properties was liable to be included in the assessment under the first limb of section 12(1) of the Act, but admittedly we are not concerned with this limb of this section in this reference. Further, the second limb of this section with which we are concerned was not even involved in that controversy nor was it mooted in connection therewith.

12. That apart, the first limb of section 12(1) of the Act does not even use the words "the absolute interest of the settlor", and his Lordship did not take into consideration the word "property", as defined in the Act, while making the said observations. Moreover, the distinction between the first and the second limb of the section appears clearly from the section itself. The words used in the first limb are "an interest", whereas the words used in the second limb are "the absolute interest".

Therefore, in construing the first limb of the section the words "the absolute interest" used in the second limb of the section must be left out of consideration. Accordingly, we ate unable to agree with the first line of the underlined portion of the above observation, with all respect to his Lordship.

13. Reliance on the second line of the said observation was misplaced by Mr. Pal, for it is directly against him inasmuch as our reading of this deed is that, subject to his right to revoke this trust, Chimanlal had transferred not only these two properties but also his absolute beneficial interest in those two properties intrust to the trustee for the pious purposes mentioned therein and therefore it is not for Mr. Pal but for Mr. Sen, the learned Counsel for the Revenue, to contend that these two properties should have been included in the estate of Chimanlal for the purpose of assessment under the second limb of this section.

14. Though at the time of settlement Chimanlal was the karta of the joint family, this deed, as already stated, does not even say that he had executed it as the karta of the joint family. On the other hand, the recitals and clause (1) of the deed clearly show that he, as the absolute owner, had transferred these two properties including his absolute beneficial interest in these two properties to the trustee. In view of clause 10 of the deed, it must be held that he had also reserved to himself the right to restore to himself these two properties including his right to reclaim the absolute interest in these two properties. Therefore, it should have been held by all the authorities below that in view of the express language of the second limb of section 12(1) of the Act these two properties were liable to be included in the estate of the deceased for the purposes of assessment under the Act but since the Revenue has accepted the decision of the authorities below that the half share of Chimanlal in these two properties is only liable to be included in the assessment, we are unable to disturb the said conclusion of the Tribunal.

15. Even on the basis that Chimanlal had settled these two properties as karta of the joint family, his own interest in these two properties is liable to be included in the assessment for the purposes of the Act on his death under the second limb of section 12(1) of the Act in view of our above reading of this deed including the fact that the joint family was disrupted during his life time. In this connection, it is also to be noted here that it is not the contention of Mr. Pal that Chimanlal had no power to dispose of his interest in these two properties, nor it is his contention that this trust is invalid or otherwise void.

16. In the premises, we reject the contentions of Mr. Pal and return our answer to the question in the affirmative and against the accountable person. In the facts and circumstances of the case, we are not inclined to make any order as to costs.

Dipak Kumar Sen, J.

I agree.