

(1978) 03 CAL CK 0050

Calcutta High Court

Case No: Matter No. 36 of 1975

Controller of Estate Duty

APPELLANT

Vs

Jyotirmoy Raha

RESPONDENT

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**Date of Decision:** March 3, 1978**Acts Referred:**

- Estate Duty Act, 1953 - Section 2(15), 33(1)

**Citation:** (1978) 112 ITR 969**Hon'ble Judges:** Dipak Kumar Sen, J; C.K. Banerji, J**Bench:** Division Bench**Advocate:** Ajit Sengupta and Prabir Majumdar, for the Appellant; Kalyan Roy and R.N. Dutt, for the Respondent

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### Judgement

Sen, J.

This reference arises out of the assessment to estate duty of the estate of one Bidhumukhi Raha, who died on the 21st November, 1970. Under his last will and testament, Sarat Kumar Raha, the late husband of the deceased, had bequeathed to the deceased one small house in Calcutta absolutely as also another property being premises No. 5, Lovelock Place, Calcutta (hereinafter referred to as the "said premises"), providing further, that on the death of the deceased the said two premises would devolve on her two sons in equal shares.

2. The small house and the first floor of the said premises had at all material times been let out. Till her death the deceased resided in the ground floor of the said premises.

3. On the death of the deceased her son, Jyotirmoy Raha, an accountable person, filed a return of estate duty and claimed exemption in respect of the portion of the said premises used by the deceased for her residence u/s 33(1)(n) of the Estate Duty Act, 1953. The Assistant Controller of Estate Duty rejected the claim for exemption on the ground that the said Section 33(1)(n) did not apply as the said premises, in

which the deceased only had a life interest and consequently only a right of possession and enjoyment, could not be said to be property belonging to the deceased. He included the entire value of the said premises in computing the value of the estate.

4. Being aggrieved, the accountable person preferred an appeal to the Appellate Controller of Estate Duty, who allowed the exemption claimed u/s 33(1)(n) of the Act in respect of the ground floor of the said premises used by the deceased for her residence and allowed the appeal to that extent.

5. The revenue preferred a further appeal to the Income Tax Appellate Tribunal against the order of the Appellate Controller. The contention of the revenue in this appeal was that as the deceased had only a life interest in the said premises it could not be said that the house belonged to her and no part of its value could be exempted from estate duty. The accountable person supported the order of the Appellate Controller contending that the said premises had, at all material times, been treated as belonging to the deceased and had been included in the computation of wealth of the deceased in her wealth-tax assessment.

6. Construing the bequest in favour of the deceased the Tribunal held that the interest of the deceased in the said premises was something analogous to a widow's estate under the Hindu law of intestate succession. The Tribunal held that the title to the said premises, though qualified, vested in the deceased and such title was valid and subsisting during her lifetime. What vested in her sons during her lifetime was merely the remainder thereof.

7. The Tribunal followed [Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another](#), where the Supreme Court had construed the meaning of the word "belonging" and had held that the word could signify possession of an interest less than that of full ownership. The Tribunal, accordingly, upheld the order of the Appellate Controller and dismissed the appeal preferred by the revenue.

8. At the instance of the Controller of Estate Duty, West Bengal, the following question of law stated to be arising out of the aforesaid order of the Tribunal has been referred u/s 64(1) of the Estate Duty Act 1953.

"Whether, on the facts and in the circumstances of the case, and on a correct interpretation of the will of the husband of the deceased, the Tribunal was right in holding that exemption u/s 33(1)(n) of the Estate Duty Act, 1953, was available in respect of the value of that portion of the property at 5, Lovelock Place, Calcutta, which was used by the assessee for her residence and which was bequeathed and demised to her by her husband for her life with a direction that, on her death, the same should go to her two sons in equal shares?"

9. To appreciate the scope of the controversy in these proceedings it is necessary to keep in mind the relevant provisions of the Estate Duty Act.

10. Section 2(15) of the Estate Duty Act, 1953, defines "property "as follows:

"Property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method."

11. The relevant portion of Section 33 of the Act is as follows :

"33. Exemption.--(1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death .....

(n) one house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand, and the full principal value thereof, in any other case."

12. At the hearing, learned counsel for the assessee drew our attention to the decision of the Andhra Pradesh High Court in [Controller of Estate Duty Vs. Estate of Late Sanka Simhachalam \(by accountable person\)](#), . The facts in this case were that the deceased had executed a settlement retaining a life interest in the residential house and had conveyed the vested remainder to his son, the accountable person. Since the deceased had only a life interest in the house the estate duty authorities took the view that the property did not belong to the deceased and, therefore, the property could not be exempted u/s 33(1) of the Act. The Tribunal allowed exemption in respect of the said property. On a reference, the High Court considered Section 2(15) of the Estate Duty Act and held that it was manifest from the definition that the word "property" included any interest in property and that the meaning of the word was not confined to an absolute title in the Corpus of any property. Applying this definition to Section 33(1) in the light of the observation of the Supreme Court in the case of [Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another](#), , the High Court held that the property in which the deceased was residing at the time of his death and of which he was only a life-tenant was entitled to exemption u/s 33(1)(n). The High Court quoted the observations of the Supreme Court as follows [Controller of Estate Duty Vs. Estate of Late Sanka Simhachalam \(by accountable person\)](#), :

"Though the word belonging no doubt is capable of denoting an absolute title, it is nevertheless not confined to connoting that sense. Even possession of an interest less than that of full ownership could be signified by that word."

13. Learned counsel for the revenue was not able to distinguish the aforesaid decision of the Andhra Pradesh High Court nor was he able to persuade us to differ from the same. On consideration of the relevant statutory provisions and keeping in mind the meaning of the word "belonging" as explained by the Supreme Court we

see no reason to differ from the decision of the Andhra Pradesh High Court and, with respect, we follow the same. The question is answered in the affirmative and in favour of the assessee. In the facts and circumstances, there will be no order as to costs.

Banerji, J.

14. I agree.