COMMISSIONER OF INCOME-TAX, MADRAS

v.

M. K. STREMANN, MADRAS

November 9, 1964

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Income-tax Act, 1922 (11 *of* 1922)—*Partition deed—Containing recital that self-acquired property already blended with Joint Hindu family property—Only evidence of blending whether sufficient to show partition valid to justify an order under s. 25A—Or deed merely a transfer to minors under s.* 16(3)(*a*)(*iv*).

For some years until 1952-53, the assessee was assessed as an individual in respect of income from a house that was admittedly Joint Hindu family property and income from a selling agency. He maintained only one set of accounts for income from both these sources. On December 19, 1952, a deed of partition was executed between the assessee and his three minor children, who were represented by their mother. In the course of assessment proceedings for the year 1953-54, the assessee claimed that an order under s. 25A be passed and separate assessments made on each of the members of the erstwhile family as from December 19, 1952.

The Income Tax Officer rejected this claim, holding that merely because the income from ancestral property and self acquired property was not separately accounted for, the latter did not become part and parcel of Joint family property; he further held that there was no partition by virtue of the deed, but simply a direct or indirect transfer made by the assessee of his own self-acquired property within the meaning of s. 16(3)(a)(iv).

The Appellate Assistant Commissioner and the Appellate Tribunal confirmed the view taken by the Income-tax Officer, but, upon a reference made to it, the High Court held that the deed executed in December 19, 1952, amounted to a valid partition and was not a transfer within the meaning of s. 16(3)(a)(iv).

It was contended on behalf of Revenue that the only evidence that all assets and liabilities including the agency business were transferred to the joint Hindu family was a recital in the partition deed itself and there was no antecedent blending of the self-acquried property with ancestral property before it was partitioned among the parties. All the clauses of the deed took effect on the signature of the deed and no amount of time elapsed between the alleged blending and partition.

HELD : From the time when instructions were given that the self-acquired property was to be treated as joint family property in the deed to be executed, the property assumed the character of the Joint family property. On execution, the deed became evidence of a pre-existing fact, *i.e* of throwing a self-acquired property into the hotch-potch. [110 G]

The High Court was right in holding that the partition proceeded on the basis that the self-acquired property was made available for partition along with the only item of joint family property. That itself constituted proof that antecedent to the partition, however short the interval, there was blending of the self acquired property of the assessee with his ancestral joint family property. The result was that at least on December 19, 1952, antecedent to the partition, the properties became impressed with

A the character of joint family property. There was a partition on December 19, 1952. Thereafter, the properties allotted to the shares of the assessee and his divided sons were held by them in severalty. [110 H; 111 A, C-D]

(ii) The partition deed did not amount to direct or indirect transfer to the minor children by the assessee within s. 16(3)(a)(iv).

B *C.I.T. Gujarat* v. *Keshavlal Lallubhai*, [1965] 2 S.C.R. 99, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1105 of 1963.

Appeal by special leave from the judgment dated August 30, 1960 of the Madras High Court in C. R. No. 49 of 1956.

C *K. N. Rajagopala Sastri* and *R. N. Sachthey*, for the appellant.

R. Ganapathy Iyer, for the respondent.

A. V. Viswanatha Sastri, T. A. Ramachandran, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the intervener.

D The Judgment of the Court was delivered by

Sikri, J. This is as appeal by special leave directed against the judgment of the Madras High Court answering a question referred to it by the Appellate Tribunal against the Revenue. The Appellate Tribunal had referred the following three questions :

E 1. Whether there was material for the Tribunal to reach the conclusion that the various assets in question belonged only to the assessee in his individual capacity till 19th December 1952 ?

2. If the answer to the first question is in the affirmative, whether the deed, Annexure 'B' aforesaid, amounted to
F a transfer of assets to the three minor children aforesaid so as to attract the provisions of Section 16(3)(a)(iv) of the Income-Tax Act ?

3. If the answer to the first question is in the negative, the Income Tax Officer having rejected the claim of
G partition under Section 25A and the assessee not having independently appealed against such decision, whether the assessee is entitled in law to any modification of the assessment other than the status alone ?

Question No. 1 was answered by the High Court in favour of the Revenue; question No. 2 against the Revenue, and question
H No. 3 in favour of the assessee. The respondent, M. K. Stremann, hereinafter referred to as the assessee, has not filed any appeal against the answer given to question No. 1, and this has become

final. From the way the questions have been worded, we are only concerned with the point whether the High Court rightly answered question No. 2. A

The facts relevant for the disposal of this appeal are as follows. The father of the assessee, Kulandavelu Mudaliar, was an agent of Muller & Phipps (India) Ltd., for the sale of its pharmaceutical preparations in Madras. While he was an agent, the assessee was employed as an assistant by the said Company. Kulandavelu died on July 27, 1938, leaving a house property at Ayalur Muthiah Mudali Street, a few insurance policies and income-tax refunds due to him. The assessee realised a total amount of Rs. 26,600/- from these and with these proceeds he purchased a house at No. 3, Varadarajulu Naidu Street in December, 1945. There is no dispute that this property was joint Hindu family property. B C

On the retirement of his father as agent of Muller and Phipps Ltd., the assessee was appointed as agent in his individual capacity. From 1938-39 till 1952-53, he was assessed as an individual not only on the income from the agency but also income from joint Hindu family property. He maintained only one set of accounts both for his income from the agency and from joint family property. In 1944, one son was born, and another son was born in 1945. D E

On December 19, 1952, the assessee executed a deed of partition and on its basis claimed before the Income Tax Officer, in the course of assessment proceedings for the assessment year 1953-54 (accounting year ending March 31, 1953) that an order under s. 25A be passed and separate assessments made on each of the members of the erstwhile family as from December 19, 1952. The Income Tax Officer held that 'the mere existence of any ancestral property, however small, would not render all self-acquired property part and parcel of the joint Family assets by the mere fact that the incomes are not separately accounted for'. He held that there was no partition but simply a case of donation made by the assessee of his own self-acquired property and s. 16(3)(a)(iv) was attracted. In the alternative, he held that assuming that the assessee's assets have been "thrown into the common stock and after becoming assets of the joint family was divided between him and minor children, Section 16(3)(a)(iv) is again attracted because the said section applies to both the direct and indirect transfers of the assets to minor children.... It would have been an indirect transfer to make (minor) children if the transfer is effected by the interposition of a joint family by a legal fiction." F G H

A On appeal, an additional point was sought to be made by the assessee that the commission business was ancestral business in his hands, but the Appellate Assistant Commissioner did not accede to this contention. He further held that the Income Tax Officer was justified in ignoring the partition deed.

B The Appellate Tribunal held that there was no evidence that all assets and liabilities including the agency business were transferred to the JHF in 1944, when his first son was born, or later. It further observed :

> "The first time we hear of the family possessing the assets in question is the deed of dissolution in which there is a recital to that effect. This certainly cannot constitute an unequivocal declaration of the admitted individual investing his self-acquired properties with the character of joint family property referred to in the judgment in 28 I.T.R. 352 (*R. Subramania Ayyar* v. *Commissioner of Income Tax*)".

C

D

Accordingly, it held that the partition deed came within the ambit of s. 16. As stated above, the Appellate Tribunal referred three questions to the High Court. The High Court answered the questions in the manner mentioned above.

E Mr. Rajagopala Sastri, the learned counsel for the Revenue, has urged the following points :

> (1) That question No. 2 did not arise out of the order of the Appellate Tribunal and the High Court should have refused to answer the question.

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> (2) That before the partition there was no antecedent blending of self-acquired properties with ancestral property.
>
> (3) That the partition deed effects a direct transfer of assets to the minor children within s. 16(3)(a)(iv).

G The first point was not raised before the High Court, or in the statement of the case in this Court. We accordingly cannot allow this point to be raised at this stage.

The second point depends on the interpretation of the partition deed, dated December 19, 1952. This deed was executed between the assessee, his two minor sons and minor daughter, the latter

H three being represented by their mother. It recites that the father of the assessee died on July 27, 1938, leaving a house and other movable investment and cash and that the assessee succeeded to

the said property and the agency of Messrs Muller & Phipps. Then follow two clauses which are important and they are :

> "Whereas the party of the first part has been earning commission and acquiring properties and blending his money with the assets inherited from his father and treating the entire properties extant before and after the birth of the parties of the second and (third) parts till this date as joint family property without making any discrimination or distinction;
>
> Whereas the party of the first part is desirous of making the legal character of the assets that exist now and the legal relationship between the parties definite and to make an arrangement of partition of the parties of the first, second and third parts and also to provide for making jewels, maintenance and marriage for the party of the fourth part, in exercise of his powers as a Hindu father, in order to ensure peaceful enjoyment and friendly relationship between the parties and to keep his own future earnings separate with powers to deal with them in any manner he liked."

Mr. Sastri contends that as the recital in the first clause reproduced above has been found to be false, there is no antecedent blending of the self-acquired property with ancestral property before it is partitioned among the parties. He says that all the clauses took effect on the signature of the deed, and no moment of time elapsed between the alleged blending and partition. We are unable to accede to this contention. In the first clause above, it is recited that the assessee has been blending his money with inherited assets *till this date*. In other words, it asserts a continuous course of conduct ending with the day when the deed was executed. The deed seems to be carefully drafted and the assessee must have given instructions as to the contents of the draft. When instructions are given that the self-acquired property is to be treated as joint family property, in our opinion, at that moment the property assumes the character of joint family property. On execution, the deed becomes evidence of a pre-existing fact i.e. of throwing the self-acquired property into the hotch-potch. The words "till this date" are significant and must be given effect to. The High Court, in our opinion, was right in observing that "the partition proceeded on this basis that the self-acquired properties were made available for partition alongwith the only item of joint family property. That itself constituted

A proof that antecedent to the partition, however short the interval, there was blending of the self-acquired properties of the assessee with his ancestral joint family property." We agree with the High Court that "whether the averment in relation to the past was supported by other evidence or not, it certainly was unequivocal that the properties dealt with at the partition were B treated by the volition of the assessee as the properties available for partition between the members of the joint family. It was certainly an unequivocal declaration that all the properties dealt with under that partition had been impressed with the character of joint family properties, properties belonging to the joint family of the assessee and his sons. The genuineness of the transaction C itself was never in issue. The result was that at least on 19th December, 1952, antecedent to the partition, the properties became impressed with the character of joint family property. There was a partition on 19th December, 1952. Thereafter, the properties allotted to the shares of the assessee and his divided D sons were held by them in severalty."

We have just pronounced judgment in *The Commissioner of Income Tax, Gujarat* v. *Keshavlal Lallubhai*(1), and following that judgment we hold that there is no force in the third point raised by Mr. Sastri.

E Agreeing with the High Court, we hold that there was no direct or indirect transfer of assets to the minor children by the assessee within s. 16(3)(a)(iv).

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed

(1) [1965] 2 S.C.R. 99.