Commissioner Of Income-Tax, Madhya ... vs Maharaja Bahadur Singh & Ors on 13 October, 1986

Equivalent citations: 1987 AIR 518, 1986 SCR (3)1020, AIR 1987 SUPREME COURT 518, 1986 TAX. L. R. 1356, 1987 SCC (TAX) 42, (1986) 28 TAXMAN 560, 1987 UPTC 96, 1986 21 TAX LAW REV 490, (1986) JT 648 (SC), 1986 TAXATION 83 (2) 18, (1986) 162 ITR 343, (1986) 3 SCJ 662, 1986 (4) SCC 512, (1986) 4 SUPREME 35, (1986) 2 CURCC 1067, (1986) 57 CURTAXREP 33

Author: R.S. Pathak

Bench: R.S. Pathak, Sabyasachi Mukharji

PETITIONER:
COMMISSIONER OF INCOME-TAX, MADHYA PRADESH

Vs.

RESPONDENT:
MAHARAJA BAHADUR SINGH & ORS.

DATE OF JUDGMENT13/10/1986

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
1987 AIR 518 1986 SCR (3)1020
1986 SCC (4) 512 JT 1986 648
1986 SCALE (2)591

ACT:
Income Tax Act, 1961 -Income derived by beneficiaries under Trust Deeds-Income derived in individual capacity and not as representing HUF-Assessment of Income-Determination of.

HEADNOTE:
One Hukum Chand Seth, who constituted a HUF with the members of his family, owned extensive properties. The properties were partitioned between him, his wife and their son in equal shares by a Deed of Partition dated March 31,

1950. On the same date, Hukum Chand Seth and his wife executed two trust deeds nominating their son and five grandsons as the beneficiaries in respect of their shares in the aforesaid properties. The trust deeds which contained identical terms inter alia provided (a) that in the event of a beneficiary dying before the time of distribution of the properties between the beneficiaries, the share of the beneficiary so dying would be used to support and maintain his widow and his male issue in such manner as the trustees shall "in their absolute and uncontrolled discretion deem proper" and the surplus, if any, of the share of that beneficiary and the income therefrom would be accumulated and kept in credit to his account and preserved in order to be distributed; (b) that upon the youngest of the beneficiaries attaining the age of 30 years, the trustees would divide and distribute the trust properties together with the accumulated interest and income thereon among the beneficiaries according to their respective rights and shares; and (c) that if at the time of the division and distribution any beneficiary should have died without leaving any son but leaving only a widow, the widow would get half of the share of that beneficiary while the other half would be distributed among the remaining beneficiaries and the heirs of the beneficiaries entitled to distribution.

With the passage of time the beneficiaries came into possession of their respective shares of the properties and the income from those properties was returned by them for the purpose of their income tax

1021

assessment in their individual status, but subsequently they began to assert that the properties were received by them as the Karta of their respective Hindu undivided families and that therefore the income was liable to be assessed in that status. The Income Tax Officer, during the relevant assessment years assessed the assessees/beneficiaries in their individual status and these assessments were confirmed by the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal. However, in a reference at the instance of the assessees, the High Court held that the properties had been settled with the assessees in their representative capacity as Kartas of their respective Hindu undivided families.

Allowing the appeals by the Revenue to this Court,

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HELD 1.1 The High Court has erred in the view taken by it of the two trust deeds. The question whether the income belongs to the individuals or Hindu undivided families has to be resolved upon the contents of the trust deeds, their terms and conditions being free from ambiguity. [1028D; 1026F]

1.2 Where the document contains no clear words describing the kind of interest which the donee is to take, the question is one of construction and the court must

collect the intention of the donor from the language of the document taken along with the surrounding circumstances. There is no presumption one way or the other. Each case must be decided on its own facts and each document calls for its own particular construction. [1026H; 1027A-B]

C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar and Another, [1954] 5 SCR 243, referred to.

In the instant case, on the plain terms of the trust deeds, the properties were intended to devolve on the beneficiaries in their individual capacity. The circustances surrounding the execution of the two documents indicate that a common intention inspired the minds of the two settlors. This has considerable significance when it is realised that while one trust deed was executed by a male member of the family the other was executed by a female member of the family. The course of devolution under the Hindu law would be materially different in the two cases and, therefore, the principles of the Hindu law governing the devolution of property in the case of property passing from a father to his son and grandsons cannot be invoked in these appeals. [1027B-C]

1022

2. The terms and conditions of the trust deeds are wholly inconsistent with the property passing into the hands of the beneficiaries as Kartas of their respective Hindu undivided families. There is clear indication in the trust deeds which bears this out. In the first place, had it been intended that the beneficiary should receive the property as Karta of his Hindu undivided family the document would not have empowered the trustees, in clause 1 to exercise an absolute and uncontrolled discretion on the death of a beneficiary to apply his share to the maintenance of his widow and his male issue and to accumulate the surplus to the account of the said beneficiary for distribution. On the contrary, the trustees would have been under an obligation to entrust the income falling to the share of the deceased beneficiary to the members of his Hindu Undivided family and no discretion would have been permissible in regard to the disposal or otherwise of any part thereof. Secondly, the document would not have provided that if before the time of division and distribution a beneficiay died leaving only a widow, the widow would get a half of the share belonging to the deceased beneficiary while the other half would be liable to distribution among the remaining beneficiaries. These two conditions are sufficient in themselves to lead to the conclusion that it was never intended that the properties should pass to the beneficiaries to be held by them for their respective Hindu undivided families. [1027D-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1681-84 of 1974.

From the Judgment and Order dated 1/6th February, 1974 of the Madhya Pradesh High Court in Civil Cases Nos. 240, 238 and 239 of 1971.

M.K. Banerjee, Additional Solicitor General, Ms. A. Subhashini and B.B. Ahuja for the Appellant.

S.T. Desai, A.K. Chitale, Mrs. S. Gambhir and S.K. Gambhir for the Respondents.

The Judgment of the Court was delivered by PATHAK, J. These appeals by special leave are directed against the common judgment of the High Court of Madhya Pradesh disposing of four Income-tax References and answering the following identical question of law arising in each Reference in favour of the assessee and against the Revenue:

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the income derived by the beneficiaries under the two trust-deeds belonged to the beneficiary in individual capacity and not in the capacity as representing the Hindu undivided family?"

These appeals involve the construction of two trust- deeds couched in identical terms. To understand their import it is necessary to set out a genealogical table:

> Sir Hukumachand Seth (Karta) m Lady Kanchanbai (Wife) Shri Rajkumarsingh (Son) m Smt. Premkumari Devi (Wife)
> _____
> Raj Bahadur Maharaj Bahadur Jambukumar Ch. Kumar Yesh Singh(son) Singh (son) Singh (son) Singh Kumar Singh _____ _____ _____ m m m (Minor) (Minor) Smt.Indrani Smt.Sneha Lata Smt.Urmila Devi (wife) Devi (wife) Devi (wife) _____ _____ _____ Pravin Dhir- Naina Sunaina Pramod Kumar (son) Kumar rendra Kumari Kumari (son) (son) (Daughter) Sir Hukumchand Seth was the head of a well known family of Indore. The family carried on various businesses and owned extensive properties. Prior to March 31, 1950 Sir Hukum Chand and the members of his family constituted a Hindu Undivided family. By a deed of partition dated March 31, 1950 various family properties were partitioned between Sir Hukum Chand, his wife Lady Kanchanbai and their son Raj Kumar Singh in equal shares. Sir Hukum Chand and Lady Kanchanbai executed two trust deeds on the same date, March 21, 1952 purporting to constitute a trust of the properties respectively belonging to them. The trust deeds contained identical terms and conditions. The trustees in each case were Sir Hukum Chand, Lady Kanchanbai, their son Raj Kumar Singh and his wife Prem Kumari Devi and the eldest grandson Raja Bahadur Singh. The beneficiaries named in the trust deeds were Rajkumar Singh and his sons Raja Bahadur Singh, Maharaja Bahadur Singh, Jambukumar Singh, Chandrakumar Singh and Yeshkumar Singh.

With the passage of time and in accordance with the terms and conditions of the trust deeds the beneficiaries came into possession of their respective shares of the properties. Originally the income from those properties was returned by them for the purpose of their income-tax assessments in their individual status, but subsequently they began to assert that the properties were received by them as the Karta of their respective Hindu undivided families and that, therefore, the income was liable to be assessed in that status.

These appeals arise out of income tax assessments made in the case of Raja Bahadur Singh for the assessment year 1962-63, Maharaja Bahadur Singh for the assessment year 1961-62 and Jambukumar Singh for the assessment years 1961- 62 and 1962-63. The Income Tax Officer assessed all three assessees in their individual status and the assessments were confirmed in that status by the Appellate Assistant Commissioner on appeal. On second appeal by the assessees the Income Tax Appellate Tribunal also took the view that the income from the properties received by the assessees under the two trust deeds fell to be taxed in their individual status. At the instance of the assessees the Appellate Tribunal referred the cases to the High Court of Madhya Pradesh for its opinion in each case on the question of law set forth earlier. The High Court understood the two trust deeds differently from the Appellate Tribunal and the taxing authorities and held that the properties had been settled with the assessees in their representative(capacity as Kartas of their respective Hindu undivided families.

It may be mentioned at the outset that neither the assessees nor the Revenue dispute the legality of the trust deeds and we must proceed on the assumption, as did the High Court, the Appellate Tribunal and the taxing authorities, that the authors of the trust deeds were competent to settle the properties in accordance with the terms and conditions expressed in those documents.

The sole question before us is whether upon those terms and conditions it was intended by the settlors that the beneficiaries should receive the properties in their individual capacity or in a representative capacity as Kartas of the respective Hindu undivided families. It is not necessary to refer to all the provisions of the trust deeds because the parties are in common agreement that the principal provisions calling for consideration are clauses 1, 3 and 4 of the trust deeds. Clause 1 empowers the trustees to apply the income from the trust properties to the rent, rates, taxes and other liabilities in respect of the trust properties, including the cost of maintenance, and thereafter to divide the balance left over in equal shares between the beneficiaries, so that each beneficiary received one-sixth of the balance. In the event of a beneficiary being a minor, his share of the income was payable to his natural guardian for being applied towards his education, maintenance and advancement in life, marriage and other expenses. It was also provided that in the event of a beneficiary dying before the time of distribution of the properties between the beneficiaries under clause 4, the share of the beneficiary so dying would be used to support and maintain his widow and his male issue "in such manner as the trustees shall in their absolute and uncontrolled discretion deem proper" and the surplus, if any, of the share of that beneficiary and the income therefrom would be accumulated and kept in credit to his account and preserved in order to be distributed in accordance with clause 4. In the event of a beneficiary dying before the time of distribution without leaving any widow or male issue his share was to be divided equally among other beneficiaries then alive or the then widow and male issue of any other deceased beneficiary, if any, entitled to share in

the distribution, subject, however, to provision being made for the maintenance and education until marriage and the marriage expenses of the daughter or daughters, if any of the said beneficiary. Clause 3 declares that if any moneys were required for meeting extraordinary expenses of or for the benefit of any beneficiary or his wife or children on special occasions, such as the marriage of the beneficiary and of his children, the illness of the beneficiary or of his children, travelling expenses of the beneficiary and of his family for going abroad, their education in a foreign country or on such other occasions as the trustees may deem fit for special treatment, the trustees were empowered to pay to the beneficiary such amounts from time to time as they thought fit in their absolute discretion. Such amounts could be paid to the beneficiary out of the trust properties either by way of advance or loan either on interest or out of his share of the corpus. In the latter event the share of the net income payable to the beneficiary was liable to proportionate reduction. Clause 4 provides that upon the youngest of the beneficiaries attaining the age of 30 years the trustees would divide and distribute the trust properties together with the accumulated interest and income thereon among the beneficiaries according to their respective rights and shares, that is to say equally, and in making such division the trustees would take into consideration the amount due by the beneficiary to the trustees by way of loan or advance made to him. It was further provided that if any beneficiary should have died before the time of such division or distribution leaving a widow and any son or sons or only son or sons the widow and/or the sons would take by substitution the share which the beneficiary would have taken had he been alive, and such share would be divided equally between the widow and the sons. The proviso declares that if at the time of the division and distribution any beneficiary should have died without leaving any son but leaving only a widow, the widow would get half of the share of that beneficiary while the other half would be distributed among the remaining beneficiaries and the heirs of the beneficiaries entitled to distribution. A further provision declares that if at the time of division and distribution any beneficiary should have died without leaving a widow or a son his share would, subject to such adequate provision made for the maintenance and education until marriage and the marriage expenses of the daughter or daughters of such beneficiary as the trustees may in their discretion think fit, he distributed among the remaining beneficiaries and the heirs of the beneficiaries entitled to distribution.

The assesses filed a declaration dated October 19, 1964 that on and from Diwali 1959 the income accruing to them as beneficiaries from the two trust deeds should be regarded as income belonging to their Hindu undivided families. The High Court and the Appellate Tribunal have rightly held that those subsequent declarations can be of no moment for deciding whether the income belonged to the individuals or their Hindu undivided families. It is settled by law that the question has to be resolved upon the contents of the trust deeds, their terms and conditions being free from ambiguity. The question whether a gift of self-acquired or separate property by a father to his son results in the son holding it as ancestral property was considered by this Court in C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar and Another, [1954] 5 S.C.R. 243, and it was laid down that it was perfectly competent for the father, when he makes a gift, to provide expressly either that the donee would take it exclusively for himself or that the gift would be for the benefit of the branch of his family, and if there are express provisions to that effect in the deed of gift or will, the interest which the son would take in such property would depend upon the terms of the grant. Where the document contains no clear words describing the kind of interest which the donee is to take, the question is one of construction and the Court must collect the intention of the donor from the

language of the document taken along with the surrounding circumstances. There is no presumption one way or the other. It is not necessary for us to refer to the several cases cited before us, because each case must be decided on its own facts and each document calls for its own particular construction.

The circumstances surrounding the execution of the two documents indicate that a common intention inspired the minds of the two settlors. This has considerable significance when it is realised that while one trust deed was executed by a male member of the family the other was executed by a female member of the family. The course of devolution under the Hindu law would be materially different in the two cases and, therefore, the principles of the Hindu law governing the devolution of property in the case of property passing from a father to his son and grandsons cannot be invoked in these appeals.

Even if the matter be looked at in the context of the Hindu law as it obtained at the relevant time, the terms and conditions of the trust deeds are wholly inconsistent with the property passing into the hands of the beneficiaries as Kartas of their respective Hindu undivided families. There is clear indication in the trust deeds which bears this out. In the first place, had it been intended that the beneficiary should receive the property as Karta of his Hindu undivided family the document would not have empowered the trustees, in clause 1, to exercise an absolute and uncontrolled discretion on the death of a beneficiary to apply his share to the maintenance of his widow and his male issue and to accumulate the surplus to the account of the said beneficiary for distribution. On the contrary, the trustees would have been under an obligation to entrust the income falling to the share of the deceased beneficiary to the members of his Hindu undivided family and no discretion would have been permissible in regard to the disposal or otherwise of any part thereof. Secondly, the document would not have provided that if before the time of division and distribution a beneficiary died leaving only a widow, the widow would get a half of the share belonging to the deceased beneficiary while the other half would be liable to distribution among the remaining beneficiaries and the heirs of other deceased beneficiaries. These two conditions are sufficient in themselves to lead to the conclusion that it was never intended that the properties should pass to the beneficiaries to be held by them for their respective Hindu undivided families. On the plain terms of the trust deeds, the properties were intended to devolve on the beneficiaries in their individual capacity.

It is contended by learned counsel for the assesses that the settlors intended under the two trust deeds to protect the grandsons, and the scheme incorporated in the trust deeds must be regarded as akin to a family settlement. We are unable to agree. The interest of the grandsons has been sufficiently protected by the terms and conditions of the trust deeds, and in order to safeguard that interest it is not necessary to conclude that the properties were intended to go to the beneficiaries as Kartas of the Hindu undivided families. The grandsons themselves were beneficiaries and on the division and distribution of the properties they would have full power to deal with them according to their will and discretion. It is only where a beneficiary dies before division and distribution of the properties without leaving a widow or sons that the trustees are empowered to intervene and direct, subject to providing for the maintenance, education and marriage of the deceased beneficiary's daughters, that the share of such beneficiary be divided among the remaining beneficiaries and the heirs of deceased beneficiaries.

We are of opinion that the High Court has erred in the view taken by it of the two trust deeds and that the Appellate Tribunal was right in its conclusions. Accordingly, we answer the question referred to the High Court in each case in the affirmative, in favour of the Revenue and against the assessees. The appeals are allowed with costs.

A.P.J. Appeals allowed.