Supreme Court of India
Controller Of Estate Duty vs Kamlavati And Shri Jai Gopal Mehra on 5 September, 1979
Equivalent citations: 1980 AIR 142, 1980 SCR (1) 527
Author: N Untwalia
Bench: Untwalia, N.L.

PETITIONER:
CONTROLLER OF ESTATE DUTY

Vs.

RESPONDENT:
KAMLAVATI AND SHRI JAI GOPAL MEHRA

DATE OF JUDGMENT05/09/1979

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
PATHAK, R.S.
VENKATARAMIAH, E.S. (J)

CITATION:
1980 AIR 142 1980 SCR (1) 527
1979 SCC (4) 262
CITATOR INFO :
F 1986 SC 631 (5,14)
D 1987 SC 785 (22)
APR 1988 SC1426 (16)

ACT:
Estate Duty Act, s. 10-Scope of-Deceased gifted money to son-Son became partner of the firm in which donor continued to be partner-Gift-Whether dutiable on the death of father.

HEADNOTE:
The deceased was a partner in a partnership firm with a half share in it. On March 27, 1957 he made a gift of Rs. 1,00,000/- to his son and Rs. 50,000/-to his wife, the respondent. Almost simultaneously his son was taken as a partner by giving him half share of the deceased, so that from that time onwards there were four partners of whom the deceased and his son had 1/4 share each. On the death of the deceased in 1962 his 4/1 share was taken by his wife and son equally.

The Revenue Authorities included the sum of Rs. 1,50,000/ in the estate of the deceased for the purposes of estate duty. On appeal the Tribunal was of the view that s.

10 of the Estate Duty Act was not attracted to the gifts. The High Court answered the reference in favour of the assessee.

Dismissing the Revenue's appeal

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HELD: The Tribunal as well as the High Court was right in holding that no estate duty was payable in respect of the two sums. [537B]

1. When property is gifted by a donor, possession and enjoyment of which is allowed in a partnership firm in which the donor was a partner, the mere fact that the donor was sharing the enjoyment or benefit in the property is not sufficient for the application of s. 10 of the Act unless such enjoyment or benefit is clearly referable to the gift. If possession, enjoyment or benefit of the donor in the property is consistent with the facts and circumstances of the case, other than those of the factum of gift, then it cannot be said that the donee had not retained possession and enjoyment of the property to the entire exclusion of the donor, or, to the entire exclusion of the donor in any benefit to him by contract or otherwise. It makes no difference whether the donee is a partner in the firm from before or is taken as such at the time of the gift or he becomes a creditor of the partnership firm by allowing the firm to make use of the gifted property for the purposes of the partnership. [535G-H]

(a) Although in a given case the donee assumes bona fide possession and enjoyment of the property immediately upon the gift to the entire exclusion of the donor, if the donee thenceforth does not retain it to the entire exclusion of the donor the gift is dutiable. In Chick's case the gift was without reservation and qualification and the sons assumed and enjoyed the property to the exclusion of the father. Yet a few years later when the donor-father and the donees entered into partnership, each partner's property, including the one gifted by

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the father, was made available as the capital of the business and property of the partnership. Each of the partners was in possession and enjoyment of the property and allowed the others to derive benefit out of the property gifted, so long as the partnership subsisted. The gift was, therefore, dutiable. In Munro's case on the other hand the gift was of a property shorn of certain of the rights which appertain to complete ownership and after the gift the donor had remained in possession and enjoyment of those rights which were not the subject matter of the gift. The gift was, therefore, not dutiable.

[531 E-H]

(b)Interpreting s. 10 of the Estate Duty Act (before the second proviso was added) this Court held in Da Costa's case that the donor-father who stayed with his sons in the house till his death after the house was gifted to them, the

donor had not been entirely excluded from possession and enjoyment of the gifted property and, therefore, s. 10 was attracted. It was further held that the expression "by contract or otherwise" in second limb of the section did not control the words "to the entire exclusion of the donor" in the first limb.

[533A-B]

(c) In Gounder's case the donor who was a partner of a firm gifted to his two sons house property which was under the occupation of the firm as a tenant at will and the firm thereafter paid rent to the donees. In addition, a sum of Rs. 1 lakh transferred by the donor in the firm's books of account and credited to the accounts of the donor's five sons, remained invested with the firm on which the firm paid interest to the sons. This Court applying the rule in Munro's case held that what was gifted by the donor was the whole of the property minus the rights of the partnership which were shared and enjoyed by the donor as well. The donor was enjoying that bundle of rights in the partnership which he was enjoying before the gift and this did not bring the case within the ambit of s. 10. In the case of the house property the possession which the donor could give was the legal possession. The benefit which the donor had as a member of the partnership was not the benefit referable in any way to the gift but is unconnected therewith.

[534E-F]

(d) But in Gounder's case the implicit departure from Chick's case was when it was said that the benefit the donor had received as a member of the partnership was not a benefit referable in any way to the gift but is unconnected therewith. This departure can be attributable to the very subtle distinction in the facts of the two cases : whereas in Chick's case the donor as a partner came to share possession and enjoyment of the property by the partnership firm long after the gift, in Gounder's case the benefit which the donor was enjoying as a partner in the property gifted was existing at the time of the gift itself and continued to exist even thereafter. It was not exactly on the basis of Munro's case that it was said so.
[534G]

(e) Where the gift of money was in a partnership firm in which the donor was a partner and the donees were taken as partners it was held that the benefit in the property viz. the money gifted which the donees were enjoying and continued to enjoy as partners was not sufficient to bring the case within the ambit of s. 10 irrespective of the question whether that benefit was referable to the gift or not. In other words if the benefit was referable to the gift then the property would be covered by s. 10, otherwise not.
[535A-B]
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(f) In Controller of Estate Duty v. R. V. Viswanathan &

Ors. the transfer of the gifted sums was made subject to the condition that the sons would use them as capital, not for any benefit of the deceased donor, but for each of them becoming entitled to 1/7th share in the business. The fact that the partnership may make use of the sums of money gifted in which the donor also was a partner did not mean that he was allowed to enjoy or derive any benefit in the money gifted which could be referable to the gift itself. [535D-E]

2. (a) Where the sums gifted by the donor were invested in the firm in which the donor was a partner, the donees remained creditors of the firm. The rule in Munro's is applicable. [537G]

(b) If a firm borrows money so as to be itself liable for it to the lender the capital of the firm is no more increased than is the capital of an ordinary individual is increased by his getting into debt. The capital of a partnership is not, therefore, the same as its property even treating it as the partnership property. The partnership property does not belong to a co-partner in the sense of his being a co-owner. The partnership firm is not a legal entity in the sense of having a legal personality of its own, different from that of the partners. But no partner can claim a share in the partnership property according to his share in the partnership. A creditor of the partnership is entitled to get back the whole of his property on dissolution of the firm or otherwise, while a partner is entitled to get a share in the net assets of the property realised on the winding up of the partnership. [536C-E]

Clifford John Chick and Another v. Commissioner of Stamp Duty 37 I.T.R. 89 (ED), Munro v. Commissioner of Stamp Duties [1934] Appeal Cases 61, George Da Costa v. Controller of Estate Duty, Mysore 63 I.T.R 497=[1967] 1 S.C.R. 1004, Controller of Estate Duty, Madras v. C. R. Ramachandra Gounder 88 I.T.R. 448=[1975] 3 S.C.R. 554, Commissioner of Income Tax and Controller of Estate Duty, Madras v. N. R. Ramarathnam and Others; 91 I.T.R. 1=[1974] 1 S.C.R. 372, Controller of Estate Duty, Kerala v. R. V. Viswanathan and Others, 105 I.T.R. 653 explained.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2527 and 2528 of 1972.

From the Judgment and Order dated 10-3-1971 of the Punjab and Haryana High Court in Income Tax Reference No. 12/68 and 5/69.

S. T. Desai, S. P. Nayar and Miss A. Subhashini for the Appellant in both the appeals.

Bhagirath Das, B. P. Maheshwari and Suresh Seth for the Respondent in CA No. 2528/72.

Ex-parte against respondents in C.A. 2527/72. The Judgment of the Court was delivered by UNTWALLA J. These two appeals by certificate filed by the Controller of Estate Duty are from the Judgments of the Punjab & Haryana High Court. Both the appeals have been heard together as a common question of law is involved in them. It relates to the interpretation and applicability of Section 10 of the Etate Duty Act, 1953, hereinafter called the Act.

We shall first proceed to state the facts and discuss the law in Civil Appeal 2527 of 1972. Even though the respondent, Smt. Kamlavati, was not represented in this appeal, Mr. S. T. Desai, learned counsel for the appellant, assisted the court very ably and fairly. In the other appeal, being Civil Appeal 2528 of 1972, Shri Jai Gopal Mehra, the respondent, was represented by Mr. Bhagirathi Das. The main judgment of the Full Bench of High Court is in this Civil Appeal, and it has followed the ratio of this decision in the other appeal also. We, however, find it convenient to first discuss the question of law with reference to the facts of Civil Appeal 2527 of 1972.

Maharaj Mal, the deceased, with whose estate we are concerned in this appeal, was a partner in a partnership firm styled as M/s Maharaj Mal Hans Raj. Mahraj Mal had a half share in the partnership. The other two partners namely Jialal and Hansraj had each 1/4th share. On the 27th March, 1957 Maharaj Mal made a gift of Rs. 1,00,000 to his son, Lalit Kumar, and of Rs. 50,000 to his wife, Kamlavati. In the books of the partnership firm the sums of Rs. 1,50,000 were debited in the account of Maharaj Mal and credited to the accounts of Lalit Kumar and Kamlavati, Rs. 1,00,000 in the name of Lalit Kumar and Rs. 50,000 in the name of Kamlavati. Almost simultaneously with effect from 28th March, 1957 as per the instrument of partnership dated the 2nd April, 1957 Lalit Kumar was taken as a partner in the firm of M/s Maharaj Mal Hans Raj by giving him 1/4th share out of the half share of Maharaj Mal. In other words, with effect from the said date there were four partners in the firm each holding 1/4th share.

On the 17th December, 1957, Hans Raj died and in his place his widow Smt. Rup Rani was taken as a partner in the firm getting 1/4th share, the share of her husband. Maharaj Mal died on the 9th January, 1962. On his death the firm was again reconstituted with Jialal and Rup Rani each retaining 1/4th share, Lalit Kumar getting 3/8th share, i.e., 1/4th his own share augmented by half of 1/4th share of deceased Maharaj Mal. The remaining half of Maharaj Mal's share i.e, 1/8th was given to Kamlavati.

The Revenue Authorities relying upon the judgment of the Privy Council in the case of Clifford John Chick and Another v. Commissioner of Stamp Duty(1) as also the judgment of the Calcutta High Court in the case of Rash Mohan Chatterjee v. Controller of Estate Duty, West Bengal(1), held that the said sums of Rs. 1,50,000 were includible for the purposes of the estate duty. The accountable person took the matter in further appeal before the Appellate Tribunal, which took the view that the provisions of Section 10 of the Act were not attracted to the two amounts of gifts made by the deceased to his wife and son and, therefore, the accountable persons were not liable to pay any estate duty on them. The Tribunal on being asked by the revenue made a reference to the High Court under Section 64(1) of the Act and referred the following question of law for its opinion:-

"Whether on the facts and in the circumstances of the case, the provisions of section 10 of Estate Duty Act did apply to the gifts of Rs. 1,00,000 and of Rs. 50,000 made by the deceased to his son and wife respectively ?"

On a consideration of the various authorities the High Court has affirmed the view of the Tribunal and hence the appeal.

Although Section 10 of the Act came up for consideration of this Court in many cases wherein several English decisions were reviewed and the law was laid down as precisely as was possible to be done on the facts of each case, in the application of the principles, Courts are still faced with difficulty resulting in some cleavage of opinion. We, therefore, think it necessary to review some of those cases over again.

In the case of Clifford John Chick (supra) the question for consideration before the Judicial Committee of the Privy Council related to the interpretation and applicability of Section 102 of the New South Wales Stamp Duties Act, which was in pari materia with Section 10 of our Act. In 1934 father of Clifford John Chick transferred by way of gift to his son the property in question. The gift was made without reservation or qualification or condition. In 1935, the deceased, his son Clifford John Chick and another son entered into an agreement to carry on in partnership the business of graziers and stock dealers. The agreement provided, inter alia, that the father should be the manager of the business and that his decision should be final and conclusive in connection with all matters relating to its conduct. Each partner's property including the one gifted was made available as the capital of the business and property of the partnership. The partnership continued for quite a good number of years until the donor died in 1952. In such a situation the Privy Council held that although the first part of sub-section 2(d) of Section 102 had been satisfied in that the son had assumed bona fide possession and enjoyment of the property immediately upon the gift to the entire exclusion of the father, he had not thenceforth retained it to the father's entire exclusion, for under the partnership agreement, the partners and each of them were in possession and enjoyment of the property so long as the partnership subsisted. Viscount Simonds delivering the opinion of the Board distinguished an earlier decision of the Privy Council in Munro v. Commissioner of Stamp Duties(1) on the ground that in Munro's case the gift was of a property shorn of certain of the rights which appertain to complete ownership and after the gift the donor had remained in possession and enjoyment of those rights and of no other right which was the subject matter of the gift. To start with, therefore, the ratio in Chick's case is that if the donor is allowed to be in possession and enjoyment of or derive any benefit out of the property gifted then Section 10 of the Act will make such property, dutiable. If, on the other hand, the donor's possession, enjoyment or benefit is not relatable to the property gifted but to something outside it then no estate duty is chargeable in respect of such property.

Section 10 came up for consideration before this Court in the case of George Da Costa v. Controller of Estate Duty, Mysore(2). The said decision was given in respect of a period when the second proviso to Section 10 was not in the Act as the same was introduced by Central Act 10 of 1965 with effect from 1-4-1965. This was a clear case where the donor had been allowed to stay-in the gifted house till his death even after the house was gifted to his sons. Ramaswami J. delivering the

judgment on behalf of the Court analysed Section 10 with reference to some other provisions of the Act and said at page 501:-

> "The crux of the section lies in two parts: (1) the donee must bona fide have assumed possession and enjoyment of the property, which is the subject-matter of the gift, to the exclusion of the donor, immediately upon the gift, and (2) the donee must have retained such possession and enjoyment of the property to the entire exclusion of the donor or of any benefit to him, by contract or otherwise. As a matter of construction we are of opinion that both these conditions are cumulative. Unless each of these conditions is satisfied, the property would be liable to estate duty under section 10 of the Act."

The learned Judge further pointed out that the "second part of the section has two limbs: the deceased must be entirely excluded, (i) from the property, and (ii) from any benefit by contract or otherwise, the word 'otherwise' to be construed ejusdem generis." But it would be noticed that in the opinion of the Court the case of the Revenue rightly rested upon the first limb as the deceased had not been entirely excluded from the possession and enjoyment of the property gifted. The expression "by contract or otherwise", occurring in the second limb of the section did not control the words "to the entire exclusion of the donor" in the first limb.

In the case of Controller of Estate Duty, Madras v. C. R. Ramachandra Gounder(1) the donor who was a partner in a firm owned a property which the firm was occupying as tenant-at-will. He executed a deed of settlement under which he transferred the property leased out to the firm to his two sons. But the firm continued to be in occupation of the premises paying rent to the donees after the deed of settlement. The deceased had further directed the firm to transfer from his account a sum of Rs. 20,000 to the credit of each of his five sons in the firm's books with effect from April 1, 1953. In the account of each of the sons, the sum of Rs. 20,000 gifted to him was credited. The amounts remained invested with the firm on which interest was paid to the sons. The deceased continued to be a partner of the firm till April 13, 1957, when the firm was dissolved and thereafter he died on May 5, 1957. The question was whether the value of the house property and the sum of Rs. 1,00,000 could be included in the principal value of the estate of the deceased as property deemed to pass under Section 10 of the Act. This Court held that no estate duty was liable to be charged on either of the properties. The main principle is discussed with reference to the house property and approving the decision of the Mysore High Court in the case of Controller of Estate Duty v. Aswathanarayana Setty(2) the same principle was applied with reference to the sum of Rs. 1,00,000 also. The ratio in Munro's case as also in another decision of the Privy Council in Commissioner of Stamp Duties of New South Wales v. Perpectual Trustee Co. Ltd.(3) was applied and it was held:-

> "The donor could, therefore, only transfer possession of the property which the nature of that property was capable of, which in this case is subject to the tenancy. He could do nothing else to transfer the possession in any other manner unless he was required to effectuate the gift for the purpose of section 10 of the Act by getting the firm to vacate the premises and handing over possession of the same to the donees

> leaving the donees thereafter to lease it out to the firm. Even then the objection of the learned advocate that since the donor was a partner in the firm which had taken the property on lease, he derived benefit therefrom and was, therefore, not entirely excluded from the possession and enjoyment thereof, will nevertheless remain unsatisfied. To get over such on objection, the donees will have to lease out the property after getting possession from the firm to some other person totally unconnected with the donor. Such an unreasonable requirement the law does not postulate. The possession which the donor can give is the legal possession which the circumstances and the nature of the property would admit. This he has given. The benefit the donor had as a member of the partnership was not a benefit referable in any way to the gift but is unconnected therewith.

It should be noticed that, though not explicitly but implicitly, some departure was made from the ratio of the Privy Council case in Chick's. When the principle of Munro's case was applied it was on the basis that what was gifted by the donor was the whole of the property minus the rights of the partnership which were shared and enjoyed by the donor also; the donor enjoying the same bundle of rights in the partnership which he was enjoying before the gift did not bring the case within the ambit of section 10. But the implicit departure from the Chick's case was when it was said that the benefit the donor had had as a member of the partnership was not a benefit referable in any way to the gift but is unconnected therewith. This departure can be attributed to the very subtle distinction in the facts of the two cases and it is necessary to highlight them. In Chick's case the donor as a partner came to share the possession and enjoyment of the property by the partnership firm long after the gift, while in Gounder's the benefit which the donor was enjoying as a partner in the property gifted was existing at the time of the gift itself and continued to exist even thereafter. It was not exactly on the basis of Munro's case that it was said so. Similar was the view expressed by the Mysore High Court in Setty's case in relation to the gift of money in a partnership firm where the donor was a partner and the sons, the donees, were also taken as partners. Even then, it was pointed out that the benefit in the property namely the money gifted which the donor was enjoying and continued to enjoy as a partner was not sufficient to bring the case within the ambit of Section 10 irrespective of the question whether that benefit was referable or not to the gift. In other words, if the benefit was referable to the gift then the property would be covered by Section 10, otherwise not. The same Bench which decided Gounder's followed it in the case of Commissioner of Income- tax and Controller of Estate Duty, Madras v. N. R. Ramarathnam and Others(1). In this case the fact in relation to the gifts of money by the donor in favour of his three sons and the daughter were almost identical to those of Gounder's except that the three sons and daughter were also partners in the firm. Yet applying the ratio in Gounder's it was held that the amounts gifted were not chargeable to estate duty under section 10.

We may now refer to the decision of a Bench of this Court to which one of us (Untwalia J.) was a party in the case of Controller of Estate Duty, Kerala v. R. V. Viswanathan and Others(2). The deceased was the sole proprietor of the business. He gifted the sums of Rs. 2,70,000 to his four major and two minor sons each son getting a sum of Rs. 45,000. The transfers were made by book entries. It was held that there was no absolute transfer of the sum of Rs. 2,70,000. It was a part of the scheme to transfer 6/7th shares in the business in favour of the sons. The transfer was made

subject to the condition that the sons would use it as capital not for any benefit of the deceased donor but for each of them becoming entitled to 1/7th share in the business. In other words, the mere fact that the partnership may make use of the sums of money gifted in which the donor also was a partner did not mean that he was allowed to enjoy or drive any benefit in the money gifted, which could be referable to the gift itself.

To avoid the conflict in the application of the ratio of the various Supreme Court cases as seems to have been done by some of the High Courts, we would like to clarify and elucidate some of the aspects and facets of the matter a bit further. When a property is gifted by a donor the possession and enjoyment of which is allowed to a partnership firm in which the donor is a partner, then the mere fact of the donor sharing the enjoyment or the benefit in the property is not sufficient for the application of Section 10 of the Act until and unless such enjoyment or benefit is clearly referable to the gift, i.e., to the parting with such enjoyment or benefit by the donee or permitting the donor to share them out of the bundle of rights gifted in the property. If the possession, enjoyment or benefit of the donor in the property is consistent with the other facts and circumstances of the case, other than those of the factum of gift, then it cannot be said that the donee had not retained the possession and enjoyment of the property to the entire exclusion of the donor, or, to the entire exclusion of the donor in any benefit to him by contract or otherwise. It makes no difference whether the donee is a partner in the firm from before or is taken as such at the time of the gift or he becomes a creditor of the partnership firm by allowing it to make use of the gifted property for the purposes of the partnership. It should be remembered as pointed out by Lindley on Partnership Twelfth Edition at page 178:-"If a firm borrows money so as to be itself liable for it to the lender, the capital of the firm is no more increased than is the capital of an ordinary individual increased by his getting into debt." Although as pointed out at page 357 "The capital of a partnership is not therefore the same as its property," even treating it as the partnership property, the partnership property does not belong to a co-partner in the sense of his being a co-owner. The partnership firm is not a legal entity in the sense of having a legal personality of its own different from that of the partners. But no partner can claim a share in the partnership property according to his share in the partnership. A creditor of the partnership is entitled to get back the whole of his property on dissolution of the firm or otherwise, while a partner is entitled to get a share in the net assets of the property realized on the winding up of the partnership.

Mr. Desai heavily relied upon the decision of the Gujarat High Court in the case of Sekarlal Chunilal and Others v. Controller of Estate Duty, Gujarat.(1) A distinction was drawn after distinguishing the decision of this Court in Gounder's case between the gifts of Rs. 2,00,000 each in favour of the two donees and the gifts of the sums of Rs. 1,20,000 and the sum of Rs. 1,99,500 gifted to the other donees on the ground that the former was not an absolute gift but was subject to the right of the partnership firm while the latter assumed the character of first there being an absolute gift and thereafter parting with a portion of the enjoyment and benefit in the gifted property in favour of the donor by investing the money in the partnership. In the enunciation of the principle of law there is no appreciable, as there could not be any, difference between what was said in Gounder's case by this Court and what has been said by the learned Chief Justice in the Gujarat case. But in the application of the principle to the facts of the two aggregate sums of money it was possible to take a different view. In relation to the gifts of Rs. 1,20,000 it was possible to take a view that it was a part

and parcel of the same transac-

tion namely the receipt of the money by the donees by gift and their investing the same in the partnership firm. So was it possible in regard to the sum of Rs. 1,99,500. However, a different view was taken by the High Court. But in the instant case it is clear that the ratio of the decisions of this Court referred to above is squarely applicable and the Tribunal as well as the High Court was right in holding that no estate duty could be charged in respect of the two sums of money viz. Rs. 1,00,000 and Rs. 50,000.

Similarly in the application of the ratio some difference of opinion will appear to have been expressed by the High Courts in the case of Controller of Estate Duty v. Chaman Lal Bery(1); Controller of Estate Duty v. B. V. Kapadia(2), Controller of Estate Duty, Madras v. S. R. Beevi Rahman(3) and Controller of Estate Duty, Madras v. V. S. Suryanarayanan(4). It is not necessary for us to enter into the fine distinction drawn by the High Courts in each of the cases referred to above. But we want to emphasise that the principles of law laid down by this Court in several decisions which we have reviewed in this judgment with some further clarification and elucidation should be carefully and broadly applied to the facts of each case without doing too much of dichotomy and hair splitting of facts so as not to easily apply or not to apply the provision of law contained in Section 10 of the Act.

The facts of Civil Appeal 2528 of 1972 are that in April or May, 1958, Jiashi Ram, the deceased made gifts of Rs. 20,000 each in favour of his son Jagdish Chand and his four daughters-in-law. The donees invested the entire sum of Rs. 1,00,000 gifted to them in the firm in which Jaishi Ram was a partner. Jaishi Ram died on October 23, 1961. It appears these donees were not partners in the firm nor were they taken as such after the gifts were made in their favour. Yet, applying the same principle of law the Tribunal as well as the High Court has held that the accountable person is not liable to pay estate duty on the sum of Rs. 1,00,000. Here the donees remained creditors and the sums gifted were already being utilised by the firm. The same remained being utilised. Squarely Munro's ratio is applicable. In our opinion, this case is on a stronger footing than that of Civil Appeal 2527, as was rightly conceded by Mr. S. T. Desai also. We, therefore, uphold the decision of the High Court in this appeal also.

For the reasons stated above, both the appeals are dismissed. Civil Appeal 2528 is dismissed with costs but there will be no order as to costs in Civil Appeal 2527 of 1972 as the hearing of this appeal proceeded ex-parte.

P.B.R. Appeals dismissed.