Supreme Court of India
Commissioner Of Gift-Tax, Kerala vs R. Valsala Amma on 16 September, 1971
Equivalent citations: 1971 82 ITR 828 SC
Bench: A Grover, K Hegde
JUDGMENT

1. Civil Appeal No. 1436 (NT)/71 is by special leave and Civil Appeal No. 1237 of 1969 is by certificate. The latter appeal has become infructuous because the certificate by which it was brought is not supported by any reason. Hence the appellant had to apply and obtain special leave from this Court for appealing against the judgment of the High Court. Appeal No. 1436 (NT/of 1971 is brought on the strength of the special leave granted by this Court and that is the only appeal that remains to be considered.

2. The question referred to the High Court that remains to be considered by this Court is :

Whether on the facts and in the circumstances of the case, the assessment of the assessees in the status of an Association of Persons was proper?

3. The High Court answered that question in the negative and in favour of the assessee.

The facts of this case are few :

4 One Smt Unnismmalu Amma executed a Will dated December 4, 1959 bequeathing her properties to her two daughters Valsala Amma and Kugmini Amma. After the death of Unnismmalu Amma her two daughters appears to have effected a partition on June 7, 1961 of some of the properties bequeathed to them under the Will of their mother. Two items of properties which had been bequeathed to them namely a cinema theatre building with machinery and a building called police quarters, were not divided between them. These two ladies gifted those buildings to their brother Sri R. Rajan Menon by means of a gilt deed dated June 8, 1961. The question to decision is whether in respect of the said gift the assessee should be assessed as an association or as a body of individuals or individual The Gift Tax Officer assessed the assessee as an association. The Appellate Assti. Commr. Up held the assessment as an 'assessment' on a body of individuals. The Tribunal came to the conclusion that the assessment in question is a valid assessment and it is an assessment on an association. The High Court differed from the conclusions reached by the above authorities and came to the conclusion that the assessee could only be assessed as individuals.

5. Section 2(xviii) of the Gift Tax Act, 1958 defines 'person' as "person" includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not." Section 3 is the charging section. It says "subject to the other provisions contained in this Act, there shall be charged for every (assessment year) commencing on and from the 1st day of April, 1968, a tax (hereinafter referred to as gift-tax) in respect of the gilts, if any, made by a person during the previous year (other than gifts made before the 1st day of April, 1957; at the rate or rates specified in the schedule."

6. Now the question is in what capacity the gift was made by the assessee. Did they do it as an association or as body of individuals or as individuals. The property received by the assessee under the Will of their mother was admittedly received by them as co-tenants. Each one of them had half share in that property. The question whether they divided that property or not is not a material question. In law each one of them had half the right in the property that they gifted to their brother. They were holding that property as tenants in common and not as joint tenants. Hence they made the gift as tenants in common and not as joint tenants. Each one must be held to have made a gift of her share of the property though the gift is made through one single document. It is surprising that the Income-tax Officer or the Appellate Assistant Commissioner or the Tribunal should have ever thought that the gift in question was by an association or by body of individuals. The Gift Tax Act did not change the general law relating to the rights of property. It merely sought to tax a gift of the property owned by a person As mentioned earlier the property with which we are concerned in this case is a property owned by two persons as tenants in common, each one having a definite share.

7. In our opinion, the High Court was absolutely right in answering the question referred to it in favour of the assessee Civil Appeal No 1436 (NT)/71 accordingly fails and the same is dismissed with costs.

8. Civil Appeal No. 1237 of 1969 is dismissed as not being maintainable. No costs.