PETITIONER:
GOLI ESWARIAH

Vs.

RESPONDENT:
COMMISSIONER OF GlFT TAX, ANDHRA PRADESH

DATE OF JUDGMENT:
05/05/1970

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C.

CITATION:
1970 AIR 1722 1971 SCR (1) 522
1970 SCC (2) 390
CITATOR INFO :
RF 1977 SC2230 (17)

ACT:
Gift Tax Act 18 of 1958, s. 2(xxiv) (d)-Transfer of property-Hindu throwing separate property into joint family stock-His act whether amounts to 'transaction' within the meaning of sub-cl. (d)-Whether amounts to 'transfer of property' liable to be treated as 'gift' under ss. 2(xii) & 4(a) of the Act-Word 'disposition' in s. 2(xxiv), meaning of.

HEADNOTE:
The appellant owned certain self-acquired properties which by a deed dated December 9, 1957 he threw into the common stock of his Hindu Joint Family. The Gift Tax Officer held that he had thereby made it gift taxable under the Gift Tax Act, 1958. After proceedings before the authorities under the Act the question whether the appellant had made 'transfer' of the property so as to attract the provisions of the Act was referred to the High Court of Andhra Pradesh. Following its earlier decision in Satyanarayanamurthy's case the High Court held that the act of' the appellant amounted to a 'transfer' within-the terms of s. 2(xxiv)(d) of the Act and therefore was a gift such as envisaged in s. 2(xii) and s. 4(a) of the Act. In Satyanarayanamurthy's case aforesaid, it had been held that an act similar to that of the appellant would amount to "a 'transaction' entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person". With certificate appeal against the judgment of the High Court was filed in this Court.
HELD:The appeal must be allowed since the declaration by which the assessee had impressed the character of joint Hindu family property on the self-acquired properties owned by him did not amount to a transfer' so as to attract provisions of the Act, [529 F]
A Hindu Joint Family is not a creature of contract. The doctrine of throwing into common stock inevitably postulates that the owner of the separate property is a copartner who has an interest in the coparcenary property and desires to

blend his separate property with the coparcenary property. The separate property of a member of a joint Hindu Family may be impressed with the character of Joint Family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The act by which the coparcener throws his separate property to the common stock is a unilateral act. By his individual volition he renounces his individual right in that property and treats it as a property of the family. As soon as he declares his intention to treat his self acquired property as that of the Joint Family, the property assumes the character of Joint Family Property. The doctrine of throwing into common stock is a doctrine peculiar to the Mitakshara School of Hindu Law. When a coparcener throws his separate property into common stock he makes no gift under Ch. VII of the Transfer of Property Act. In such a case there is no donor or done. Further no question of acceptance of the property thrown into the common stock arises. [526 A-F]

523

It was not necessary in the present case to consider whether the act of the assessee could be said to have "diminished directly or indirectly the' value of his own property and increased the value of the property" of his joint family, because his act could not he considered as a "transaction entered into". Clause (d) of s. 2(xxiv) contemplates a "transaction entered into" by one person with another. It cannot apply to a unilateral act. it must be an act to which two or more persons are parties. Even though under the Act the undivided 'family is a 'person' the assessee did not enter into any transaction with his family. Therefore, it was not possible to agree with the High Court that the act of the assessee fell within the scope of s. 2(xxiv) (d) of the Act. [528 A-B]

The assessee's act could also not be considered as a 'disposition' under the main part of s. 2(xxiv). The word 'disposition' is not a term of law. Further it has no precise meaning. Its meaning has to be gathered from the context in which it is used. In the context in which the term is used in s. 2(xxiv), it cannot mean to "dispose of. Otherwise, even if a man abandons or destroys his property it would become a "gift" under the Act. That could not have been the intention of the Legislature. In s. 2(xxiv) the word 'disposition' is used along with words "conveyance, assignment, settlement, delivery, payment or other alienation of property". It is clear' from the context that the word 'disposition' therein refers to a bilateral or multilateral act. It does not refer to a unilateral act. [528 D-F]

Mallesappa Bandeppa Desai & Ors. v, Desai Mallappa & Ors. [1961] 3 S.C.R. 779, Grimwade & Ors. v. Federal Commissioner of Taxation, 78 C.L.R. 199, Commissioner of Income-tax, Madras v. M. K. Stremann, 56 I.T.R. 62 and M. K. Stremann v. Commissioner of Income-tax, 41 I.T.R. 297, applied.

Commissioner of Gift Tax, Madras v. P. Rangaswami Naidu T.C. 272 of 1964 : R. S. R. M. Ramaswami Chettiar v. The Commissioner of Gift Tax, Madras. Tax Case No.10 of 1966, Dr. A. R. Shukla v. Commissioner of Gift Tax, Gujarati, 74 I.T.R. 167 and Smt. Laxmibai Narayana Rao Nerlekar v. Commissioner of Gift-tax, 65, I.T.R. 19, approved.

Commissioner of income-tax, Hyderabad v. C. Satyanarayanamurthy, 56 I.T.R. 353, G. V. Krishna Rao, & Ors. v. First Addl. Gift Tax Officer, Guntur, 70 I.T.R. 812 and Commissioner of Gift Tax v. Jagdish Saran, 75 I.T.R. 529, disapproved.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No, 695 of 1968.
Appeal from the judgment and order dated October 13, 1966 of the Andhra Pradesh High Court in Case Referred No. 74 of 1963.
N. A. Palkhivala and T. A. Ramachandran, for the appellant.
B. Sen, G. C. Sharma, R. N. Sachthey and B, D. Sharma, for the respondent.
M.-C. Chagla, M. Shankar and K. Jayaram, for interveners Nos. 1 and 2.
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N. D. Karkhanis and T. A. Ramachandran, 'for intervener No. 3.
The Judgment of the Court was delivered by
Hegde, J. This appeal by certificate arises from the judgment of the Andhra Pradesh High Court rendered in its advisory jurisdiction on a case stated by the Income-tax Appellate Tribunal, Hyderabad Bench under s. 26(1) of the Gift-tax Act, 1958 (to be hereinafter referred to as the 'Act'). The question referred for the opinion of the High Court was :

> "Whether the declaration by which the assessee has impressed the character of joint Hindu family property on the self-acquired properties owned by him amounts to a transfer so as to attract the provisions of the Gift-tax Act."

The High Court following its earlier decision in Commissioner ,of Income-tax, Hyderabad v. C. Satyanarayanamurthy(1); ,answered that question in the affirmative.
The material facts as could be gathered from the statement of the case submitted to the High Court are as follows :
The assessee is the karta of his joint family. The assessment year with which we are concerned in this case is 1959-60, for which the "previous year" is the year commencing on 23-10-1957 and ,ending on 10- 11- 1958. The assessee owned movable and immovable properties which were his self acquisitions. By a deed dated December 9, 1957, he threw into the common stock his houses bearing Nos. 6658-5-9- and 2731 situate at Imamba vidi, Secunderabad and a cash deposit of Rs. 1,50,000 in the firm of M/s. Goli Eswariah, Paper Merchants, Secunderabad. In the books of account of the firm, necessary entries were made transferring the amount to the account a the family. The Gift-tax Officer treated that portion of the value of the properties so blended in which the assessee ceased to have a right on partition of the family as having been gifted by him to the family. He rejected the contention of the assessee that his act of throwing his self acquired properties into the common stock did not amount to a gift under the Act. In appeal, the Appellate Assistant Commissioner took the view that since the deed in question was not registered, there was no transfer of the immovable properties to the family and as such there was no gift of the two houses mentioned earlier but with regard to the sum of Rs. 1,50,000, he considered it as a gift and accordingly held that 3/4th of it was liable to be taxed under
(1) 56 I.RT.R. 353.

the provisions of the Act. Thereafter the matter was taken

up in appeal to the tribunal. The tribunal by its order dated November 17, 1961 held that the act by which the assessee threw his self acquired properties to the family hotchpot did not amount to a transfer- and hence it need not have been effected by a registered document. It further held that where the copartner threw himself acquired properties into the hotchpot of the joint family, there was no element of transfer within the meaning of s. 2, cl. (xxiv) sub-cl. (d) of the Act. At the instance of the Commissioner,Gift-tax, Andhra Pradesh, the tribunal stated a case for the opinion. of the High Court and submitted the aforementioned question for its opinion. The High Court did not examine the question of law arising for decision afresh as it was bound by the earlier decision of that High Court in Commissioner of Income-tax, Hyderabadv. C. Satyanarayanamurthy(1) wherein that court had held that where a Hindu by a declaration has impressed on his self acquired property the character of joint family property, the same would-. amount to a transfer of property within the terms of s. 2 (xxiv) (d) and as such is a gift as envisaged in s. 2(xii) and s. 4(a) of the. Act. The view taken in that case was that an act similar to the one we are called upon to consider in this case would amount to, a "'transaction' entered into by any person with intent thereby to diminish directly or indirectly the value 'of his own property and to increase the value of the property of any other person."

On the question of law that we are required to, decide in this case, there is a sharp cleavage of judicial opinion. The Andhra, Pradesh High Court in the case referred to earlier as well as in G. V. Krishna Rao and Ors. v. First Additional Gift-tax officer, Guntur(1) and the Allahabad High Court in Commissioner of Gift-tax v. Jagdish Saran (3) have taken the view that when a coparcener in a Hindu Undivided Family governed by Mitakshara School throws his self acquired properties into common stock. the,. same amounts to a 'gift' under the Act. On the other hands a full bench of the Madras High Court in Commissioner of Gift-tax, Madras v. P. Rangasami Naidu(4) and VR. S. RM. Ramaswami Chettiar v. The Commissioner of Gift-tax, Madras(,), a full bench of the Gujarat High Court in Dr. A. R. Shukla v. Comnzissioner of Gift-tax, Gujarat("); a division bench of the Kerala High Court in P. K. Subramania lyer v. Commissioner of Gift-tax, Kerala(1) and a division bench of the Mysore High Court in Smt. Laxmibai Narayana Rao Nerlekar v. Commissioner of Gift-tax(8) havetaken a contrary view.

(1) 56 I.T.R. 353. (2) 70 I.T.R. 812.

(3) 75 I.T.R. 529.(4)Tax Case 272 of 1964'..

(5) Tax Case No. 10 of 1966.(6)74 I.T.R. 167.

(7) 67 I.T.R. 612.(8)65 I.T.R. 19.

526

To pronounce on the question of law presented for our decision, we must first examine what is the true scope of the doctrine of throwing into the 'common stock' or 'common hotchpot. It must-be remembered that a Hindu family is not a creature of a contract.As observed by this Court in Mallesappa Bandeppa Desai and Ors. v. Desai Mallappa and Ors.(1) that the doctrine of throwing into common stock inevitably postulates that the owner of a separate property is a coparcener, who has an interest in the coparcenary property and desires to blend hi-, separate property with the coparcenary property. The existence of a coparcenary is absolutely necessary before a coparcener can throw into the

common stock 'his self acquired properties The separate property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention' of abandoning his separate claim therein. The separate property of a Hindu ceases to be a separate property and acquires the characteristic of a joint family or ancestral property not by any physical mixing with his joint family or 'his ancestral property but by his, own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his separate property to the common stock 'is a unilateral act. There is no question of either the family rejecting or accepting it. By his individual volition he renounces his individual right in that property and treats it as a property of the family. As soon as he declares 'his intention to treat his self acquired property as that of the joint family, the property assumes the character of joint family property. The doctrine of throwing into the common stock is a doctrine peculiar to the Mitakshara School of Hindu law. When a coparcener throws his separate property into the common stock, he makes no gift under Chapter VII of the Transfer of Property Act. In such a case there is no donor or donee. Further no question of acceptance of the property thrown into the common stock arises.

Bearing in mind the true nature of the doctrine of throwing into the common hotchpot, we shall now proceed to examine the relevant provisions of the, Act to ascertain whether the act of the assessee can be considered as a gift under the Act.

Section 3 is the charging section. It provides that subject to the other-provisions contained in the Act, there shall be charged for every assessment year commencing on and from the 1 St day of April, 1958, a tax known as gift tax in respect of the gifts, if any, made by a person during the previous year (other than gifts made

(1) [1961] 3 S.C.R.770.

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before the 1st day of April 1957) at the rate or rates specified in the Schedule. Gift is defined in s. 2(xii) as follows :

> " "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer of any property deemed to 'be a gift under section 4".

In this case we are not dealing with a deemed gift. Therefore we need not consider the scope of s. 4. Before an act can be considered as a gift as defined, there must be a transfer of property by one person to another. 'Person' is defined as including a Hindu Undivided Family in s. 2(xviii). Section 2(xxiii) says that 'property' includes any interest in property, movable and immovable.Section 22(xxiv) defines "transfer of property" thus :

> "Transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the. generality of the foregoing includes.-
> (a) the creation of a trust in property;
> (b) the grant or creation of Any lease, mortgage, charge, easement, licence, power, partners hip or interest in property;

(c) the exercise of a power of appointment of property.-vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power-, and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person."

The High Court relied on s. 2 (xxiv) (d) in answering the question referred to it in favour of the Revenue. It came to the conclusion that the act of the, assessee in throwing his self-acquired properties into the common stock amounted to "a transaction entered into by him with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person". It is true that the assessee 'by throwing his self-acquired property into the common stock gave up his exclusive right in that property and in its place he was content to own that property jointly with the other members of his family. We do not think that it is necessary in this case to consider whether the act of the assessee can be said to have "diminished

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directly or indirectly the value of his own property and increased the value of the property" of his joint family because in our opinion that act cannot be considered as a "transaction entered into". Clause (d) of s. 2(xxiv) contemplates a "transaction entered into" by one person with another. It cannot apply to a unilateral act. It must be an act to which two or more persons are parties. It is true that for the purpose of the Act, a Hindu Undivided Family can be considered as a "person". But the assessee did not enter into any transaction with his family. Therefore we are unable to agree with the High Court that the act of the assessee fell within the scope of S. 2 (xxiv) (d) of the Act.

Section 2(xxiv(d) is similar to Paragraph (f) of S. 4 of the Australian Gift Duty Assessment Act, 1941-42. Interpreting that section in Grimwade and Ors. v. Federal Commissioner of Taxation(1), the High Court of Australia observed that the transaction by a person referred to therein must be a transaction with some other person and that it cannot be a unilateral act.

Mr. B. Son, learned Counsel for the department contended that the said act should be considered as a 'disposition' under the main part of S. 2 (xxiv). The word 'disposition' is not a term of law. Further it has no precise meaning. Its meaning has to be gathered from the context in which it is used. In the context in which that term is used in S. 2(xxiv), it cannot mean to 'dispose of'. Otherwise even if a man abandons or destroys his property, it would become a 'gift' under the Act. That could not have been the intention of the legislature. In S. 2(xxiv), the word 'disposition' is used along with words "conveyance, assignment, settlement, delivery, payment or other alienation of property." Hence it is clear from the context that the word 'disposition' therein refers to a bilateral or a multi-lateral act. It does not refer to a unilateral act. In this connection reference may be usefully made to the decision of this Court in Commissioner of Income-tax, Madras v. M. K. Stremann(2). Therein the assessee first threw his private properties into the common stock and afterwards there was a partition amongst the members of the family

which included his two minor sons and a minor daughter, represented by their mother. The question arose whether the partition in question amounted to a transfer of assets by the assessee to the three minor children so as' to attract the provisions of s. 16(3) (a) (iv) of the Indian Income-tax Act, 1922. In that case, the Revenue did not contend in this Court that the act of the assessee throwing into common stock his self acquired properties amounted to transfer of assets by the assessee to his three minor children. On the other hand, ,it contended that the partition that took place subsequently amounted to a transfer of assets of the assessee to his minor child-

(1) 78 C.L.R. 199.

(2) 56 I.T.R. 62.

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ren. This Court overruled that contention. Therein the contention of the Revenue appeared to have proceeded on the basis that the antecedent act of the assessee viz. throwing his self-acquired properties to the common stock may not amount to a transfer of his assets to his minor children but the partition that followed amounted to such a transfer. In that very case the Revenue appears to have contended before the High Court that the act of the assessee in throwing his self acquired properties into common stock amounted to a transfer of his assets to his minor children. The High Court observed that when the separate property of a copar-cener ceases to be his separate and becomes impressed with the character of coparcenary property, there is no transfer of that property from the coparcener to the coparcenary; it becomes joint family property because the coparcener who owned it until then as his separate property, has by the exercise of his volition, impressed it with the character of joint family or coparcenary property, to be held by him thereafter alongwith other members of the joint family; it is by his unilateral action that the property became joint family property; the transaction by which a property ceased to be the property of a coparcener and became impressed with the character of copes property, does not itself amount to a transfer; no transfer need precede the change and no transfer ensues either-see M. K. Stremann v. Commissioner of Income-tax, Madras(1). We are in agreement with those findings.

For the reasons mentioned above, we allow this appeal, set aside the judgment of the High Court and answer the question referred to the High Court thus :--

The declaration by which the assessee has impressed the cha-racter of joint Hindu family property on the self-acquired properties owned by him did not amount to a transfer so as to attract the provisions of the Act. The Revenue shall pay the costs of the appellant in this appeal.

G.C.

Appeal allowed.

(1) 41 1. T.R. 297.

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