

PETITIONER:
CONTROLLER OF ESTATE DUTY, KARNATAKA, BANGALORE

Vs.

RESPONDENT:
UMESH RUDRA

DATE OF JUDGMENT 15/01/1979

BENCH:

ACT:
Estate Duty Act, 1953, S. 10, enjoyment to the entire exclusion of the donor, applicability when husband is donor.

HEADNOTE:

The deceased gifted his residential property to his wife, but continued to live there with her. On his death, while calculating the estate duty, the appellant included the value of the residential property, in the principal value of the estate, on the ground that the deceased continued to reside with the wife, even after the gift. Upholding the High Court's judgment, and rejecting the special leave petition, the Court

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HELD : Section 10 cannot be construed in a manner which would require the husband who has gifted residential house to the wife, to live separately from her. When the wife obtains possession of the house and remains in enjoyment of it, it cannot be said that the husband who resides with the wife, is, on that account, in possession or enjoyment of the house so as to attract the applicability of Section 10. [952 B-D]

Mrs. Shamsun Nehar Mansur v. Controller of Estate Duty, West Bengal 71 ITR 301 : Sunil Roy v. Controller of Estate Duty, Calcutta, 77 ITR 667; Mohammad Bhai & Anr. v. Controller of Estate Duty, A.P., 69 ITR 770; Kamla Pandalai v. Controller of Estate Duty, 105 ITR 531; approved.

Bibi Ahmedi Begum v. Controller of Estate Duty, U.P., 83 ITR 303, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 6331/78.

From the Judgment and Order dated 1-6-78 of the Karnataka High Court at Bangalore in T.R.C. No. 1/75

R. N. Sachthey and Miss A. Subhashni for the Petitioner.

The Order of the Court was delivered by
BHAGWATI, J. This petition for special leave to appeal against an order of the High Court of Karnataka raises a question of interpretation of section 10 of the Estate Duty Act, 1953. The deceased made a gift of his residential property to his wife on 27th November, 1957 and on his death which occurred on 2nd August, 1963, the question arose whether the value of the residential property was liable to be included in the principal value of the estate passing on the death of the deceased under section 10. The argument of the Revenue was that even after the gift the deceased

continued to reside with the wife and, therefore, it

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could not be said that the wife retained possession and enjoyment of the residential property to the entire exclusion of the deceased and hence section 10 was attracted. Now there can be no doubt that on a proper interpretation of section 10, the donee must retain possession and enjoyment of the property gifted to the entire exclusion of the donor, in order to repel the applicability of that section. But we do not see how in the present case it can at all be said that the wife did not retain possession and enjoyment of the residential house to the exclusion of the deceased, merely because the deceased in his capacity as husband continued to reside with the wife. Section 10 cannot possibly be construed in a manner which would require the husband who has gifted residential house to the wife to live separately from her, if he wants to escape from the mischief of that section. Such an interpretation would subvert family life and social order and would be contrary to morality and good sense. When the residential house is gifted to the wife and she obtains possession and remains in enjoyment of it, it cannot be said that the husband who resides with the wife, as in a happy family life every husband would be expected to do, is, on that account, in possession of the residential house or in enjoyment of it. It is the wife who is in possession and enjoyment of the residential house and the husband, by reason of the marital ties, continues to reside with the wife. We do not think that section 10 would at all be attracted in such a case.

We find that this view has been taken by the Calcutta High Court in *Mrs. Shamsun Nehar Mansur v. Controller of Estate Duty, West Bengal*(1) and *Sunil Roy v. Controller of Estate Duty, Calcutta*(2), the Andhra Pradesh High Court in *Mohammed Bhai and another v. Controller of Estate Duty*, (3) the Madras High Court in *Kamla Pandalai v. Controller of Estate Duty*, (4) and the Karnataka High Court in the judgment under appeal and it commends itself to us. We think that these High Courts rightly refused to apply section 10 to a case like the present where the husband has gifted the residential house to the wife and thereafter continued to reside with the wife in the residential house. The contrary view taken by the Allahabad High Court in *Bibi Ahmedi Begum v. Controller of Estate Duty, U.P.* (5) must be held to be erroneous.

We accordingly reject the special leave petition.

M. R.

Petition dismissed.

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