

Present: Schneider A.C.J. and Maartensz A.J.

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THE COMMISSIONER OF STAMPS *v.* CORNELIS
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108—(*Inty.*) *D. C. Chilaw, 1,473.*

Estate Duty Ordinance, No. 8 of 1919, s. 19—Joint gift in favour of children—Reservation of life-interest—Death of one of the donors—Property passing on death—Liability to pay estate duty.

Where a husband and wife made a gift of property to their children, reserving to themselves the right of possession during their joint lives and the life of the survivor.

Held, that on the death of the husband the children were under no liability to pay estate duty, as no interest accrued to them on the death of their father.

ONE Isseris Appuhamy and his wife Mangohamy made a joint gift of certain lands to their children, reserving the right of possession of the lands during their joint lives and the life of the survivor of them. Isseris died in 1922, and in terms of the deeds of gift Mangohamy became solely entitled to the possession of the lands. At the instance of the Commissioner of Stamps, citation issued on the children to show cause why writ of execution should not issue against them for the payment of estate duty. They disclaimed liability on the ground that, although they were the donees under the deeds of gift, no interest accrued to them on the death of Isseris.

This contention was upheld by the District Judge.

J. E. M. Obeyesekere, C.C. (for Crown), appellant.

H. V. Perera (with him *Ameresekere*), for the respondents.

October 12, 1926. SCHNEIDER A.C.J.—

For the purpose of this appeal we were asked to accept certain facts as having been admitted. Those facts are these: Some lands were donated by one Isseris Appuhamy and his wife Mangohamy to their children who are now represented by the first, second, third, fourth, and fifth respondents to this appeal. The donors reserved a right of possession for themselves in all the property donated during the life time of both of them and of the survivor of them. Isseris died in September, 1922, leaving his widow surviving him whereby she became solely entitled to the right of possession reserved

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in the deeds of gift. The Commissioner of Stamps, who is the appellant, applied to the District Court under the provision in section 32 of the Estate Duty Ordinance, No. 8 of 1919, for a citation on the respondents to show cause why execution for the amount of the estate duty owing should not issue against them. The respondents showed cause. They submitted that they were not liable to pay the estate duty under the provisions of the Ordinance. The District Judge upheld the respondents' contention. He expressed an opinion as to the liability of the widow, but her liability was not the question before him.

The appeal was argued before us upon the footing that the assessment of estate duty made by the Commissioner must be accepted as correct, and that we had only to consider the question of the liability of the respondents to pay the duty claimed from them. But the question of the liability of the respondents cannot be decided without reference to the provisions of the law under which the duty is leviable. Not only section 7, but wherever else in the Ordinance property is referred to it is clear that the reference is to "property passing on the death" of a person. The words "property passing on the death" are interpreted in the Ordinance (section 2). What then is the property which passed on the death of Isseris? Upon the admitted facts no property in any sense passed to the respondents. As donees in the deeds of gift they became entitled to the *dominium* of the lands donated immediately the deeds were executed. The possession of the lands and the right of possession remained in Isseris and his wife. The only change brought about by the death of Isseris was that his wife became entitled solely to the possession of the lands. Her previous right of possession was enlarged to that extent. Whether in those circumstances there was a passing of property to her on the death of the deceased is a question which seems to me to require some argument. But that question does not arise upon this appeal.

Crown Counsel, who appeared for the appellant, submitted that the estate duty which was sought to be recovered from the respondents was duty leviable under section 8 (1) (e) of the Ordinance, and that the word "property" there meant the lands which were the subject matter of the donations, and the donations themselves were "past settlements" made by the deceased. This contention appears to me to be wholly unsustainable. It rests entirely upon a misconception of the words "property passing." As I have already said, it is quite obvious from the provisions of the Ordinance that "property" means property "passing on the death of the deceased." That sub-section might be construed as having reference to the interest which, in this case, passed to the widow, but even of that I am doubtful.

The section which really requires consideration for the determination of this appeal is section 19, which deals with the liability for estate duty. In sub-section (1) it imposes the duty imperatively on the executor to pay the estate duty on "all property coming to him, or being under his control," and it permits him to pay the estate duty in respect of any property not coming within that description if the persons accountable for the duty request him to make such payment. In sub-section (2), cases are dealt with where the estate duty has not been paid by the executor:—

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- (1) It enacts that estate duty shall be paid by the person to whom any property passes for any beneficial interest in possession.
- (2) It then enacts that the following two classes of persons "shall be accountable for the estate duty on the property" passing "to the extent of the property actually received or disposed of by them":
 - (a) Every trustee, guardian, or other person in whom any interest "in the property so passing" or the management thereof is vested.
 - (b) Every person in whom "the same" (that is, "the property so passing") is vested by alienation or other derivative title.

Crown Counsel contended that the respondents came under the last class of persons. This contention, too, appears to me to be entirely unsustainable. The persons contemplated in this class clearly are those in whom the property passing on the death of the deceased is vested at the time the estate duty becomes payable, either by an alienation effected by the person to whom the property had passed on the death for any beneficial interest in possession, or by a derivative title, that is, for instance, by right of intestate succession. The respondents clearly do not come within this class of persons. To my mind the construction of section 19 presents no difficulty. That section has been modelled upon section 8 (4) of the Finance Act, 1894,¹ which is as follows:—

"Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or derivative title shall be accountable for

¹ (1894) 57 & 58 Vict. Ch. 30.

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the estate duty on the property, and shall within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of the property."

The language of the English Act renders the meaning of section 19 of our Ordinance clearer, if I might say so.

We were invited by Crown Counsel to express the opinion that the widow is liable to pay the estate duty claimed from the respondents. This I must decline to do for the obvious reason that she is not a party to this appeal, and also for other reasons.

I dismiss the appeal with costs.

MAARTENSZ A.J.—

The inquiry from which this appeal arises was held on an application by the Commissioner of Stamps made under the provisions of section 32 of the Estate Duty Ordinance, No. 8 of 1919, that the respondents should be cited to show cause why execution should not issue against them for the recovery of estate duty alleged to be due in respect of certain property which belonged to Mahatantirige Isseris Appuhamy, whose estate is being administered in this action.

The respondents showed cause and the Commissioner of Stamps appeals from the order of the District Court declaring the respondents not liable to pay the estate duty claimed.

The facts as stated at the bar are as follows: The properties in respect to which estate duty is claimed were the subject of three deeds of gift executed by the intestate. They are—

(a) Deed No. 12,427 dated January 26, 1907.

(b) Deed No. 4,120 dated July 5, 1922.

These two deeds were executed in favour of M. Dona Johannahy, the fifth citee, respondent.

(c) Deed No. 12,425 dated January 26, 1907, executed in favour of Liyanchihamy, the predecessor in title of the first, second, third, and fourth citees, respondents.

In all three deeds the donor reserved a life interest in favour of himself and his wife, Selestina Arachchige Mangohamy, and it was admitted that the entire usufruct vested in the widow and that the donees acquired no beneficial interest on the death of the donor.

The appeal turns on the construction of section 19, sub-section (2), of the Estate Duty Ordinance, 1919, which enacts as follows:—

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19. (2) Estate duty, so far as not paid by the executor, shall be paid by the person to whom any property passes for any beneficial interest in possession, and also to the extent of the property actually received or disposed of by him, by every trustee, guardian, or other person in whom any interest in the property so passing or the management thereof is vested, and every person in whom the same is vested by alienation or other derivative title shall be accountable for the estate duty on the property. Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent for another person in the management of property.

Under this section estate duty, so far as not paid by the executor, is payable by three classes of persons, namely—

- (a) By the person to whom any property passes for any beneficial interest in possession;
- (b) By every trustee, guardian, or other person in whom any interest in the property so passing or the management thereof is vested to the extent of the property actually received or disposed of by him;
- (c) By every person in whom the same is vested by alienation or other derivative title.

The appellant argued that the word " same " used with reference to the persons in class (c) means the property *simpliciter* and does not mean the property passing on the death of the deceased and that this part of the section should read thus: " Estate duty so far as not paid by the executor shall be paid by every person in whom the property is vested by alienation or any other derivative title. " If this argument is sound the citees respondents would no doubt be liable to pay the estate duty payable in respect of the property vested in them by the deeds of gift referred to above. But this construction of the word " same " is, in my opinion, repugnant to the Ordinance as a whole and to the terms of the sub-section itself.

The Ordinance provides for the recovery of estate duties. Section 7, which enacts as follows:—

" In the case of every person dying after the commencement of this Ordinance, there shall, save as hereinafter expressly provided, be levied and paid, upon the value of all property settled or not settled, which passes on the death of such person, a duty called 'estate duty,' at the graduated rates set forth in the schedule to this Ordinance "

describes the property on which estate duty should be levied and paid as property which passes on the death of a person.

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By section 2 "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation; and the expression "on the death" includes "at a time ascertainable only by reference to the death."

Section 18 provides "that the estate duty payable in respect of any property passing on the death of a deceased person shall be a first charge on all the immovable property of the deceased coming to an executor or being under his control, so far as the duty payable by such executor is concerned and on the property passing to any other person, so far as the duty payable by such other person is concerned."

Section 19 prescribes the person or persons by whom estate duty shall be payable. Under sub-section (1) the executor is liable to pay the estate duty on all the property coming to him or being under his control.

These sections establish as clearly as possible that estate duty is payable on property passing on the death of the deceased person by the person to whom it passes and I am of opinion that the word "same" should be read as referring to such property.

Sub-section (2) of section 19 is modelled on sub-section (4) of section 8 of the Finance Act (57 and 58 Vict. c. 30). The model sub-section which runs thus—

"Where property passes on the death of the deceased and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also to the extent of the property actually received or disposed of by him every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title"

leaves no room for doubt that the word "same" refers to the property passing on the death of the deceased. The draftsman of sub-section (2) of section 19, in my opinion, intended to give it the same effect as the English Act.

I therefore hold that the word "same" refers to the property passing on the death of the deceased and that the section with reference to the persons in class (c) should read: "By every person in whom the property passing on the death of the deceased is vested by alienation or other derivative title." This clause was no doubt intended to catch up the persons who had by alienation or other derivative title acquired the interest of any person to whom property would pass on the death of a person.

The next question is whether any property passed to the citees respondents on the death of the deceased. According to the facts stated at the bar the title to the property had passed to the donees before the death of the deceased by virtue of the deeds of gift in question subject to a usufructuary interest in favour of the donor and his wife and all that passed on the death of the deceased was his usufructuary interest which devolved on his widow. The respondents thereof got nothing of the property which passed on death.

I accordingly hold that the citees respondents are not liable to pay estate duty and dismiss the appeal with costs.

I should mention that the appeal was argued and decided on facts stated at the bar as neither the deeds of gift in question nor a statement of the facts on affidavit or otherwise have been filed in the record.

Appeal dismissed.

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