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has brought to my attention a Division Bench judgment of Harrington and Mookerjee JJ. in *Hakimi Jan Bibi* v. *Mouze Ali* (2), Harrington J., speaking for the Court, held that the law does not empower a Magistrate to rehear an application for maintenance under section 488, Criminal Procedure Code, dismissed for non-appearance.

The learned counsel for the respondent has contended that the Court in its inherent powers can always review its judgment and the Magistrate's action in restoring the petition when the petitioner reappeared on the day when it was dismissed in default must be upheld. In the absence of any provision in the Code itself, the power of restoration cannot be spelled out from the general provisions. Being in respectful agreement with the authority of Gurdev Singh J. of this Court and of the Division Bench of the Calcutta High Court, I would accept the recommendation and quash the order of the Magistrate.

R.S.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

IQBAL SINGH GREWAL AND ANOTHER,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 216 of 1965.

1965

November, 3rd

Gift Tax Act (XVIII of 1958)—Ss. 19 and 29—Gift tax due from the deceased—Whether to be recovered out of the estate left by him or from the donees.

Held, that section 19 of the Gift Tax Act, 1958, deals with a situation where a donor being dead, liability for the payment of the gift tax is fixed on his estate or his executors. An executor, administrator or a legal representative of the deceased donor is made liable only to the extent of the estate which has devolved on him. It means naturally that when the estate is capable of meeting the gift-tax, the donee is not to be made liable for the payment of the gift-tax. Section 29 reiterates that the primary responsibility for payment of the gift-tax is on the donor but when it cannot be so recovered, the donees will be liable for its payment. Where the donees are more than one, they shall be jointly and severally liable and the extent of their liability will never exceed the value of the gift. It is not difficult to visualise a situation where the donor's estate has been exhausted by gifts and in such circumstances it has been provided that the Exchequer will not be the loser and the donees will be liable.

(2) (1905) 2 Cr. L.J. 213.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, prohibition or any other appropriate writ, order or direction be issued quashing the order dated 17th October, 1964, passed by respondent No. 2 and further restrainina the respondents from attaching or auctioning the property in dispute for realising the gift tax from the petitioners.

DALJIT SINGH, ADVOCATE, for the Petitioners.

D. N. AWASTHY AND HEM RAJ MAHAJAN, ADVOCATES, for the Respondents.

ORDER

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—The problem posed in this petition under Article 226 of the Constitution of India briefly is whether the gift tax is to be recovered out of the estate of the donor who is now dead or from the donees themselves ?

Sardar Bahadur Dr. Kartar Singh Grewal of Ludhiana owned extensive properties which he disposed of in his lifetime by gifts and also bequeathed some of these to his heirs. Dr. Kartar Singh died on 8th of August, 1960, and at the time of his death a sum of Rs. 12,921 remained to be realised out of the gift tax which had been computed at Rs. 15,715. The first petitioner Iqbal Singh Grewal is the son while the second petitioner Inder Kaur is the wife of Iqbal Singh Grewal. In realisation of the gift tax 'Indar Niwas' which had fallen to the share of the first petitioner by will has been put to auction in pursuance of an order passed in exercise of his revisional jurisdiction by the Financial Commissioner (Shri B. S. Grewal) on 17th of October, 1964, reversing that of the Commissioner who had affirmed the order of the Collector that the gift tax should be realised from the donees, who are respondents 3 to 10.

In order to appreciate the point in controversy, it is necessary to state that Dr. Kartar Singh Grewal had five sons, Jagjit Singh, Daljit Singh, Jagdev Singh, Ajaib Singh and the first petitioner Iqbal Singh, Jagjit Singh had died leaving behind his only son Amarjit Singh who is respondent 3. Ajaib Singh, the fourth son of Dr. Kartar Singh is also dead and his issues are Harjit Singh Grewal respondent 4, Charanjit Singh Grewal respondent 5, and

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Balbir Kaur respondent 6. Dr. Kartar Singh first made a will on 19th of May, 1965, in favour of his grandson Amarjit Singh respondent 3, his sons Jagdev Singh Grewal and Iqbal Singh Grewal, petitioner and grandsons Harjit Singh Grewal, respondent 4, Charanjit Singh Grewal respondent No. 5 and Daljit Singh Grewal.

A few months later on 25th of January, 1957, Dr. Kartar Singh made a gift in favour of Amarjit Singh Grewal respondent 3 who is also a legatee under the will. By a second gift deed of 20th of February, 1958, Dr. Kartar Singh made a gift in favour of Harjit Singh Grewal respondent 4, and Charanjit Singh Grewal respondent 5, sons of Ajaib Singh Grewal, Kamaljit Singh, Ramanjit Singh and Samanjit Singh sons of Daljit Singh Grewal (respondents 7 to 9) and Balbir Kaur, daughter of Ajaib Singh Grewal (respondent 6).

It would thus be seen that the sons, grandsons and great-grandsons of Dr. Kartar Singh were the objects of his bounty by both the will and the gift-deeds. The first petitioner, his wife and his brother Jagdev Singh have benefitted only as legatees under the will, while the testator's grandsons respondents 4 and 5 are both legatees under the will and beneficiaries in pursuance of the second gift-deed of 20th of February, 1958. Daljit Singh Grewal is a legatee like the first petitioner but his sons are beneficiaries under the second gift, Dr. Kartar Singh having died before the full realisation of the gift tax, the question has arisen whether the legatees or the donees are liable to pay it?

The relevant provisions of the statute are sections 19 and 29 of the Gift Tax Act, 1958, which has been amended to a great extent by Central Act 53 of 1962. Section 19 is to this effect :—

> "19(1) Where a person dies, his executor, administrator, or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the gift-tax determined as payable by such person, or any sum which would have been payable by him under this Act if he had not died."

This section is in Chapter V dealing with "liability to assessment in special cases". On behalf of the petitioners, reliance is placed on section 29 which is in Chapter VII dealing with "payment and recovery of gift tax" and is to this effect :—

"29. *Gift-tax by whom payable.*—Subject to the provisions of this Act, gift-tax shall be payable by the donor but when in the opinion of the Gift-tax Officer the tax cannot be recovered from the donor, it may be recovered from the donee:

Provided that where the donees are more than one, they shall be jointly and severally liable for the amount of tax determined to be payable by the donor:

Provided further that the amount of tax which may be recovered from each donee shall not exceed the value of the gift made to him as on the date of the gift."

Under section 30, gift tax payable in respect of any gift comprising immovable property shall be the first charge on that property.

It is manifest, in my opinion, that section 19 deals with a situation where a donor being dead liability for the payment of the gift tax is fixed on his estate or his executors. An executor, administrator or a legal representative of the deceased donor is made liable only to the extent of the estate which has devolved on him. It means naturally that when the estate is capable of meeting the gift-tax, the donee is not to be made liable for the payment of the gift-tax. Section 29 reiterates that the primary responsibility for payment of the gift-tax is on the donor but when it cannot be so recovered, the donees will be liable for its payment. Where the donees are more than one, they shall be jointly and severally liable and the extent of their liability will never exceed the value of the gift. It is not difficult to visualise a situation where the donor's estate has been exhausted by gifts and in such circumstances it has been provided that the Exchequer will not be the loser and the donees will be liable.

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On a plain reading of these provisions of the statute, therefore, the view taken by the learned Financial Commissioner appears to be correct and the estate of the testator being available, the payment of the gift tax is to be the first charge on it under section 30. Though there is no illegality in levying the gift tax only on the estate which has come into the hands of the first petitioner and his wife, the Assessing Authority should have made all the legatees under the will of Dr. Kartar Singh liable for payment of the gift-tax. It seems, no effort has been made to realise the arrears of the gift-tax from the other legatees. It is to be hoped that the legatees who are equally liable would be made to share the burden of the gift-tax. It is not, therefore, surprising that Daljit Singh Grewal, who is also a legatee under the will, has chosen to support the position of the donees some of whom are his own sons. It is only when it is found that the gift-tax cannot be realised from all the legatees that the property of 'Inder Niwas' should alone be put to auction. With these observations, I would dismiss this petition making no order as to costs.

B. R. T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J. and H. R. Khanna, J.

BASAWA SINGH,—*Appellant.*

versus

SANTA SINGH AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 311 of 1962.

1965

November, 4th

Punjab Pre-emption Act (I of 1913)—S. 27—Pre-emptor found entitled to pre-empt a part of the land—Whether liable to pay the full price.

Held, that the right of pre-emption is a right of substitution, and if plaintiff is found to have a superior right of pre-emption only in respect of a part of the property sold and gets a decree for possession in respect of that part, it would be only to the extent of that part of the property sold that there would be substitution of the plaintiff in place of the vendee. As substitution would be confined only to a part of the property sold, it seems but fair that the plaintiff should be made to pay the price which represents that part of the property in respect of which he is substituted. It is no doubt true that a pre-emptor must take the sale as a whole, and in case he is entitled to pre-empt the whole of the property sold, he cannot be allowed to pick and choose