

A COMMISSIONER-OF INCOME-TAX, ANDHRA PRADESH

v.

T. N. ARAVINDA REDDY

October 5, 1979

B [V. R. KRISHNA IYER AND D. A. DESAI, JJ.]

Income-tax Act—1961 Section 54(1)—Scope of—Words & Phrases—Purchase—Meaning of.

C The respondent sold his house at a price sufficient to attract capital gains but he pre-empted the demand of tax by acquiring the common house from his brothers for a consideration of Rs. 30,000/- each through separate release deeds. On behalf of the Petitioner, it was contended that release deeds by which the respondent purchased the house in favour of one of them amounts to purchase within the meaning of s. 54(1) of the Act. The High Court having held it is, the Revenue came for Special Leave.

Dismissing the Petition,

HELD : Each release is a transfer of the releaser's share for consideration to the transferee. In plain English, the transferee purchases the share of each brother for a price. Had this been taken from non-fraternal owners or from one stranger owner, plain spoken people would have called it a purchase. The reason is supported by decision in *Hobshaw Brothers Ltd.*, [1956(3) AER 833 and 835] that purchase primarily means acquisition for money paid, not adjusted. There is no reason to divorce the ordinary meaning of the word 'purchase' as buying for a price or equivalent of price paid in kind or adjustment towards an old debt or for other monetary consideration from the legal meaning of that word in s. 54(1) of the Act.

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IN APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 157 of 1979.

In the Judgment and Order dated 1-2-1978 of the Andhra Pradesh High Court in Case Referred No. 114 of 1976.

J. Sorabji, Solicitor General and *Miss A. Subhashini* for the Petitioner.

Desai, K. J. John and *A. K. Verma* for the Respondent.

Order of the Court was delivered by

MR. JUSTICE V. R. KRISHNA IYER, J.—We regard the single point, persuasively presented by the learned Solicitor General on behalf of the petitioner (Commissioner of Income Tax, Andhra Pradesh), as deserving a dissenting order, although in dissent, since the question may arise in future and needs to be silenced.

Briefly, the facts. Four brothers, members of a coparcenary, partitioned their family properties, leaving in common a large house in the occupation of their mother. The eldest, who is respondent before us, sold his own house at a price sufficient to attract handsome capital gains tax, but he pre-empted the demand for tax by acquiring the common house from his three brothers who executed three release deeds for a consideration of Rs. 30,000/- each, adjusted towards the extra share (*Jeshtabhaga*) agreed to be given to the eldest by the next three. It is common ground that if these release deeds did amount to purchase of the house, s. 54(1) of the Income Tax Act, 1961, would save the respondent from exigibility to tax. So the short question, neatly identified by the learned Solicitor General is whether release deeds by sharers in favour of one of them whereby the joint ownership of all became separate ownership of one amount to purchase of house property within the meaning of s. 54(1) of the Act. The High Court has held it is and we concur. Undoubtedly, each release, in these circumstances, is a transfer of the releaser's share for consideration to the releasee. In plain English, the transferee purchases the share of each of his brothers. It is for a price of Rs. 30,000/- each. Had this been taken from non-fraternal owners of shares or from one stranger-owner, plain-spoken people would have called it a purchase. Why, then, should a legalist be allowed to play this linguistic distortion. The reason, supposedly supported by an English decision, is that purchase primarily means acquisition for money paid, not adjusted. Upjohn, J. in *Hobshaw Brothers Ltd. v. Mayer*⁽¹⁾ has circumspectly said :

There are no doubt to be found authorities and statutes which have extended that meaning. In Mr. T. Cyprian Williams book, the *Contract of Sale of Land*, at p. 3 he says: " 'sale', in the strict and primary sense of the word, 'means' an agreement for the conveyance of property for a price in money; but the word 'sale' may be used in law in a wider sense and so applied to the conveyance of land for a price consisting wholly or partly of money's worth other than the conveyance of some other land."

Apparently he considered that a sale for something other than money can in a wider sense be properly described as a sale.

We agree. The signification of a word of plural semantic shades may, in a given text, depend on the pressure of the context or other indicia. Absent such compelling mutation of sense, the speech of the lay is also the language of the law.

(1) [1956] 3 A. E. R. 833 at 835.

- A We find no reason to divorce the ordinary meaning of the word 'purchase' as buying for a price or equivalent of price by payment in kind or adjustment towards an old debt or for other monetary consideration from the legal meaning of that word in Sec. 54(1). If you sell your house and make a profit, pay Caesar what is due to him. But if you buy or build another subject to the conditions of
- B Sec. 54(1) you are exempt. The purpose is plain; the symmetry is simple, the language is plain. Why mutilate the meaning by lexical legalism. We see no stress in the section on 'cash and carry'. The point pressed must, therefore, be negated. We have declined to hear Sri S. T. Desai's artillery fire although he was armed *cap a pie* with *Mitakshara* lore and law. A point of suffocating scholarship
- C sometimes arrives in court when one nostalgically remembers the escapist verse :

"Where ignorance is bliss,
'Tis folly to be wise."

- D Amen !

- E A passing reference to avoidance and evasion of tax was made at the bar, a dubious refinement of a dated legal culture sanctified, though, by judicial dicta. The court is not the mint of virtue and one day in our Welfare State geared to Social Justice, this clever concept of 'avoidance' against 'evasion' may have to be exposed. Enough unto the day is the evil thereof.

N.K.A.

Petition dismissed.