

1968  
Sept. 21  
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XANTHOS SP.  
CHARALAMBIDES  
v.  
REPUBLIC  
(MINISTER OF  
FINANCE)

[LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

XANTHOS SP. CHARALAMBIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

*(Case No. 77/66).*

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*Income Tax—Assessment—Applicant's renunciation of his right to inherit from his deceased wife under section 57 of the Wills and Succession Law, Cap. 220 (1949 Ed.)—As a result, the whole property of the deceased wife including Applicants 1/6th share devolved by operation of law upon the minor children of the marriage—Whether such renunciation is a "disposition" within the meaning of the word in section 56(2)(3) of the Income Tax Law, Cap. 323—Cf. sections 55(1) and 62 of Cap. 220; section 21(1)(9)(b) of the English Finance Act, 1936.*

*Inheritance—Renunciation—Whether it is a 'disposition' within section 56 of the Income Tax Law, Cap. 323—See above.*

*Renunciation of inheritance—See above.*

*Disposition—Disposition within section 56(2)(3) of the Income Tax Law, Cap. 323—See above.*

*Words and Phrases—"Disposition" in section 56(2)(3) of the Income Tax Law, Cap. 323.*

Applicant's complaint in this recourse relates to the assessment of income tax made by the Respondent for the years of assessment 1958 and 1959. The undisputed facts of the case are shortly as follows:—

Applicant's wife died on the 14th April 1954, leaving as heirs the Applicant and three minor children. On the 3rd May, 1954, the Applicant acting under section 57 of the Wills and Succession Law, Cap. 220 (1949 Ed.) filed a declaration, in the prescribed form, in the District Court of Nicosia, renouncing his right to inherit from his deceased wife. The validity of this instrument has not been challenged. As

a result of this renunciation the whole property of Applicant's deceased wife including his own 1/6th share devolved upon his minor children.

The Respondent, in assessing Applicant's income tax for the aforesaid two years of assessment 1958-1959, treated the income from Applicant's share in the property which went to his minor children as a result of the renunciation as income of the Applicant by virtue of the provisions of section 56(2) of the Income Tax Law Cap. 323 (1959 Ed.) Sub-sections (2) and (3) of section 56 read as follows:

"2. Where by virtue or in consequence of any disposition made during the life of the disponent, other than a disposition for valuable and sufficient consideration, any income is payable to or for the benefit of any person in any year immediately preceding the year of assessment the income shall, if at the commencement of that year the person was under the age of eighteen years and unmarried, be treated for the purposes of this Law as the income of the disponent.

3. In this section 'disposition' includes any trust, grant, covenant, agreement or arrangement."

The short point in issue in these proceedings is whether Applicant's renunciation of his share in his deceased wife's estate is a "disposition" within the meaning of the word in the section above quoted. Holding that it is and dismissing the recourse, the Court:-

*Held, (1) (a).* Substantially the same provision is to be found in section 21(1)(9)(b) of the English Finance Act, 1936 which section was considered by the Court of Appeal in the case *Inland Revenue Commissioners v. Buchanan* [1957] 2 All E.R. 400. (Text of sub-section (1)(9)(b) is quoted in the judgment *post*).

(b) In the light of the principles laid down by Lord Goddard C.J. in the *Buchanan* case *ubi supra* at pp. 402 H, 403 and of the dicta of Sterling J. in *Carter v. Carter* [1896] 1 Ch. 62, at p. 67; and having regard to the wide, ordinary and unlimited by the context meaning of the word "disposition" as defined in section 56(3) of the Income Tax Law, Cap. 323 (*supra*), there cannot be, in my view, any doubt that the renunciation by the Applicant is covered by this section; or to put it in another way that by the renunciation

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Applicant has made a disposition in favour of his minor children of his 1/6th share of his wife's estate to which he became entitled, by operation of law, upon her death.

(2) On the other hand it is not denied that the disputed income became payable to Applicant's children in consequence of such disposition. I, therefore, hold that it was correctly treated by the Respondent as the income of the Applicant for income tax purposes under section 56(2) of the Income Tax Law, Cap. 323 (*supra*).

*Recourse dismissed.*

*No order as to costs.*

Cases referred to:

*Inland Revenue Commissioners v. Buchanan* [1957] 2 All E.R. 400, at pp. 402H, 403 per Lord Goddard C. J. *applied*;

*Carter v. Carter* [1896] 1 Ch. 62, at p. 67, per Sterling J., *applied*.

**Recourse.**

Recourse against the validity of income tax assessments made by the Respondent for the years of assessment 1958-1959.

*X. Clerides*, for the Applicant.

*L. Loucaides*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:-

LOIZOU, J.: Applicant's complaint in the present recourse relates to the assessment of income tax made by the Respondent for the years of assessment 1958-1959 (years of income 1957-1958). The undisputed facts of the case are shortly as follows:-

Applicant's wife died on the 14th April, 1954 leaving as heirs the Applicant and three minor children. On the 3rd May, 1954, the Applicant acting under section 57 of the Wills and Succession Law (Cap. 220 as it then was) filed a declaration, in the prescribed form, in the District Court of Nicosia, renouncing his right to inherit from his deceased wife. The validity of this instrument, which is attached

to the Application, had not been challenged. As a result of the renunciation the whole property of Applicant's deceased wife including his own 1/6th share devolved upon his minor children.

The Respondent, in assessing Applicant's income tax for the years of assessment 1958-1959, treated the income from Applicant's share of the property which went to his children as a result of the renunciation as income of the Applicant by virtue of the provisions of section 56(2) of the Income Tax Law (Cap. 323). The marginal note to this section reads: "certain transactions to be disregarded" and sub sections (2) and (3) thereof read as follows:

"(2). Where by virtue or in consequence of any disposition made during the life of the disponer, other than a disposition for valuable and sufficient consideration, any income is payable to or for the benefit of any person in any year immediately preceding the year of assessment, the income shall, if at the commencement of that year the person was under the age of eighteen years and unmarried, be treated for the purposes of this Law as the income of the disponer.

(3). In this section 'disposition' includes any trust, grant, covenant, agreement or arrangement".

The short point in issue in these proceedings is whether Applicant's renunciation of his share of his deceased wife's estate is a "disposition" within the meaning of the word in the section above-quoted.

Learned counsel for the Applicant argued that there cannot be a gift or disposition of property, which has not in the first instance come into the hands of the assumed disponer and that there can be no gift in favour of an unnamed person as in the present case. In support of his argument he has cited section 55(1) of the Wills and Succession Law (Cap. 220), which enables a person upon whom an inheritance devolves by law either to accept the inheritance or renounce it and section 62 of the same law which makes provision concerning the effect of renunciation; this last section in effect provides that an heir who has renounced the inheritance incurs no liability in respect of the debts of the deceased and can receive no benefit from the estate of the deceased either by operation of law or under the will of the deceased.

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I must say that I can derive no help from the provisions of either of these two sections; section 62 clearly refers to liability in respect of subsisting debts of the deceased and has no relevance to the issue in the present case.

Learned counsel's argument that there cannot be a disposition of property unless such property has actually come into the hands of the assumed disponer and unless the name of the person in whose favour the disposition is made is mentioned in the instrument does not impress me as a sound argument for the very simple reason, apart from the fact that the renunciation form is prescribed under the law, that the inevitable result of the renunciation by the Applicant of his share of the estate was for such property to devolve upon his children who were the only other heirs of the deceased, by operation of law, just as certainly as if he had mentioned each of his children by name.

As stated earlier on it appears to me that the crux of the matter is whether the renunciation can be said to be a disposition within the meaning of the relevant section.

It is interesting to note that substantially the same provision is to be found in section 21 of the English Finance Act, 1936, sub-section (1) of which reads as follows:-

“(1). Where, by virtue or in consequence of any settlement to which this section applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the commencement of that year the child was an infant and unmarried, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person”.

The word “settlement” is defined in paragraph (b) of sub section (9) of the same section as follows:-

“(9)(b). The expression ‘settlement’ includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;”

This section was considered by the Court of Appeal in England in the case of *Inland Revenue Commissioners v. Buchanan*, [1957] 2 All E.R. p. 400, a case cited by learned counsel for the Respondent.

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In that case a testator by his will settled his residuary estate on his children living at his death and their issue. Each child took a life interest in his share with remainder to his issue, but any such issue living at the date of the testator's death were also to take a life interest only with remainder to their issue. The testator died in 1927, and a son of his, G., and the son's daughter, D., who were then living, each became entitled to a life interest in one-third of the residuary estate. D.'s life interest, which was a protected life interest, was expectant on G.'s death and, subject to these two life interests, the capital of the one-third share belonged to her children. Under an express power in the testator's will D. executed in 1948 a surrender of her life interest, which was then still expectant on G.'s death. Under the terms of the will D.'s children then became entitled to the like estate or interest as if D. were dead. G. executed a surrender of his life interest on the following day. The income of the one-third share was thereafter applied for the benefit of D.'s children, who were infants. D.'s husband was assessed to surtax on the income so applied, on the ground that it was income that was to be treated as D.'s income under s. 21(1) of the Finance Act, 1936, because it was applied for the benefit of her children 'by virtue or in consequence of settlement', viz., the surrender made by D. who was, it was also alleged the 'settlor' for the purposes of that section.

It was held on appeal that D.'s husband was rightly assessed to surtax in respect of the income, since

- (a) D.'s surrender of the life interest was a "disposition" and, therefore, a settlement as defined in section 21(9)(b) of the Act of 1936.....and
- (c) it was by virtue or in consequence of the settlement within section 21(9)(b) that the income was paid to D.'s children.

Lord Goddard, the then Chief Justice of England, in the course of his Judgment said this: (at p. 402 H).

"Section 21(9)(b) of the Finance Act, 1936, provided that the expression 'settlement' included any 'disposition, trust, covenant, agreement, arrangement or transfer of assets', and counsel for the tax-payer has argued strenuously that a surrender is not a disposition. I should have great difficulty in holding that; I think that a surrender clearly is a disposition. A person can dispose

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of his interest in a fund or in a chattel or in anything else in a variety of ways, but, if having an interest in a fund, although the interest may not then be in possession he surrenders that interest, it seems to me that he disposes of it.”

and further down in his judgment: (at p. 403)

“She exercised the power which the will had given her to surrender in favour of her children, and, therefore, she disposed of the interest to her children. In those circumstances, looking at the clear words of section 21, it is in consequence of that disposition that income is paid for the benefit of the children of Lady Dufferin. She is the settlor because, if a disposition is a settlement, the person who disposes is the settlor. The income is being paid for the benefit of her children. It seems to me, therefore, that the section entirely covers the facts of this case”.

In a much older case, *Carter v. Carter* [1896] 1 Ch. p. 62 Sterling J., (at p. 67) referring to the meaning of the word “disposition” had this to say:-

“The words ‘dispose’ and ‘disposition’ in the Fines and Recoveries Act are not technical words, but ordinary English words of wide meaning; and where not limited by the context those words are sufficient to extend to all acts by which a new interest (legal or equitable) in the property is effectually created”.

Turning now to the facts of the present case I am of the view that, in the light of the above Judgments, and having regard to the wide, ordinary and unlimited by the context meaning of the word “disposition” as defined in section 56(3) of the Income Tax Law (Cap. 323) there cannot be any doubt that the renunciation by the Applicant is covered by this section; or to put it in another way that by the renunciation Applicant has made a disposition in favour of his children of his 1/6th share of his wife’s estate to which he became entitled, by operation of law, upon her death. It is not denied that the disputed income became payable to Applicant’s children in consequence of such disposition and I, therefore, hold that it was correctly treated by the Respondent as the income of the Applicant for income tax purposes.

In the result this recourse fails and is hereby dismissed. In all the circumstances there will be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*