Estate of Stewart v. Commissioner, 74 T. C. 1054 (1980)

A joint will can sever a tenancy by the entirety if it provides for a disposition inconsistent with the rights of survivorship.

Summary

In Estate of Stewart v. Commissioner, the Tax Court ruled that a joint will executed by Robert and Edith Stewart severed their tenancy by the entirety in certain real property. The will stipulated that upon the death of the first spouse, half of the property would pass to their children, which was deemed inconsistent with the rights of survivorship inherent in a tenancy by the entirety. Consequently, Edith's interest passed directly to the children upon her death, not to Robert, thereby preventing any taxable gift by Robert to the children. The court's decision was grounded in the interpretation of Indiana law and the principles of joint wills as both testamentary and contractual instruments.

Facts

In 1974, Robert and Edith Stewart were diagnosed with cancer. They executed a joint, mutual, and contractual last will and testament on March 20, 1976, specifying that upon the death of the first spouse, one-half of their real property held as tenants by the entirety would pass to their children. Edith died on November 16, 1976, and her will was probated, distributing her interest in the property to the children. Robert died on January 29, 1978. The IRS argued that Robert made a taxable gift of Edith's interest to the children after her death, which should be included in his gross estate.

Procedural History

The IRS issued a notice of deficiency asserting estate and gift tax liabilities against Robert's estate. The estate filed a petition with the U. S. Tax Court to contest these deficiencies. The Tax Court consolidated the cases and ruled in favor of the estate, holding that the joint will severed the tenancy by the entirety, and thus, no gift occurred.

Issue(s)

1. Whether the execution of a joint will by Robert and Edith Stewart severed their tenancy by the entirety in the real property.

2. If severed, whether Robert made a gift of Edith's interest in the real property to their children.

Holding

1. Yes, because the joint will provided for a disposition of the property inconsistent

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with the rights of survivorship, thereby severing the tenancy by the entirety under Indiana law.

2. No, because Edith's interest passed directly to the children upon her death, and thus, no gift was made by Robert.

Court's Reasoning

The court analyzed whether the joint will severed the tenancy by the entirety under Indiana law, noting that such a will acts both as a testamentary instrument and a contract. The court cited cases where mutual wills had severed joint tenancies and, by analogy, applied similar reasoning to tenancies by the entirety. The court emphasized that the key factor was the inconsistency between the will's terms and the rights of survivorship. The joint will's provision that one-half of the property pass to the children upon the first spouse's death was deemed inconsistent with the survivorship rights, thus severing the tenancy. The court rejected the IRS's argument that a tenancy by the entirety could not be severed by a mutual will, pointing out that such a position would be based on outdated concepts of marriage. The court also noted the Probate Court's action in distributing Edith's interest directly to the children, further supporting its conclusion.

Practical Implications

This decision clarifies that a joint will can sever a tenancy by the entirety if it provides for a disposition inconsistent with survivorship rights. Attorneys should draft joint wills with care, ensuring clarity on the intended disposition of property held in such tenancies. The ruling impacts estate planning by allowing couples to use joint wills to control the distribution of property held as tenants by the entirety, potentially affecting estate and gift tax planning. Subsequent cases, such as In re Estate of Waks, have followed this principle, reinforcing its application in estate law. This case also highlights the importance of understanding state-specific property law when dealing with federal tax issues.

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