
(1945) 02 AHC CK 0035
In the Allahabad High Court

COMMISSIONER OF Income Tax

APPELLANT

Vs

SARWAN KUMAR.

RESPONDENT

Date of Decision : 14-02-1945

Acts Referred:

Income Tax Act, 1961 — Section 66

Citation : (1945) 15 AWR 227 : (1945) 13 ITR 361

Hon'ble Judges : Iqbal Ahmad, C.J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

IQBAL AHMAD, C.J. - This is a reference u/s 66 of the Income Tax Act by the Income Tax Appellate Tribunal, Delhi and the questions referred for decision by this Court are :-

(1) Whether the undivided Hindu family of which Raja Jagat Kumar was the sole surviving coparcener and who died in 1934, leaving behind two widows, an unmarried daughter, a mother, a stepmother who during his lifetime was entitled to and receiving maintenance as the widow of a predeceased coparcener, and two illegitimate sons of his father who are receiving maintenance out of the family estate, ceased to exist on Raja Jagat Kumars death.

(2) Whether when the amount of maintenance that the widow of predeceased coparcener had in the past been receiving as a member of a Hindu undivided family has been fixed by an agreement, the amount received by her under the agreement ceases to be an amount received by her as member of an undivided Hindu family.

For a proper appreciation of these questions, which are a bit involved, it is necessary to state the facts in some detail as they appear from the statement of the case submitted by the Tribunal

There is an estate known as Sahaspur Bilari Estate in the district of Moradabad.

The estate was till the year 1915 admittedly owned by a joint Hindu family of which the head and the karta was Raja Kishen Kumar. The family pedigree of Raja Kishen Kumar is as follows :-

RAJAKISHEN KUMAR (Died on June 17, 1915).

?

Raja Raj Kumar

(Died on November 3, 1915)

?

Senior Rani Rani Panna Kuar

Junior Rani Rani Amrit Kuar

?

Raja Jagat Kumar

(Died in March 1934)

?

Bibi Lachmi (Married)

Senior Rani

Rani Pritam Kuar

?

Junior Rani

Rani Jai Devi Kuar

Raj Kumari Indra Mohini (unmarried)

Raja Kishen Kumar died in June 1915 and then Raja Raj Kumar became the karta of the undivided Hindu family consisting of himself and his minor son Jagat and the other female members of the family. Raj Kumar also died in November 1915 leaving two widows Panna Kuar and Amrit Kuar. He also left him surviving two illegitimate sons named Lachhmi Narain and Jai Narain by a concubine named Mst. Kokila. As Jagat Kumar was a minor at the time of the death of Raj Kumar, the Court of Wards assumed superintendence of the estate of which Jagat Kumar had become the sole owner. It is a matter of admission that after the death of Raj Kumar, Panna Kumar, the Senior Rani, was paid by the Court of a Wards a monthly allowance of Rs. 2,000 on account of her maintenance.

In 1927 dissensions appear to have arisen in the family and Panna Kuar instituted a suit in that year in the Court of the Subordinate Judge of Moradabad for possession of the Bilari Estate. The suit was based on the allegation that Amrit Kuar was not a lawfully wedded wife but only a concubine of Raja Raj Kumar, and as such, Jagat Kumar, Panna Kuar, as his sole surviving widow became entitled to the entire estate. Jagat Kumar, through the Collector of Moradabad who was in charge of the Court of Wards, Rani Amrit Kuar and Bibi Lachhmi were impleaded as defendants to the suit. The suit was contested by the defendants. They denied the allegations contained in the plaint and maintained that Amrit Kuar was the wife of Raj Kumar and Jagat Kumar was Raj Kumars legitimate son.

The suit did not proceed to trial but was compromised on June 4, 1928. The compromise is evidenced by an application that was filed in Court. The application runs as follows :-

"In the case noted above an agreement is being made between the parties in accordance with the advice of the Senior Member, Board of Revenue, Mr. Collett and in honour of King Emperors birthday ceremony.

"This agreement is come to between the parties of whom, I, the plaintiff Rani Panna Kuar, hereby withdraw my civil suit against Raja Jagat Kumar and the Collector of Moradabad against Bibi Lachhmi and against Rani Amrit Kuar, and I explicitly withdraw all allegations made therein; and I further undertake not to bring any such suit again nor to repeat the allegations in future.

"We, the other parties, viz., Raja Jagat Kumar and the Collector of Moradabad, Babi Lachhmi, and Rani Amrit Kuar, accept the withdrawal of the suit and allegations and undertake not to take any action, civil or criminal, against Rani Panna Kuar in respect of this suit and in general we agree to treat her in a friendly fashion in future.

"Parties will bear their own costs."

In view of the compromise the Subordinate Judge passed the following orders on July 1928 :-

"Parties have come to terms and file compromise. I, therefore, allow the case to

be withdrawn in terms of the compromise."

After the withdrawal of the suit, by an agreement dated May 5, 1932, the Court of Wards paid to Panna Kuar a sum of Rs. 10,000 in consideration of the withdrawal of the suit by her and agreed to raise the monthly allowance, that she was receiving, from Rs. 2,000 to Rs. 2,250 a month. It is common ground that during her lifetime Panna Kuar all along received this allowance.

Jagat Kumar attained majority in or about the year 1933 and the estate was released from the superintendence of the Court of Wards in January 1933.

By a notification dated 16th February, 1934, the provisions of Part I of the United Provinces Estates Act (VII of 1920) were made applicable to Raja Jagat Kumar in respect of the immovable property described in a schedule to that notification, in which he had a separate, permanent, heritable and transferable right. The Bilari Estate is, therefore, at present an impartible zamindari governed by the United Provinces Estates Act.

Within a month of this notification Jagat Kumar died in March 1934 and the Court of Wards again assumed superintendence of the estate on behalf of Jagat Kumars senior widow, Rani Pritam Kuar.

In pursuance of the agreement of 1932 Panna Kuar was paid a sum of Rs. 27,000 as allowance for each of the four previous years, 1935-36, 1936-37, 1937-38 and 1938-39. The Income Tax Officer being of the opinion that the amount received by Panna Kuar in each of these years was liable to payment of Income Tax, assessed her with respect to these amounts. Panna Kuar had contended before the Income Tax Officer that the amounts received by her were exempt from tax in view of the provisions of Section 14 (1) of the Income Tax Act. Section 14 (1) runs as follows :-

"The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family."

The Income Tax Officer overruled this contention of Panna Kuar and Panna Kuar then filed four appeals with respect to each of the four assessment years before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner agreed with the Income Tax Officer and dismissed the appeals. Panna Kuar then filed four appeals before the Appellate Tribunal and the Tribunal allowed all the four appeals on the authority of the decision of this Court in *Bhagwati v. Commissioner of Income Tax, C. P. & U. P.*

The Commissioner of Income Tax being dissatisfied with the decision of the Tribunal filed an application u/s 66 of the Act requesting the Tribunal to refer to the High Court the following question :-

"(a) When there is no male member, can it be said that a Hindu undivided family is in existence ?

(b) If the answer to the first question is in the affirmative, did Rani Panna Kuar

receive the maintenance allowance of Rs. 27,000 a year in her capacity as a member of a Hindu undivided family and not by virtue of the agreement executed on the 5th May, 1932 ?"

The Appellate Tribunal, being of the opinion that the case is one of unusual difficulty and in its essential characteristics somewhat novel, referred the questions set out at the inception of this judgment of this Court for decision.

Now, it is not disputed that so long as Raja Raj Kumar was alive a Hindu undivided family consisting of Raj Kumar, his son Jagat Kumar, his two wives and his unmarried daughter existed. On the death of Raj Kumar, Jagat Kumar was left as the sole surviving male member of the family and he became entitled to the estate by right of survivorship. There is abundant authority for the proposition that there can be a Hindu undivided family with a single male member provided there are widows of deceased coparceners or other persons entitled to maintenance from him, vide *Vedathanni v. Commissioner of Income Tax, Madras*, *Commissioner of Income Tax, Bombay v. Laxmi Narayan*, and *Bhagwati v. Commissioner of Income Tax, U. P. & C. P.* Indeed it is not, and was not, disputed by the Department that the existence of at least one male member is essential for the constitution of a Hindu undivided family. In support of this contention the learned counsel has placed reliance on *Chandra v. Gojara Bai*, and *Khushwaqt Rai v. Jagannath Prasad Tandan*. In these cases there are observations that support the contention that there can be no joint Hindu family consisting of females only. The decision in *Chandras* case was noticed by their Lordships of the Privy Council in *Anant Bhikkappa Patil v. Shankar Ramchandra Patil*, and was not approved. But apart from this we, for the reasons to be presently state, are not prepared to subscribe to the proposition that the existence of at least one male member is essential for the constitution of an undivided Hindu family.

It is well settled that the existence of a joint estate is not an essential requisite to constitute a joint Hindu family and there may be such a family without owning any property. In other words, a joint Hindu family may be possessed or may not be possessed of property. A Hindu coparcenary as compared to a Hindu undivided family is a much narrower body and includes only those persons who acquire by British an interest in the joint or coparcenary property. But in the case of a joint Hindu family that is not possessed of any property there can be no coparcenary body for the simple reason that the family does not own joint or coparcenary property.

In the case of an undivided Hindu family that is not possessed of any property the jointness consists in mess, residence, worship etc. It is conceded that in such a case an undivided Hindu family can exist so long as there is a male member and some females constituting the family. Why the disappearance of the male member in the case of such a family should cause disruption of the family is not explained. Even after the disappearance of the last surviving male member the females may be joint in mess, residence etc., and continue to remain undivided.

A family is an association of people. It is a natural as distinct from an artificial association. The members of an undivided Hindu family consist both of males and females. In other words, females are and can be component parts of an undivided Hindu family. That being so, there can be in our judgment, an undivided Hindu family consisting of females only.

In the case of an undivided Hindu family which is possessed of joint property the "coparcenary" no doubt comes to an end with the disappearance of the last male member of the family, but, as already pointed out, the existence of coparcenary is not essential for the existence of a joint Hindu family. It follows that the continuance of coparcenary can be no test for the determination of the question whether a particular Hindu family is or is not undivided. Take a case where an undivided family consists of A, his wife and his two unmarried daughters. On the death of A the property of the family will devolve not by survivorship but by right of inheritance. All the same after the death of A, his widow and his daughters may decide to remain undivided. They being Hindu and members of the same family will undoubtedly constitute a Hindu family and as they continued to remain undivided, the family must, we consider, be regarded as an undivided Hindu family.

For the reason given above we answer the first question referred to us in the negative.

The answer to the second question must also, in our judgment be in the negative. That, even before the agreement of May 1932, Panna Kuar was receiving a sum of Rs. 2,000 on account of her monthly allowance admits of no doubt. It is equally manifest that she received this allowance in her capacity as a widow of a Hindu undivided family. Before the execution of the agreement the amount received by her was, in view of Section 14 (1) of the Act, exempt from the payment of tax. The question then remains whether the mere execution of the agreement, by which the allowance was increased from Rs. 2,000 to Rs. 2,250 a month, alters the position and nullifies the exemption provided for by Section 14 (1). The agreement did no more than to acknowledge the liability to pay monthly allowance at a fixed and enhanced rate to Panna Kuar. The liability evidenced by the agreement existed from before and the execution of the agreement could not alter the nature of that liability. The liability to pay monthly allowance to Panna Kuar was referable to the fact that she was the widow of an undivided Hindu family and was, under the Hindu law, entitled to maintenance. The nature of the allowance received by her was not, therefore, altered and, in spite of the execution of the agreement, the allowance received by her was in the capacity as a widow of an undivided Hindu family. We have not overlooked that the agreement of May 1932 did not in terms limit the annuity of Panna Kuar to her widowhood. But, in fact, she died without ever remarrying, and even if the agreement might, on a strict construction, be construed as some enlargement of her rights as a Hindu widow, we should still consider that what she received under it during her widowhood was referable to her character as a member of a

Hindu undivided family. Moreover it is true that from February 1934 the incident of impartibility attached to the Bilari Estate, but it is well settled that in the case of an impartible estate the fact that the holder for the time being is exclusively entitled to the estate is not inconsistent with other members of the family being joint with him. Vide Commissioner of Income Tax v. Vishweswar Singh and collector of Gorakpur v. Ram Sundar Mal. On the death of Jagat Kumar, Rani Pritam Kuar, his senior widow, became solely entitled to the estate, but the liability to pay the allowance to Panna Kuar also developed on her from Jagat Kumar. We, therefore, answer the second question in the negative.

The opposite party is entitled to the costs of this reference which we assess at a sum of Rs. 150.

A copy of this judgment under the seal of the Court and the signature of the Registrar will be sent to the Appellate Tribunal.

Reference answered in the negative.