
(1989) 06 KL CK 0024

In the High Court Of Kerala

Case No : Income-tax Reference No's. 43 and 44 of 1984

Commissioner of Wealth-tax

APPELLANT

Vs

P.M. Padmanabhan

RESPONDENT

Date of Decision : 01-06-1989

Acts Referred:

Citation : (1989) 180 ITR 598

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; Sebastian Davis, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the Commissioner of Wealth-tax (Revenue), the Income Tax Appellate Tribunal has referred the following two questions of law, for the decision of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that a female member is entitled to a share on partition of properties which belonged to a joint Hindu family ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in view of the Kerala Joint Hindu Family System (Abolition) Act, 1975, only the presumptive share of the assessee can be included in computing his net wealth under the Wealth-tax Act, 1957 ?"

2. The respondent is an assessee to wealth-tax. We are concerned with the assessment years 1977-78 and 1978-79. The respective valuation dates are March 31, 1977, and March 31, 1978. The main objection to the assessments is regarding the status and the inclusion of the entire property in the wealth-tax assessments. The Wealth-tax Officer assessed the respondent as an individual. He rejected the plea of the assessee that the Hindu undivided family in which status the assessee was assessed till then had become statutorily extinct with effect from December 1, 1976, by the operation of the Kerala Joint Hindu Family System (Abolition) Act, 1975. Even though the Wealth-tax Officer assigned the

status of the assessee as an "individual", he included in the assessments the entire assets which originally belonged to the Hindu undivided family. In appeal, the Appellate Assistant Commissioner held that in view of the Kerala Act (Kerala Joint Hindu Family System (Abolition) Act, 1975), only the presumptive share of the assessee in the properties can be assessed in his hands. The Appellate Tribunal concurred with this view. Thereafter, at the instance of the Revenue, the Appellate Tribunal has referred the two questions of law, formulated hereinabove, for the decision of this court.

3. We heard counsel for the Revenue, Mr. P. K. R. Menon, as also counsel for the respondent-assessee, Mr. Davis. In the light of the decisions of this court in W. A. No. 159 of 1981, *Sreepadam Vs. Commissioner of Wealth Tax and Others*, ; P.G. Narayanaswamy Vs. Commissioner of Income Tax, and Commissioner of Wealth-tax Vs. T. Lakshmikutty Amma, (Appendix) (infra), there can be no assessment in the status of a Hindu undivided family in Kerala State after December 1, 1976. This position is not open to any doubt.

4. The facts in this case are in a narrow compass. The assessee is the sole coparcener in the Hindu undivided family. The only other member of the Hindu undivided family was his wife. It is stated that the assessee is a Jain by religion. So, it cannot be disputed that Hindu law applies to him. The effect of Section 4 of the Act 30 of 1976 is to bring an end to the Hindu undivided family. Section 4 of the Act says that all members of a Hindu undivided family governed by the Mitakshara law holding any coparcenary property shall be deemed to hold it as tenants-in-common as if a partition had taken place among all the members of that Hindu undivided family. Before the Appellate Tribunal, the Revenue contended that even if there was a partition in the Hindu undivided family, the assessee's wife was not entitled either to claim partition or to a share on partition and so by the extinction of the joint family, the entire properties will be held by the assessee as an individual. He has to be assessed on the entirety of the properties and not on his presumptive share alone in the properties. The Income Tax Appellate Tribunal adverted to the legal effect flowing from the "Kerala Joint Hindu Family System (Abolition) Act, 1975, which held that the properties are held by the members of the joint family as tenants-in-common from December 1, 1976. It was stated that the wife of the assessee, being a member of the Hindu undivided family, will be holding her separate share. The Appellate Tribunal held that it is not correct to say that a female member is not entitled to a share on partition of the joint family properties. Reliance was placed on the decision of this court in the case of *Saraswathi Ammal v. Anantha Shenai* AIR 1966 Ker 66 : [1965] KLT 141, to hold that when the joint family is divided or partitioned, the wife of the assessee is entitled to a share in the estate in lieu of her right to maintenance. In the light of the decision of this court in W. A. No. 159 of 1981 and other cases, it was held that with effect from December 1, 1976, there will be no joint Hindu family in the State and the assessee can be assessed only on the basis of his presumptive share in the properties.

5. Mr. P. K. R. Menon, counsel for the Revenue, attacked the reasoning and conclusion of the Tribunal to hold that the assessee's wife will be entitled to a share in the estate and so only the presumptive share of the assessee in the properties can be included in the wealth-tax assessments. It was argued that the assessee is a Hindu, governed by the Hindu Mitakshara law in South India and in South India the practice of allotting a share to females on partition had become obsolete long ago. The decision relied on by the Appellate Tribunal will not apply to the instant case, *Saraswathi Ammal v. Anantha Shenai* AIR 1966 Ker 66 : [1965] KLT 141. It related to the right of a Hindu female member of a joint family in the erstwhile Cochin State wherein the Hindu law applicable was different. Counsel for the assessee, Mr. Davis, argued that the effect of the Kerala Joint Hindu Family System (Abolition) Act, 1975, is to make a statutory extinction of the joint family and to result in a situation wherein the members will hold the properties only as tenants-in-common. Since the assessee's wife is a member of the Hindu undivided family, on extinction of the joint family, it should be deemed that she also obtained a share in the joint family properties and so in the assessments of the assessee in this case, only his presumptive share can be brought to tax. Incidentally, Mr. Davis also mentioned that there are other male members in the family besides the assessee and that aspect has not been reckoned with by the authorities.

6. On hearing the rival contentions and on a perusal of the order of the Appellate Tribunal as a whole, we are constrained to say that the real question that arose for decision was not viewed in a proper angle or perspective. The fact that the Hindu undivided family became extinct as a result of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Kerala Act No. 30 of 1976), is no more in doubt. But, the controversy in this case is, whether, on such extinction, the assessee's wife will be entitled to a share in the properties belonging to the Hindu joint family. It is true that the assessee's wife is a member of the Hindu joint family. Section 4 of the Act 30 of 1976 predicates that the members of the Hindu undivided family governed by the Mitakshara law holding any coparcenary property shall hold it as tenants-in-common on extinction of the family as if a partition among all the members of the Hindu undivided family regarding the joint family properties had taken place. Only if the assessee's wife is entitled to claim a partition in the properties or she is entitled to a share on partition of the joint family properties, can it be stated that she will hold such properties which will be allotted to her on partition as tenants-in-common. The question is whether the assessee's wife is entitled to demand partition or to a share on partition of the joint family properties ?

7. The question posed is not free from difficulty. That will depend upon the personal law by which the assessee is governed. Jains are governed by Hindu law, as modified by custom. Only if, by the law applicable to the particular school of Hindu Mitakshara law or by the customary law of the particular person, a female member can demand partition or is allotted a share on partition in lieu of her right to maintenance or marriage expenses, then only she is entitled to a

share in the properties. The said right is not universal in all schools of Hindu Mitakshara law. As far as the Mitakshara law (Madras school) is concerned, text-books say that the practice has become obsolete long ago. For deciding the question in controversy, the first thing to be ascertained is the particular school of law by which the assessee is governed. The further question will be whether, by the particular school of law by which the assessee is governed, the female member can claim partition or is entitled to a share on partition in lieu of her right to maintenance or marriage expenses. If both these questions are answered in the affirmative, then only the assessee's wife will get a right in the properties. Then only, it can be stated that, by the extinction of the joint family, as a member of the joint family and as a tenant-in-common, the assessee's wife will be entitled to a share in the properties and as a sequel to this, the assessee can be assessed only on his presumptive share in the properties. These aspects have not been borne in mind or evaluated or adjudicated by the Appellate Tribunal. In the absence of such facts, it is not possible to say whether the assessee's wife obtained any right in the property and whether on extinction of the joint family, as per the Kerala Act 30 of 1976, she became entitled to a share in the estate in lieu of her right to maintenance. The Appellate Tribunal was in error in holding that the assessee's wife is entitled to a share in the estate in lieu of her right to maintenance. The error was caused because the Tribunal did not apply the proper law applicable to the parties and wrongly assumed that the decision in Saraswathi Ammal's case, AIR 1966 Ker 66: [1965] KLT 141, will apply to the facts of this case.

8. Therefore, we hold that the Appellate Tribunal was wrong in affirming the decision of the Appellate Assistant Commissioner and in holding that only the presumptive share of the assessee in the properties can be assessed in his hands. The matter requires fresh appraisal.

9. In the absence of relevant facts and findings, we are not in a position to answer the questions referred to us by the Appellate Tribunal. Therefore, we decline to answer the questions referred to us. At the same time, we direct the Income Tax Appellate Tribunal to restore W. T. A, Nos. 24 and 25 (Coch.) of 1981 to file and dispose of the appeals afresh, in the light of the observations and directions contained hereinabove and in accordance with law.

10. The Income Tax referred cases are disposed of as above.

11. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate tribunal, Cochin Bench.