

(2002) 09 KL CK 0015
In the High Court Of Kerala
Case No : T.R.C. No. 29 of 1996

Deputy Commissioner

APPELLANT

Vs

Yocos Family Trust

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Hindu Succession Act, 1956 — Section 30, 6
Kerala Joint Hindu Family System (Abolition) Act, 1975 — Section 4(1)

Citation : (2002) 09 KL CK 0015

Hon'ble Judges : S. Sankarasubban, J; A. Lekshmikutty, J

Bench : Division Bench

Advocate : S. Soman, Government Pleader, for the Appellant; P.V. Jyothi Prasad, for the Respondent

Judgement

S. Sankarasubban, J.—This revision is filed by the Revenue. The matter relates to the Agricultural Income Tax Act. The assessment year is 1981-82. The question involved in this case is with regard to the status allotted. In the return of the income the Assessee has claimed the status as tenants-in-common consisting of four members which included his wife, son and daughter. The Assessing Authority allotted the status as tenants-in-common only for the Assessee and his son. His wife and daughter was excluded. The first Appellate Authority also agreed with the findings of the Assessing Authority.

2. The Appellant filed appeal before the Tribunal. The Tribunal held that the Assessee's family constituted a Hindu undivided family and when the coming into force of the Kerala Joint Hindu Family System (Abolition) Act, 1975 from 1st December 1976 there was notional partition of the properties of the persons and hence, the tenants-in-common are the Assessee's wife, son and daughter. The Tribunal found that the effect of Section 4(1) of the Abolition Act would be that the Assessee's son, wife and daughter would hold the properties as tenants-in-common. It is against that this revision is filed.

3. Section 4(1) of the Joint Hindu Family System (Abolition) Act says that all

members of an undivided Hindu Family governed by the Mitakshara law holding any coparcenary property on the day this Act comes into force shall with effect from that day, be deemed to hold it as tenants-in-common as if a partition had taken place among all the members of that undivided Hindu Family as respects such property and as if each one of them is holding his or her share separately as full owner thereof. According to us, the order of the Tribunal is not correct. So far as coparcenary is concerned, all members of an undivided Hindu Family are not members of coparcenary. In Mulla Hindu Law, Vol. I, Seventeenth Edition at page 315, it is stated as follows: "A Hindu coparcenary is a much narrower body than the Joint Family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are the sons, grandsons and great-grandsons of the holder of the joint property for the time being, in other words, the three generations next to the holder in unbroken male descent." At page 317, it is stated that a coparcenary is purely a creature of law; it cannot be created by act of parties. Again at page 322, it is stated thus: "No female can be a coparcener under Mitakshara law. Even a wife, though she is entitled to maintenance out of her husband's property and has to that extent an interest in his property, is not her husband's coparcener. Nor is a mother a coparcener with her sons neither a mother-in-law with her daughter-in-law." At page 324 it is stated thus:

Joint family or coparcenary property is that in which every coparcener has a joint interest and a joint possession. The incidents of a coparcenary were summarised in the undermentioned decision of the Supreme Court. The following are the main incidents of joint family or coparcenary property it-

(a) devolves by survivorship, not by succession: This proposition must now be read in the context of Sections 6 and 30 of the Hindu Succession Act, 1956, in cases where those sections are applicable;

(b) is the property in which the male issue of the coparceners acquire an interest by birth.

Thus, it is seen that so far as the coparcenary property is concerned, only male members have the right over the property.

4. In *Dy. Commissioner of Sales Tax v. R.S. Chidambaram* 1993 K.L.J. (TC) 576 it was held as follows: "We are of the view the Agricultural Income Tax Appellate Tribunal has wholly misunderstood the nature of the property obtained by the Respondent as per the partition deed dated 29th March 1975. It is true that the properties so partitioned were obtained by the Respondent/Assessee in a partition between himself, his brother and his father. They were ancestral properties But, the crucial question is whether the Respondent's wife, the only other member in the family or unit, had any right in the said separate property. Admittedly, she is not a coparcener. She is, if at all, only a female member of the family. She is not entitled to claim partition. She is not entitled to any property." Thus, in this case, the Tribunal was wrong in holding that the Assessee along

with his wife and children will be entitled to hold the properties as tenants-in-common.

5. In the above view of the matter, only the father and son will be entitled to hold the properties as tenants-in-common. The order of the Tribunal is modified to the above extent. We hold that the property can be assessed with regard to the father and son as tenants-in-common.

T.R.C. is disposed of as above.