(1964) 01 CAL CK 0016

In the Calcutta High Court

Case No : Civil Revision Case No. 216 (w) of 1962

Dulal Chand Bhar APPELLANT

Vs

Certificate Officer, 24 Parganas RESPONDENT

Date of Decision : 21-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 68 CWN 349

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Alak Gupta and Bikash Chandra Sen, for the Appellant;Balai Lal Pal, for the Respondent

Judgement

Banerjee, J.—One Fakir Chandra Bhar, now deceased, was paid to have been the Karta of a Hindu undivided family, governed by the Dayabhaga School of law. For the assessment years 1947-48, 1948-49 and 1949-50, the said undivided Hindu family was assessed to income tax. The taxes were not paid. After the death of Fakir Chandra Bhar, steps were taken for realisation of the tax, under the Public Demands Recovery Act (hereinafter referred to as the Act) and three certificates for realisation of the taxes in arrears were filed before the Certificate Officer, District 24 Parganas. In the certificates, the certificate debtor was described as "Sri Fakir Chandra Bhar, Karta of the H.U.F. M/s. Fakir Chandra Bhar and others." After the filing of the certificate there were objections filed in each of the certificate cases, interalia, to the effect that Fakir Chandra Bhar having had died, on June 15, 1951, the certificate proceedings against a dead person should be treated as null and void. The Certificate Officer found that the undivided family consisted of Fakir Chandra Bhar and his brother Jaharlal Bhar and passed an order, on December 29, 1953, bringing on record the name of Jaharlal Bhar in place of Fakir Chand Bhar, deceased, as the Karta and calling upon him to pay up certificate debt. Much progress does not appear to have been made in the certificate cases after the name of Jaharlal Bhar was brought on the record. The said Jaharlal Bhar died on February 11, 1959. Thereupon on September 23, 1959, the heirs and legal representatives of both Fakir and Jahar were made the certificate-debtors in their capacity as members of the Hindu undivided family. Thereafter, fresh notices, in form 3, were served upon the said heirs and legal representatives. The petitioner, who is a son of Jaharlal, received such a notice on October 27, 1959.

2. On July 18, 1961, the petitioner filed an application u/s 37 of the Act, interalia, raising the following objections:-

(a) the certificate was not enforceable because the joint family had split up;

(b) the substitution of the name of Jaharlal Bhar in the certificates in place of Fakir Chandra Bhar deceased was illegal and without jurisdiction.

(c) the execution was barred by limitation.

(d) the personal properties of the petitioner were not liable under the certificates.

3. The Certificate Officer over-ruled the objections with the following observations: -

The assessee in the present case, as has been already stated, is the H.U.F. of which Dulal became a member after the death of his father Jaharlal Bhar. As a member of the H.U.F. Dulal is liable for the debts of the H.U.F. So his contention that he is not liable for the present demand is untenable.

The ground of limitation urged by the CD is equally untenable. It is true that the petitioner along with his brothers was made a CD on 23.9.59 after the death of his father Jaharlal. The execution proceeding was pending when this inclusion took place. So article 182 of the Limitation Act was not applicable and there was nothing wrong in this inclusion as a CD on account of his being the son of the Head of the assessee--H.U.F. The petitioner inherited the assets of the H.U.F. and there is no reason why he should not be made liable for the debts of the H.U.F.

4. Aggrieved by the order of the Certificate Officer the petitioner moved this court, under Article 226 of the Constitution, praying for a writ of certiorari for the quashing of the certificate cases and for a writ of mandamus restraining the certificate Officer from giving effect to the certificates and obtained this Rule.

5. Mr. Alak Gupta, learned Advocate for the petitioner urged the following points in support of the Rule. He contended in the first place, that the unit of assessment was on an undivided family; the certificate debtor should have been described as "an undivided Hindu family represented by so and so the Karta"; but the description of the certificate debtor was "Sri Fakir Chandra Bhar, Karta of the H. U. F., M/s. Fakir Chandra Bhar and others", which was erroneous. He contended, in the next place, that Fakir Chandra Bhar had died on June 15, 1951 and the certificates were filed thereafter, on March 31, 1952; the certificates being in the name of a dead person were nullities. He contended, in the third place, that if an undivided family is the certificate-debtor then the family cannot be treated as dead on the death of the Karta and there was no occasion to bring

in the legal representatives of the Karta on the record. He contended, in the fourth place, that after the death of Jaharlal Bhar the undivided family stood dissolved arid could not further be proceeded against. He made a grievance that this objection was expressly taken before the Certificate Officer but he did not even advert to the same. He lastly contended that apart from section 43 of the Act, there was no procedure for proceeding against the heirs of a deceased certificate-debtor and since the certificate debtor, namely, the undivided family was not dead, that procedure was of irrelevant consideration and the heirs certificate-debtor could not be substituted by any other procedure.

6. I am unable to uphold the points raised by Mr. Gupta for the reasons hereinafter stated.

7. The assessment of tax was on an undivided Hindu family. The description of the certificate debtor as "Sri Fakir Chandra Bhar Karta of Hindu undivided family, M/s. Fakir Chandra Bhar and other", merely meant that the certificate debtor was Fakir Chandra Bhar as karta of a Hindu undivided family, which was composed of himself and others. The use of the word ''others'' was not very informative and did not identify the "others" who were the members of the undivided family. Therefore, the certificate debtor must be understood to be Fakir Chandra Bhar in his capacity as Karta of the undivided family which family was the assessee. The argument of Mr. Gupta that the certificate debtor should have been described as "an undivided Hindu family represented by the Karta so and so" need not be up-held. The description of the Certificate debtor as given makes out the meaning hereinbefore stated. In the view I take, I find support from a Division Bench Judgment of this court in (1) Union of India v. Jiwanmull Bhutoria (Civil Revision Case 734 of 1957, dated June 3, 1959--per Bachawat and Renupada Mukherjee, JJ.--unreported).

8. Then again the certificates against Fakir Chandra Bhar, who was dead at the material time, were no doubt defective, in so far as they were against a dead person. But the public debt being there, remaining unpaid, it was within the competence of the certificate Officer to vary the certificate, in exercise of his power u/s 3(1) read with section 10 of the Act. The said two section read as follows:--

Section 3(1) -- ''Certificate-debtor'' means the person named as debtor in a certificate filed under the Act, and includes any person whose name is substituted or added as debtor by the certificate officer.

Section 10. The Certificate Officer in whose office the original certificate is filed shall hear the petition, take evidence (if necessary), and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed; and may set aside, modify or vary the certificate accordingly.

9. After the filing of the certificates, it appears from paragraph 8 of the affidavit-in-opposition, there was an objection filed before the certificate officer to the

effect that the certificates being against a dead person were null and void. The certificate officer took note of the objection deleted the name of Fakir Chandra Bhar and described the undivided family as represented by Jhar Lal Bhar, the then Karta. In so doing, the certificate officer merely exercised his powers u/s 3 (1) read with section 10 of the Act, which was within his power to do.

10. Before the execution of the certificates was complete Jahar Lal died and the certificate officer brought the heirs and legal representatives both of Fakir and Jahar, on record and began to proceed against them. There was nothing wrong in so doing. A Hindu undivided family is a form of description of a number of persons, living in jointness. A Karta or manager of a undivided family has ordinarily the control over the income and expenditure and is the custodian of the surplus. Since a Karta can bind the family by his acts of management of the joint estate, he is said to represent the family. So long, therefore, a Karta of the assessee undivided family was there, the certificates were varied by bringing in the Karta of the undivided family on the record as the representative of the certificate-debtor family. When there was no such Karta, the certificate officer-varied the certificates by bringing the members of the joint family on the record. Mr. Gupta is not right in thinking that legal representatives of the Karta were brought on the record. What was done was to vary the certificates by naming the members of the undivided family, after the death of the Karta of the assessee family, as the certificate debtors. I do not find that this was beyond the power of the Certificate-Officer to do.

11. The submission of Mr. Gupta that the undivided family had split up and could not be proceeded against is also not an argument of substance. The assessed unit was a Hindu undivided family. No objection was raised, at the time of assessment, that family stood disrupted, possibly because there was no disruption of the family at that time. That being so, u/s 25A (3) of the income tax Act, 1922, the family shall be deemed for the purposes of the Act to be undivided and may be proceeded against accordingly.

12. The last submission of Mr. Gupta must also be rejected. The circumstances hereinbefore stated did not attract section 43 of the Public Demands Recovery Act. A Hindu undivided family not being a limited company or a Corporation having a separate legal existence, apart from the members composing it, there is no real or virtual variation of the certificates, if on the death of the karta, the certificates be amended to include all the members substituting it (vide in this connection the observations of P. B. Mukharji, J. in (2) Kishori Mohan Paul v. Certificate Officer, Civil Revision case 806 (W) of 1961, dated November 14, 1963 --unreported). In my opinion in varying the certificates in the manner stated above, there was no substitution effected, but the family was described a new in the changed circumstances following the death of the karta. In the view that I take, this Rule must be discharged with costs, hearing fee being assessed at 3 Gms.