

(1929) 07 CAL CK 0009
In the Calcutta High Court
In Re: Ganga Sagar and Another

Date of Decision : 04-07-1929

Acts Referred:

Citation : 123 Ind. Cas. 312

Hon'ble Judges : George Glaus Rankin, C.J;Phillip Lindsay Buckland, J;Charu Chunder Ghose, J

Bench : Full Bench

Judgement

Charu Chunder Ghose, J.—In this matter the Commissioner of Income Tax, Bengal, was directed by an order made by this Court on the 13th December, 1927, to state a case for the opinion of the Court whether or not the assesseees were entitled to be treated for income tax purposes as a Hindu undivided family. The Commissioner of Income Tax has accordingly stated a case for the opinion of the Court.

2. The facts found by the Commissioner of Income Tax are as follows: It appears that four brothers governed by the Dayabhaga School of Hindu Law named Ganga Sagar, Ananda Mohan, Brojo Mohan and Hari Mohan Shah, who were members of a Hindu undivided family, started a business many years ago. These four brothers are dead and their sons and grandsons are now carrying on the business. The places of business at present are, among others, Calcutta, Dacca and Backerganj, the head office being at Dacca. For many years past, the heirs of the said four brothers have drawn monies separately from the business, the monies being debited to the separate accounts of the heirs of the said four brothers in the books of the business. These heirs separated in mess about 15 or 18 years ago and had been living in four separate houses (the heirs of each of the four brothers living in the same house and in the same mess), the cost of constructing which was drawn from the business and debited to the accounts of the heirs of the said brothers separately. The cost of messing is met separately by each of the four branches and likewise the expenses of marriages and education of children. No family idol being maintained by any of the separate branches of the family, no question of joint worship arises.

3. The Commissioner of Income Tax states that in the books of the business there is no capital account either in the name of a joint family or in the names of the separate branches, but there are accounts in the names of the heirs of the said four original proprietors showing their drawings from the business. The credit side shows either nill or some paltry sum while the debit side in every case shows a large sum. The accounts of the business have never been adjusted and the accounts in the names of the heirs of the said four original proprietors have not also been adjusted. The balances are carried forward from year to year. Further the said four branches have got separate businesses of their own which are separately assessed to income tax. In each of these assessments, a one-fourth share of the main business together with the income of the separate business of the particular branch of the family and the bona fide annual value of the house properties belonging to that branch are taken into account. The house properties were acquired with monies drawn from the main business debited to the account of the respective branches.

4. The Commissioner of Income Tax also points out that the business has through-out been assessed as an unregistered firm and that the four separate branches have filed separate returns of their own income and have been assessed separately since the year 1923-24. In July, 1927, the assessee in compliance with a notice u/s 38 of the Act give a list of "Angshidars" (the word "Angshidars" literally translated means sharers). In this return each separate branch of the family was shown to be the proprietor of one-fourth share in the business in question. It also shows not only the names of the male sharers or partners but also of female and minor partners.

5. On the case as submitted by the Commissioner of Income Tax it has been argued on behalf of the assesseees that in law the said four branches ought to be regarded as members of a Hindu undivided family and that the business in question ought not to be assessed as an unregistered firm.

6. Now, every Hindu family is presumed to be joint in food, worship and estate; Under the Dayabhaga Law each co-parcener takes a defined share. The essence of a co-parcenary under the Mitakshara Law is; unity of ownership whereas under the Dayabhaga Law the essence of a co-parcenary is unity of possession. So long as there is unity of possession, no co parcener can say that a particular share of the property; belongs to him. That he can say only after a partition. Partition then, according to; the Dayabhaga Law, consists in splitting up joint possession and assigning specific portions of the property to the several co-parceners. But there is no presumption that a family because it is joint, possesses joint property or any property. Where there is joint estate and the members off the family become separate in estate, the family ceases to be joint. Mere severance; in food and worship does not operate as a separation. Cesser in commensality is an element which may properly be considered in determining, the question, whether there has been a partition, but it is not conclusive [Ganesh Dutt Thakoor v. Jewach Thakoorani 31 I.A. 10 : 31 C. 262 : 8 C.W.N. 146 : 14

M.L.J. 8 : 6 B. L.R. 1 (P.C.)]. If, however, after cesser in commensality any member of the family is in possession of any portion of the property separately, the presumption referred to above is considerably weakened. No doubt it is true that the mere fact that a property is purchased in the name of a member of the family and that there are receipts in his name respecting it, does not render the property; by itself, his separate property; but if in addition to the fact that certain property stands in the name of one of the members, there be these further facts, namely, that some other members of the family have properties standing in their separate names and are found to deal with the same as their own without reference to the rest of the family and that the members of the family are allowed to appear to the world to be the sole owners of the said separate properties the presumption that the properties are joint is almost gone and the burden of proving that the properties are still joint will lie on those who allege that they are joint. If the family remains joint, no charge can be made against any co-parcener because in consequence of his having a larger family to maintain than others, a larger share of the joint income was spent on his family. Such expenditure is considered to be the legitimate expenditure of the whole family. If, however, the expenses of the marriages of the daughters and of the education of the children are paid for separately by the co-parceners, that is a circumstance which must be taken into consideration for the purpose of finding out whether the family still remained joint [Abhay Chandra Roy v. Pyari Mohan Guho 5 B.L.R. 347 : 13 W.R. 75 (F.B.).]

7. These being the guiding considerations, each case must depend upon its own facts; and, in my opinion, the facts set out by the Commissioner of Income Tax taken together are only consistent with the position that the original undivided Hindu family in question has ceased to exist and that in place thereof there are four undivided Hindu families. It is not necessary to go over the facts again. But there can be hardly any doubt that specific portions of the property or specific properties have been assigned to specific co-parceners. That amounts to cessation of the joint estate. It is true that the monies required for the acquisition of the said properties came from the main business. But where one finds, as in this case, that the business has descended to the third generations who are in enjoyment of separate house properties and who have in addition separate business, the fact that the accounts of the main business have never been adjusted throughout these long years is not a circumstance which can be allowed to outweigh the inference properly deducible from the other-facts referred to above. Further, the events which have taken place since 1923-24 about the separate assessment of the said four branches can hardly be overlooked. In my opinion all the circumstances set out above indicate that the income tax authorities are right in treating the main business as an unregistered firm. In my opinion, the assessee must lose and must pay the costs of this reference.

George Glaus Rankin, C.J.

8. I agree.

Phillip Lindsay Buckland, J.

9. I agree.