
(1959) 08 PAT CK 0005

In the Patna High Court

Case No : Miscellaneous Judicial Cases No"s. 278 and 279 of 1955

KUMAR TARANAND SINHA

APPELLANT

Vs

STATE OF BIHAR.

RESPONDENT

Date of Decision : 11-08-1959

Acts Referred:

Bihar Agricultural Income Tax Act, 1938 — Section 2(m), 28(3), 3

Citation : (1960) 40 ITR 460

Hon'ble Judges : Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Full Bench

Judgement

RAMASWAMI, C.J. - In this case the assessee, Kumar Taranand Sinha, was appointed a receiver of 8 annas Patti Banaili Raj by the Subordinate Judge of Bhagalpur in Partition Suit No. 13 of 1935. This suit was instituted by Kumar Krishnanand Sinha against Raja Bahadur Kirtyanand Sinha for partition of certain landed properties popularly known as Banaili Raj. It appears that Raja Kirtyanand Sinha died in January, 1938, and in his place there was substation of his six sons, Kumar Shyamanand Sinha, Kumar Bimalanand Sinha, Kumar Taranand Sinha, Kumar Durganand Sinha, Kumar Jayanand Sinha and Kumar Adyanand Sinha, and also of Srimati Rani Prabhabati Saheba. A preliminary decree for partition was granted in the suit by the Subordinate Judge and the share of Kumar Taranand Sinha and his five brothers, and his mother, Srimati Rani Prabhabati Saheba, was specified as 8 annas in the whole of Banaili Raj, as representing the branch of Raja Kirtyanand Sinha. In 1946 Kumar Taranand sinha was appointed as the receiver of the 8 annas Patti Banaili Raj. For the accounting year 1356 Fasli, the Agricultural Income Tax Officer, Bhagalpur, issued a notice to the assessee, as the receiver of the 8 annas Patti Banaili Raj to submit a return of agricultural income. The assessee pointed out that with effect from July 1, 1948, there was disruption of the undivided Hindu family between all the six brother and they had decided to enjoy their share in severalty with effect from that date. The contention of the assessee was rejected by the Agricultural Income Tax Officer, who taxed the agricultural income in the hands of the

assessee on the basis of a Hindu undivided family, but by mistake he calculated both the Income Tax and super tax on the share of each brother separately u/s 13 of the statute. The Agricultural Income Tax Officer later on discovered the mistake and on December 26, 1951, he rectified his previous order and levied super tax on the total income in the hands of the assessee and not on the share of each brother as he had done previously. For the accounting year 1357 Fasli, also the Agricultural Income Tax Officer, Bhagalpur, made a similar assessment of the agricultural income in the hands of the assessee on the basis of a Hindu undivided family by his order dated December 28, 1951. The assessee took the matter in appeal to the Deputy Commissioner of Agricultural Income Tax, but the appeal were dismissed. The assessee also presented revision application before the Board of Revenue, but the revision application were dismissed.

Under section 28(3) of the Bihar Agricultural Income Tax Act the Board of Revenue has stated a case on the following question of law for the opinion of the High Court :

"Whether, in the facts and circumstances of the case, super tax could be validly levied on the total income of Kumar Taranand Sinha and his five brothers which was in the hands of the receiver or whether super tax could be validly levied only on the individual income of Kumar Taranand Sinha and each of his five brothers ?"

It is necessary at this stage to set out the relevant statutory provisions.

Section 3 of the Bihar Agricultural Income Tax Act (Bihar Act 32 of 1948) states that agricultural Income Tax shall be charged for each financial year in accordance with, and subject to the provisions of, this Act on the total agricultural income of the previous year of every person. Section 2(m) of the Act defines a "person" to mean any individual, or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for another, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognized by law, and includes an undivided family, firm, or company. Section 11 of the Act states as follows :

"11. Assessment of a Hindu undivided family. -The total agricultural income of a Hindu undivided family shall be treated as the income of one individual and assessed as such :

Provided that if a Hindu undivided family consists

(i) of brothers only, or

(ii) of a brother or brothers and the son or sons of a brother or brothers or

(iii) of a brother or brothers and the son or sons of a brother or brothers of the father, or

(iv) of a brother or brothers, the son or sons of a brother or brothers and the son or sons of a brother or brothers of the father,

the total agricultural income of the family shall be assessed at such rate or rates as may be specified from year to year by an annual Bihar Finance Act :

Provided that for the financial year commencing on the 1st April, 1948, the total agricultural income of the family shall be assessed :

(a) at the rate applicable to the share of a brother if such share exceeds Rs. 3,500.

(b) at nine pies in the rupee, if the share of a brother is Rs. 3,500 or less.

Explanation. - for the purposes of this section -

(1) the expression share of a brother means the portion of the total agricultural income of a Hindu undivided family, which would have been allotted to a brother, if a partition of the property of such family had been effected according to the ordinary rules of Hindu law applicable to such family, on the day before the assessment is made; and

(2) son includes a sons son but does not include the sons sons of a brother or brothers of the father."

Section 43 A relates to the charges of super-tax and reads as follows :

"43A. Charges of super-tax-In addition to the agricultural Income Tax for the year, there shall be charged, levied and paid for that year in respect of the total agricultural income of the previous year of a person, an additional tax (in this Act referred to as super-tax) at the rate or rates laid down from year to year by an annual Bihar Finance Act."

Section 43C enacts as follows :

"43C. Application of Act to super tax. -All the provisions of this Act relating to the charge, assessment, collection and recovery of agricultural Income Tax except those contained in section 3, 5, 11, 16 and 17 shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax."

The learned Attorney-General presented the argument that in this case there was disruption of the Hindu joint family with effect from July 1, 1948, and for the accounting years 1356 and 1357 Fasli, the Hindu joint family had ceased to exist and no assessment could, therefore, be made upon the Hindu undivided family by the agricultural Income Tax authorities. In support of his contention the learned Attorney-General referred to the letter dated July 6, 1948, written by Bimalanand Sinha, Jayanand Sinha, Adyanand Sinha and Taranand Sinha, for self and on behalf of Kumar Durganand Sinha, to the receiver of 8 annas Patti Banaili Raj, stating that all the brothers were living separate from one another with effect from July 1, 1948. A copy of this letter was forwarded by the signatories to Kumar Shyamanand Sinha, the karta of the Hindu undivided family. This letter is printed at page 86 of the paper-book and is in the following terms :

"Raj Banaili.

P. O. Banaili Raj,

Dist. Purnea,

Dated 6th July, 1948.

To,

The Receiver, as. Banaili Raj, Bhagalpur.

Sir,

We have the honour to state that from the 1st of July, 1948, we have separated from each other and we are no longer members of a Hindu Joint Family, but we have our separate individual existence. Hence kindly take note and divide surplus of estate henceforth on equal share basis to all brothers except that out of surplus every month Rs. 1,250 should be sent to mother as her allowance and Rs. 1,400 sent to Kumar Bimalanand Sinha for the expenses at Deorhi which is common to all. If necessary you can file a petition to court on our behalf to this effect.

I have honour to be,

Sir,

Your most obedient servant,

(Sd.) Bimalanand Sinha.

(Sd.) Jayanand Sinha.

(Sd.) Adyanand Sinha.

(Sd.) Taranand sinha for self

and Kumar Durganand Sinha.

copy forwarded to Kumar Shyamanand Sinha for information and guidance.

(Sd.) B. N. Sinha."

The Attorney-General also referred to another letter dated September 19, 1948, written by Kumar Shyamanand Sinha, the karta of the Hindu undivided family, to the receiver of the 8 annas Banaili Raj, stating that since the Hindu joint family had become separated from July 1, 1948, separate accounts for each of the group of co-sharers should be maintained by the receiver and a three monthly return of income and expenditure of his share should be separately sent to him. This letter is printed at page 87 of the paper-book and reads as follows :

"Camp Chowni Kothi, Bhagalpur,

Banaili P & T. O., District Purnea,

E. B. R. dated the 19th September, 1948.

Order No. 7209, dated 24-9-48.

To

Kumar Taranand Sinha, B. A., M. L. A.,

Receiver, Raj Banaili 8 annas, Bhagalpur.

Sir,

In July last, I received a copy of a letter addressed to you by 3 of younger brothers, Kumar Bimalanand Sinha, Kumar Jayanand Sinha and Kumar Adyanand Sinha, informing you that all the brothers had separated from the 1st July, 1948. Under the circumstances, I hope you will please keep my accounting separate from that date and will send me a three-monthly return of income and disbursement of my share in the eight-annas Banaili Raj.

Yours faithfully,

(Sd.) S. N. Sinha.

Proprietor, Banaili Raj.

Memo. No. 00064.

Dated 20-9-48.

Copy forwarded to the Subordinate Judge, Bhagalpur, for perusal and information.

(Sd.) (Illegible).

Proprietor, Banaili Raj.

Kedar Babu, make a note of this letter in the order-sheet.

(Sd.) A. K. Sharan, 24-9."

A copy of this letter was sent by Kumar Shyamanand Sinha to the Subordinate Judge of Bhagalpur on September, 20, 1948. By his order dated September 24, 1948, the Subordinate Judge accepted the claim of separation and made a note to this effect in the order-sheet of the case. Reference was also made on behalf of the assessee to the order of the Income Tax Officer, Bhagalpur, dated the 25th April, 1950, u/s 25A of the Income Tax Act, holding that the Hindu undivided family had separated with effect from July 1, 1948. It was submitted by the Attorney-General on the basis of these documents that there was an explicit and unequivocal intention to separate on behalf of all the coparceners and that the Hindu joint family had ceased to exist with effect from July 1, 1948, and no assessment could, therefore, be made on the Hindu undivided family by the agricultural Income Tax authorities. The Attorney-General also criticised the order of the Board of Revenue, dated August 14, 1953, and submitted that the Board of Revenue had misdirected itself in law in holding that even if there was proof of the intention to separate the taxing authorities could still hold that there was a

joint Hindu family capable of being so assessed. In my opinion, the argument of the Attorney-General is well founded and must be accepted as correct. The documentary evidence already referred to clearly indicates that there was an explicit and unequivocal intention to separate on behalf of all the coparceners and an intimation of such an intention was sent to the Subordinate Judge in whose court the partition suit was pending. The Subordinate Judge acted upon that intimation and separate budgets were prepared for each coparceners. It is manifest that there was severance of status though there was no actual partition by metes and bounds. As a matter of law there was a division of interest though it was not immediately perfected by actual partition. In my opinion, the Board of Revenue has misdirected itself in law in holding that though there was proof of the intention to separate the taxing authorities could make an assessment on the basis that the Hindu joint family continued to exist.

In *Appovier v. Rama Subba Aiyar* [1866] 11 M. L. A. 47 the Judicial Committee dealt with an argument that a deed of division between the members of an undivided family "which speaks of a division having been agreed upon, to be thereafter made, of the property of that family, was ineffectual to convert the undivided property into divided property until it has been completed by an actual partition by metes and bounds". Lord Westbury, who delivered the judgment of the Judicial Committee, pointed out that the argument proceeded upon a misconception in "confounding the division of title is applied."

In a latter case, *Musammat Girja Bai v. Sadashiv Dhundiraj* AIR 1916 P. C. 104, it appears that a coparcener of a Hindu joint family, governed by the Mitakshara law, gave a registered notice to have his share partitioned and subsequently filed a suit for partition and possession of his share in the joint property and the defendants did not deny the plaintiffs right to a share. It was held by the Judicial Committee that the registered notice coupled with the suit for partition clearly established an unequivocal and clear expression of intention on the part of the plaintiff to separate himself and enjoy his share in severalty and that these acts effected a separation in status so that on his death pendente lite the widow became entitled to continue the suit and get a decree for his share. It was pointed out by Ameer Ali, J. AIR 1916 P. C. 104, that separation from the joint family involving the severance of the joint status so far as the separating member was concerned, with all the legal consequences, was quite distinct from the de facto division into specific shares of the joint property. One was a matter of individual decision, the desire on the part of any one member to sever himself from the joint family and to enjoy his hitherto undefined or unspecified share separately from the others, while the other was the natural resultant from his decision, the division and separation of his share which may be arrived at either by private agreement among the parties, or on failure of that by the intervention of the court. A similar view has been expressed by the Judicial Committee in *Amritrao v. Mukundrao* AIR 1919 P. C. 91 and AIR 1936 264 (Privy Council)

On the admitted facts of the present case it is, therefore, manifest that there was

disruption of the Hindu joint family with effect from July 1, 1948, and for the accounting years 1356 and 1357 Fasli, the Hindu joint family had ceased to exist and the agricultural Income Tax authorities had, therefore, erred in law in making the assessment on the assumption that the Hindu joint family had continued to exist. It is also important to note that section 25A of the Income Tax Act enacts a procedure for assessment after partition of a Hindu undivided family, and the Third sub-section 25A provides that where no order has been made by the Income Tax Office under sub-section (1) in respect of a Hindu family hitherto assessed as undivided, such family "shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family."

There is no corresponding provision in the Bihar Agricultural Income Tax Act; and applying the general principle of the Hindu Law, therefore, it is obvious that there was disruption of the Hindu joint family with effect from July 1, 1948, and the Board of Revenue was erroneous in law in holding that assessment could be made on the Hindu undivided family for the accounting years 1356 and 1357 Fasli.

I shall then proceed to consider the argument of the learned Government Advocate that the assessment of the agricultural Income Tax has become final and conclusive for the accounting years 1356 and 1357 Fasli, and in view of the provision of section 43B, the question of the status of the assessee cannot be debated in this case. The argument is based upon the language of section 43B of the act which states as follows :

"43B. Total agricultural income for purposes of super-tax. -Subject to the provisions of this chapter the total agricultural income of any person shall, for the purposes of super-tax, be the total agricultural income as assessed for the purposes of agricultural Income Tax, and where an assessment of the total agricultural income has become final and conclusive for the purposes of agricultural Income Tax for any year, the assessment shall also be final and conclusive for the purposes of super tax for the same year."

It was contended by the Government Advocate that the assessee did not appeal against the assessment of the agricultural Income Tax for the years 1356 and 1357 Fasli, and as that assessment (sic.) of super-tax in view of the provisions of section 43B of the Act. I am unable to accept this line of reasoning. The finality referred to in section 43B refers to the quantum of assessment of the Income Tax for the purpose of assessing super-tax and there was no finality with regard to the status of the assessee. Section 43B fixes the totality of the income for purposes of super-tax, and, in my opinion, that section provides for finality only in regard to the quantum of tax. In order to ascertain the status of the assessee you have to look at section 43A which imposes a charge of super-tax, and in order to ascertain the quantum of the super-tax you have to look at section 43B. I, therefore, hold that section 43B does not act as a bar and the argument of the Government Advocate on this point must be rejected.

The next argument of the Government Advocate is that even if there was disruption of the Hindu undivided family it is not possible to say that super-tax should be validly levied only on the individual income of each of the five brothers. It was contended that there were not merely two alternatives, namely, the Hindu undivided family or the individual, but there may be an intermediate case, namely, "an association of individuals". It was submitted that even though there was no Hindu undivided family there might be an association of individuals and in such an event the assessment of super-tax should be taken to have been validly made. The Government Advocate suggested that the case should be remanded to the Board of Revenue for a further statement to be made u/s 28(5) of the Bihar Agricultural Income Tax Act. I am unable to accept the submission of the Government Advocate as right. There was no case made by the State of Bihar before the taxing authorities that there was an association of individuals and not a Hindu joint family. Neither the order of the Agricultural Income Tax Officer, nor of the Deputy Commissioner of Agricultural Income Tax, nor of the Board of Revenue, suggests that there was ownership of an association of individuals and not merely co-ownership. It is well established that in order to constitute an association of individuals there must be present not merely co-ownership but other indicia of joint enterprise are necessary. To put it differently, there must be a combination of persons for the promotion of a joint enterprise banded together as co-adventurers, see, for example, IN THE MATTER OF KESHARDEO CHAMRIA., and S. C. MAZUMDAR, RECEIVER TRIGUNAIT BROTHERS ESTATE Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., . In the present case the facts as admitted and found by the taxing authorities do not suggest that there was an association of individuals within the meaning of section 2(m) of the Bihar Agricultural Income Tax Act. I, therefore, hold that there is no case made out for calling for a further statement u/s 28(5) of the Act and the learned Government Advocate is unable to make good his submission on this point.

For the reasons expressed I hold that, in the facts and circumstances of this case, super-tax could be validly levied only on the individual income of Kumar Taranand Sinha and his five brothers. I accordingly answer the question of law referred by the Board of Revenue in favour of the assessee and against the State of Bihar. The assessee is entitled to the costs of the reference. Hearing fee Rs. 250 for both the cases.

KANHAIYA SINGH, J. - I agree.

Reference answered accordingly.