
(1970) 02 OHC CK 0034
In the Orissa High Court
Case No : S.J.C. 40 of 1964

Popatlal Devram

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-02-1970

Acts Referred:

Citation : (1970) 77 ITR 1013

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : Ranjit Mohanty, for the Appellant; Standing Counsel, for the Respondent

Judgement

G.K. Misra, C.J.—The following question has been referred to the High Court u/s 66(2) of the Indian Income Tax Act, 1922 (hereinafter referred to as " the Act ")-

" Whether the memorandum of partition dated May 1, 1957, evidencing previous partition on April 1, 1957, is inadmissible in law for want of registration ? "

2. The facts leading to this reference may be clearly stated. Popatlal Devram was being assessed to Income Tax as karta of an undivided family up to the assessment year 1958-59. The assessee had the following sources of income which were being taken into account :

- (a) house property,
- (b) individual business as a contractor,
- (c) share income from Messrs. Rasiklal & Co. in respect of grocery and stationery business; and
- (d) share income from Messrs. H. B. Pandey & Co, This is transport business.

3. The joint family consisted of Popatlal Devram (party No. 1 to the memorandum of partition drawn up on 1st May, 1957), his two sons, Bhagwanlal Popatlal and Rasiklal Popatlal (parties Nos. 2 and 3), and his wife, Premu Bai

(party No. 4). The assessee effected an oral partition on April 1, 1957, and the regular memorandum evidencing oral partition was drawn up on 1st of May, 1957. The memorandum indicated that both movable and immovable properties were divided. The share capital was also partitioned. Details of this need not be given. Though clear reference was made in the memorandum to the business relating to Messrs. Rasiklal & Co. and Messrs. H. B. Pandey & Co, no reference was made to the contract business. Before the Tribunal, the contract business was claimed to be the personal property of Popatlal Devram. It was also described to be his individual business in paragraph 1 of the application filed before this court. The assessee filed an application u/s 25A of the Act and an order was sought to the effect that the joint family property had been partitioned among the various members in definite portions as required u/s 25A, Sub-section (1). The Income Tax Officer rejected this claim holding that the memorandum was compulsorily registrable and that the properties which initially belonged to the first party should have been transferred by another registered document to the other members. The order of the Income Tax Officer was confirmed in appeal by the Appellate Assistant Commissioner of Income Tax. He held that registration was compulsory and allotment of a share to the wife in the partition was illegal. The Tribunal in second appeal at one place held that the memorandum does not require registration. In the concluding paragraph it, however, rejected the application u/s 25A with the following observation :

" We are, therefore, of the opinion that in the absence of a registered deed conveying the immovable properties to the two sons and the wife and in the absence of the contract business being included in the partition, there had not been a valid, effective and complete partition between the members of the appellant Hindu undivided family and the authorities below were right in rejecting the claim u/s 25A."

4. Against the Tribunal's order, a reference was sought u/s 66(1) of the Act, On its dismissal, an application for reference u/s 66(2) was filed in the High Court. Four questions were framed in the application for reference before the High Court. They are :

(a) Whether by the oral partition dated April 1, 1957, as evidenced by the memorandum of partition dated May 1, 1957, a partition has taken place amongst the members of the family of Popatlal Devram ?

(b) Whether in the absence of a registered deed conveying the immovable properties to the respective members, the partition of the family is vitiated and becomes invalid and ineffective ?

(c) Whether non-inclusion of contract business makes the partition in the family invalid, ineffective and incomplete ?

(d) Whether the Income Tax Officer has power u/s 25A to enquire into the question whether there has been an unequal distribution ?

5. The High Court, however, asked for a statement of a case on the single question already enumerated.

6. A bare analysis of the facts would show that the real questions for decision before the assessing authorities were :

(i) Whether the memorandum dated May 1, 1957, required registration ?

(ii) Whether the application u/s 25A, Sub-section (1), could be allowed when it was found that the contract business was not partitioned in the memorandum ?

7. On the second question, no statement of fact has been called for and, accordingly, we express no opinion thereon except saying that the finding of fact is there that the contract business belonged to the Hindu undivided family, although it was being assessed as the property of the Hindu undivided family.

8. The sole question on which this court, is to express its opinion is whether the memorandum dated May 1, 1957, is compulsorily registrable. Law is well settled that a partition of the joint family properties can be effected by an oral agreement irrespective of the value of the property. It is not being disputed that joint family properties were partitioned as enumerated in the memorandum by an oral agreement on April 1, 1957. The partition was legal and valid. The memorandum executed on May 1, 1957, merely recorded the factum of partition which had already taken place on April 1, 1957. But itself it does not create any new jural relationship amongst the parties. The disruption of the joint family with partition by metes and bounds in respect of properties covered by the memorandum took place on April 1, 1957. Since then, the joint ownership was converted into individual ownership and the memorandum is merely evidence of that fact.

9. It is not hit by Section 17(1) of the Indian Registration Act. At one stage in its appellate order the Tribunal came to the same conclusion and rightly. It is not necessary to cite various authorities on the point. Reference may be made only to Deo Chand v. Shiv Ram [1969] 1 S.C.R. 442 .

10. On the aforesaid analysis we would answer the question posed in the negative.

11. Incidentally it was indicated that the question did not arise out of the appellate order. The contention is not sound inasmuch as in one part of the order the Tribunal held that the memorandum was compulsorily registrable. The final order of the Tribunal quoted is in two parts and ultimately its conclusion is based on this erroneous opinion that the document was compulsorily registrable. A question of law therefore arose out of the appellate order.

12. In the result, the reference is accepted. In the circumstances, there will be no order as to costs. The reference fee deposited is permitted to be withdrawn.

Acharya, J.

13. I agree.