

(1964) 01 AHC CK 0039
In the Allahabad High Court
Case No : A.I.T. Misc Case No. 387 of 1963

Purshottam Das

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 28-01-1964

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 15(3)

Citation : AIR 1967 All 398

Hon'ble Judges : S.C. Manchanda, J

Bench : Single Bench

Advocate : Ashok Gupta, Ambika Prasad and V.B. Khare, for the Appellant;
Standing Counsel, for the Respondent

Judgement

S.C. Manchanda, J.—On a difference of opinion this case has been referred to me. The question that was framed by the Supreme Court and which was ultimately directed by the High Court to be referred was--

"Whether on the materials on record the Board of Revenue could say that there was evidence to show that there was no partition of the family "in point of fact"?

2. The words underlined (here in " ") are mainly responsible for the difference of opinion. These words have been interpreted by the learned Chief Justice to mean that the High Court was only required to determine the factual position as to whether there was any material for the Board of Revenue to hold that there was no separation in fact between the members of that family, and the legal position of partition under the Hindu Law was intended by the Supreme Court to be completely ignored.

3. The existence of the following circumstances (1) the absence of any necessity for separation, common management of property by one person as before the alleged partition and the joint realisation of the income, were held to be "material" by the learned Chief Justice, for the Board of Revenue's conclusion that the co-parceners were living Jointly and not separately in point of fact. The

question referred was accordingly answered in the affirmative.

4. If the question could have been said not to tie the hands of the High Court only to ascertaining the position in fact as to partition, then manifestly, there was no doubt in the mind of the learned Chief Justice, and if I may say so with respect, rightly, that the decree of the Civil Court declaring that the family had partitioned would undoubtedly constitute a partition according to the Hindu Law and it was pointed out that "partition is the legal effect of certain acts: it is a conception and not a tangible thing Whether there is partition or not is to be inferred in accordance with certain legal principles from certain circumstances."

5. Pathak J. took the contrary view and answered the question referred in the negative

6. The real question and perhaps the only one which falls for determination, and is a difficult one. Is as to the true scope and meaning of the question as framed by the Supreme Court. If the question is interpreted strictly and literally, then it is undoubtedly possible for the Department to contend that this Court in answering the question referred was only required to see whether there was any material for the conclusion reached by the Board of Revenue that there was no partition in point of fact. That, however, in my judgment, and with the utmost respect, is not what the Supreme Court had in mind. The question has to be read in the light of all the observations which the Supreme Court was at great pains to make before actually formulating the question. If those observations are borne in mind the question would appear in its true perspective.

7. This is what the Supreme Court observed before it proceeded to formulate the aforementioned question:

"The question in the case was if a family disrupts one would expect that separate management of the share would follow; but there is in law nothing to prevent tenants in common from managing jointly the separate shares and this would not, unless it amounted to a reunion, militate against a partition actually made. The question in the case was "whether this fact alone, which seems to have weighed with the Board of Revenue was "sufficient material" so as to discard a partition made through the agency of the Civil Court and the Revenue Authorities". The motive for the partition is not of much relevance if it be held that the result is, in effect, to divide the family and not to continue in jointness. One reason as to why the family found it necessary, might be to solve incidents of tax on it and in such an event the fact that the decree was a consent decree might well lose its point."

8. The portion underlined (here in " ") by me indicates clearly the way in which the wind was blowing and how the mind of their Lordships was working. If I may be permitted to paraphrase the above observations of their Lordships of the Supreme Court, with respect, in my own words, it would be something like this: "that when there was a solemn decree of the Civil Court in existence and not merely an oral declaration of intention to separate and such declaration was

followed up by the parties by having entries of mutation recorded in the revenue records, could it possibly be said that the material relied upon by the Board of Revenue for holding that there was no partition was relevant material for drawing the legal inference that there was no partition in fact?"

9. It is not possible for the High Court, which can only answer questions of law to ignore the position in law and merely to take the factual position de hors the provisions of the Hindu Law bearing on the question of partition. Legal incidents of partition cannot possibly be divorced, ignored or sacrificed for circumstances which at best may go to show that the parties were living jointly or managing the property through a common Mukhtar.

10. Court decrees, solemn declarations or contracts entered into cannot be sacrificed to the form of the question as compared to its substance. It was laid down by the House of Lords in the well known case of *Duke of Westminster v. Commr. of Inland Revenue* (1936) 19 Tax Cas 490:

"that the substance is that which results from the legal rights and obligations of the parties ascertained upon ordinary legal principles (per Lord Tomlin) "What the legal effect is as between the covenantor and covenantee must determine for revenue purposes the character of the payments actually made and if it is once admitted that the deed is a genuine document there is in my opinion no room for the phrase "in substance" Or more correctly the true nature of the legal obligation and nothing else is the substance (Per Lord Wright)."

11. The true nature of the legal obligation of partition under the Hindu Law in the present case, flows directly from the plaint solemnly verified by one of the members of the Hindu undivided family asking for a declaration of partition. Such suit when it culminates in a decree, albeit, a consent decree, is again a reiteration and declaration by all the coparceners that they not only intend to separate but have in fact separated in law.

12. It is difficult, if not impossible, to disturb the inexorable legal effects which flow from (1) the decree of partition. (2) the conduct of the parties in having mutation effected in the revenue records, (3) their further continued reiteration of partition at every stage right upto the Supreme Court, by each one of the coparceners, unless there is positive legal and relevant material on the record to establish that the decree was obtained fraudulently or it was only a sham or as pointed out by the Supreme Court that there was a reunion of the Hindu undivided family.

13. There may be material of sorts on the record, but that is not what the law requires. What is required is relevant material for proving that the Civil Court decree and the mutation obtained thereon was fraudulent, or sham or evidence supporting a reunion of the family. If the material on record is not relevant for disturbing the legal presumption of partition or for establishing reunion of the family then, manifestly, such material would not be evidence in the eye of law and it would be open to this Court to say that there was no material to support

the legal inference drawn by the Board of Revenue, that there was no partition in fact.

14. It is true that the jurisdiction of the High Court in Reference is purely advisory and consultative and is confined to giving an opinion on the question of law referred. It is also true that there is no power in the High Court to set aside my finding of fact or to reconsider, appreciate, or weigh evidence. That is the function of the final court of fact and not of the High Court. But if the material relied upon is inadmissible, irrelevant or partly relevant and partly irrelevant, on the basis of which the legal inference that there was no partition has been drawn the High Court can say that there is no material or evidence in point of fact to justify the legal inference drawn.

15. The above distinction sought to be drawn by me would appear to find some support from the way in which the question was framed by their Lordships of the Supreme Court. In the question framed the word "materials" was first used and then the word "evidence". The use of both these words in the question would seem to indicate that though there may be "materials" on the record but it may not be "evidence" to justify the legal inference that there was no partition in point of fact. Therefore I venture to think that all that had to be seen was whether the so-called material on which the Board of Revenue came to draw the legal inference that there was no partition in fact was relevant evidence for that purpose. In the face of the civil Court decree, the mutation entries, the separate returns filed and the subsequent continued assertions of partition made by the erstwhile members of the family by way of successive appeals, reference, etc. there cannot be much doubt that the aforesaid material on record was not evidence which could justify the legal conclusion that partition had not taken place in point of fact and a fortiori. there was no material in the eye of law for the conclusion arrived at by the Board of Revenue.

16. No attempt by the Department, on whom the burden undoubtedly lay, has been made to establish fraud in the obtaining of the civil Court decree and much less to establish reunion of the Hindu undivided family. The nature of evidence required in order to establish reunion was laid down by the Supreme Court in *Bhagwan Dayal Vs. Mst. Reoti Devi*, .

"If a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved To reconstitute a reunion there must be an intention of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily

implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion of ordinary joint enjoyment cannot sustain a plea of reunion."

The materials on the record in the present case on which the Board of Revenue relied could at best be described as ambiguous pieces of material which could never in the face of the Civil Court decree mutation entries and persistent reiteration by all concerned have justified the legal inference drawn by the Board of Revenue that there was no partition in fact.

17. For the reasons given above, I would answer the question referred in the negative.