

(1985) 10 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 27 of 1977

Ram Narain Paliwal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-10-1985

Acts Referred:

Income Tax Act, 1961 — Section 171

Citation : (1986) 52 CTR 245 : (1986) 2 ILR (P&H) 373 : (1986) 162 ITR 539

Hon'ble Judges : S.P. Goyal, J;G.C. Mital, J

Bench : Division Bench

Advocate : Balwant Singh Gupta, for the Appellant; Ashok Bhan and Ajay Mittal, for the Respondent

Judgement

G.C. Mital, J.—In order to appreciate the case, the following pedigree table may be kept in view :

Ram Chander Paliwal = Ram Piari | Ram Narain = Wife | _____
_____ | | four minor sons one daughter

2. Ram Chander Paliwal was the karta of a Hindu undivided family which carried on money-lending business and owned immovable property.

3. He died on September 3, 1963. The Hindu undivided family continued with Ram Narain as the karta.

4. A firm, under the name and style of M/s. Ram Narain Sat Narain, was started on December 8, 1965, and Ram Narain representing the Hindu undivided family became a partner in the said firm with his share of 35 per cent. Out of the Hindu undivided family funds he invested Rs. 45,000 as a partner in that firm. On March 31, 1973, the capital of the Hindu undivided family in the books of M/s. Ram Narain Sat Narain was shown as Rs. 1,18,321.42. The said amount was divided by Ram Narain and Smt. Ram Piari and Rs. 59,160.71 was allotted to each of them. Separate accounts of the aforesaid two persons were opened in the books of M/s. Ram Narain Sat Narain with opening credit balance of Rs.

59,160.71. A memorandum of partial partition was drawn up on April 2, 1973, wherein the terms of the aforesaid partition were recorded. During the course of assessment proceedings for the previous year ending on March 31, 1973, a claim for partial partition u/s 171 of the Income Tax Act, 1961 (hereinafter called "the Act"), was made by the Hindu undivided family. The Income Tax Officer did not accept the assessee's claim for partial partition, firstly, because Smt. Ram Piari had been wrongly described in the memorandum of partial partition as a coparcener and, secondly, because the widowed mother could not compel for a partition. It was also concluded that the existence of at least two coparceners was essential for claiming partition. The Hindu undivided family filed an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner (appellate authority) relied on the proviso to Section 6 of the Hindu Succession Act, *Vidyaben v. J.N. Bhatt*, AIR 1974 Guj 23 and *Jai Parkash v. Ram Kali* 1974 R L R 327, for coming to the conclusion that a female heir could claim partition of the joint Hindu family property. Consequently, the appeal was accepted and partial partition was allowed u/s 171 of the Act. The Department came up in appeal before the Income Tax Appellate Tribunal. The Tribunal, by order dated July 29, 1976, allowed the appeal and after vacating the order of the Appellate Assistant Commissioner, restored the order of the Income Tax Officer after giving a finding that Smt. Ram Piari had been wrongly described as a coparcener in the memorandum of partial partition as in law she could not be a coparcener and was not entitled to claim partition. It first relied on para 316 of Mulla's Hindu Law for coming to the conclusion that a mother cannot claim partition so long as the sons remained united and since Ram Piari had only one son and since that son cannot claim partition, i.e., partition against himself, no partition could take place. On behalf of the assessee, reliance was placed on the provisions of Section 3(3) of the Hindu Women's Right to Property Act, 1937, for the proposition that a Hindu widow shall have the same right of claiming partition as a male owner and, therefore, the Appellate Assistant Commissioner was right in holding that she was entitled to claim partition. The Tribunal did not agree with this because the 1937 Act was repealed by Section 31 of the Hindu Succession Act, 1956. The Tribunal further disagreed with the Appellate Assistant Commissioner that Section 6 of the Hindu Succession Act, 1956, gave a right to a female to claim partition of Hindu undivided family property. The Tribunal distinguished the two decisions relied upon by the Appellate Assistant Commissioner and followed *Dalichand Tejraj Vs. Commissioner of Income Tax*, a decision of the Rajasthan High Court, wherein it was held that a Hindu female had no right to claim partition of Hindu undivided family. The assessee sought a reference and the Tribunal has referred the following question of law for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that there could not be a valid partial partition of the Hindu undivided family assets between a widowed mother and her son ?"

5. After hearing learned counsel for the parties and on a perusal of the order of

the Tribunal and the statement of the case, we are of the view that there has been a complete misunderstanding of the basic admitted facts of this case. If the dispute had to be settled between members or coparceners of Hindu undivided family and the questions were raised whether the joint Hindu family stood disrupted by the death of Ram Chander Paliwal on September 3, 1963, and in case it stood disrupted what would be the shares of the members of the joint Hindu family, then the consideration, which have been taken notice of by the Tribunal would have fallen for consideration. Here, the Income Tax Officer and the Tribunal were called upon to determine the matter u/s 171 of the Income Tax Act, 1961. Admittedly, the Hindu undivided family consisted of Ram Narain, his mother, Ram Piari, his wife and his minor sons and that Hindu undivided family was recognised and continued to be assessed as such from 1963 till March 31, 1973, in spite of the death of Ram Chander Paliwal, which took place on September 3, 1963. The point before the aforesaid authorities was not whether the Hindu undivided family could be an assessee or not. Even from the question referred, it is clear that there is a Hindu undivided family and what is to be determined is whether a partial partition of the Hindu undivided family assets was valid or not.

6. It has been settled by the highest court that a Hindu undivided family can become a partner of another concern. Once the Hindu undivided family continued to be an assessee till March 31, 1973, there can be partial partition of the Hindu undivided family assets and that is what has been done in this case. Partial partition of Hindu undivided family assets in the partnership firm of M/s. Ram Narain Sat Narain was carried out by Ram Narain and since his mother was entitled to share the assets equally with him, she was also given equal share and the memorandum of partition was drawn up. Under the circumstances, on a reading of Section 171 of the Income Tax Act, we do not find any impediment in the way of the assessee to claim partial partition of Hindu undivided family assets. It would hardly matter whether a mother was entitled to claim partition or not, and even if Ram Narain was the sole male coparcener, he could effect partition. The Income Tax law and particularly Section 171 of the Act does not envisage that if members of a Hindu undivided family are a mother and her son, such Hindu undivided family is debarred in law in effecting complete or partial partition of Hindu undivided family assets. On this process of reasoning, we are of the opinion that on the facts and circumstances of this case, the Tribunal was not right in holding that there could not be a valid partial partition of Hindu undivided family assets between a widowed mother and her son, and answer the referred question in the negative, i.e., in favour of the assessee and against the Department.

7. The reference stands disposed of with no order as to costs.