
(1986) 08 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 131 of 1979

Sat Pal Bansal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-08-1986

Acts Referred:

Citation : (1987) 1 ILR (P&H) 105 : (1986) 162 ITR 582

Hon'ble Judges : Prem Chand Jain, C.J.; Sukhdev Singh Kang, J.; S.P. Goyal, J

Bench : Full Bench

Advocate : B.S. Gupta and P.S. Saini, for the Appellant; Ashok Bhan and Ajay Mittal, for the Respondent

Judgement

S.P. Goyal, J.

(14-11-1985).

1. The question referred to this court in this case is as to whether the Tribunal was justified in holding that the karta being the sole surviving coparcener could not effect partition of the family property between himself and his wife.

2. Learned counsel for the parties are agreed that on this matter there is an apparent conflict between the two Division Bench decisions of this court, namely, Kundan Lal Vs. Commissioner of Income Tax-cum-Wealth-tax, and Commissioner of Income Tax Vs. Narain Dass Wadhwa, . In the former case, it was held that a wife cannot claim partition of the Hindu undivided family as a matter of right but the partition made by the karta was upheld on the ground that there was an earlier partition between the father and his son and as the wife had not given up her share, she was entitled to claim it even later on. On the contrary, in the later case, where the Hindu undivided family consisted of "K", his mother and two sisters, it was held that "K" being a coparcener could claim partition and the partition made by him was upheld. In this case, "K" was the sole coparcener and there being no other person having proprietary interest in the property, partition could not be effected according to the rule laid down in the former case. As it is

necessary to resolve the conflict between the two decisions, this case is ordered to be placed before my Lord the Chief Justice for referring the same to a larger Bench.

JUDGMENT

S.P. Goyal, J.

(13-8-1986)

3. The question referred to this court in this case is as to whether the Tribunal was justified in holding that the karta being the sole surviving coparcener could not effect partition of the family property between himself and his wife. As there was a conflict on this question between the two Division Bench decisions of this court in *Kundan Lal Vs. Commissioner of Income Tax-cum-Wealth-tax*, and *Commissioner of Income Tax Vs. Narain Dass Wadhwa*, the case was referred to the Full Bench.

4. The assessee is a Hindu undivided family consisting of Sat Pal Bansal and his wife, Smt. Banti Bansal. During the course of the assessment proceedings relating to the year 1973-74, a claim was made before the Income Tax Officer that a partial partition had been effected qua the family business capital at the instance of the wife of the karta and each of them was credited with Rs. 30,374.78. The assessing authority rejected the claim on a number of grounds including the one that the wife could not claim partition nor could it be effected by the karta, he being the sole surviving male member of the Hindu undivided family. Having failed before the Appellate Assistant Commissioner, the assessee went in further appeal before the Tribunal who affirmed the order of the authorities below holding that neither could the wife demand partition under the Hindu law nor could the husband who was the sole surviving coparcener of the Hindu undivided family divide the family property between himself and his wife at her instance.

5. The answer to the question referred to us obviously depends upon the nature of the rights of the wife in the property of the Hindu undivided family. It is not disputed that female members of a Hindu undivided family, according to the Hindu law, have no share in the joint family property and their interest is confined to maintenance only. As stated in para 315 of the Hindu law by Mulla, a wife cannot herself demand a partition of the Hindu undivided family property, but if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. The share which is allotted to the wife or the mother, as held by the Full Bench of the Gujarat High Court in *Commissioner of Gift Tax, Gujarat I Vs. Taramati Hariprasad Vasa*, is in lieu of her right of maintenance and the allotment of such a share does not show that she had any right or interest in the Hindu undivided family property. Before one can visualise or think of a partition, the property has to be owned by more than one person. Obviously, the sole owner cannot divide the property. The grant of any share in

the property by the sole surviving male member of the Hindu undivided family to the wife or to the mother would be only in the nature of settlement of the property upon them in lieu of their right of maintenance and cannot by any stretch of reasoning be said to be a partition of the property amongst them. We are, therefore, of the considered view that no partition, partial or otherwise, would be possible in the case of a Hindu undivided family consisting only of one male member or the sole coparcener. Similar view was taken by the Gujarat High Court in *Income Tax OFFICER, SHILLONG, AND OTHER Vs. HUBERT OSRICK UNGER.*, and the Madras High Court in *T.G.K. Raman (Huf) Vs. Commissioner of Income Tax and Commissioner of Wealth-tax*, which we fully endorse.

6. Now, we may consider the two decisions of this court referred to above. In *Kundan Lal Vs. Commissioner of Income Tax-cum-Wealth-tax*, the Hindu undivided family originally consisted of the father, three sons, the wife and a daughter. The three sons separated from the family on different dates and got their share out of the Hindu undivided family properties. After their separation, the Hindu undivided family consisted of the husband, his wife and their unmarried daughter. Although the wife was entitled to a share on each of the occasions when the three sons separated, none was allotted to her. Later on, a partial partition was effected by Kundan Lal between himself and his wife which was the subject matter of dispute. The Bench upheld the partial partition on the ground that when the partition took place between the father and the sons, the wife was entitled to a share and she, never having acquiesced or relinquished her right, could legitimately claim her share in the Hindu undivided family property. As is evident from these facts, the Hindu undivided family, when the partition took place for the first time, consisted of more than one coparcener or male member. When the partition amongst them took place, the wife was entitled to a share equal to that of the son. No share having been allotted, she was entitled under the law to claim her share and the partial partition made to recognise that right was, therefore, rightly sustained. Neither of the two learned counsel for the parties disputed the correctness of this decision.

7. In *Commissioner of Income Tax Vs. Narain Dass Wadhwa*, when the partial partition was effected, the Hindu undivided family consisted of "K", his mother and two sisters. The Bench upheld the said partition on the ground that the karta of the Hindu undivided family did not cease to be a coparcener, and as a coparcener, he had the right to claim partition and effect the same amongst himself and his family members. The fallacy in the reasoning is so obvious that it does not need any elaborate discussion for it to be refuted. As discussed above, the sole owner cannot effect partition of the property. The mother and the two sisters were not co-owners in the Hindu undivided family property and they having only a right of maintenance, therefore, no partition could be effected by the karta of the Hindu undivided family between himself and the said family members. The further observation of the Bench that even if the division of the capital may be taken as a family arrangement that would also amount to a partition, cannot be sustained. The allotment of any amount to the family

members out of Hindu undivided family funds would at best be a settlement in lieu of the recognition of their right of maintenance which cannot by any stretch of reasoning be described as an arrangement in the nature of partition of Hindu undivided family properties. This case, therefore, was not correctly decided and is hereby overruled.

8. Learned counsel for the assessee then referred to the following observations of this court in ITR No. 27 of 1977 (Ram Narain Paliwal Vs. Commissioner of Income Tax,), decided on October 18, 1985 (p. 542) :

"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".

9. In that case, when the partial partition was effected, the Hindu undivided family consisted of Ram Narain, his mother, the wife, four minor sons and one daughter. There being thus more than one coparcener or male member of the Hindu undivided family, partial partition could validly be effected by the karta. The observations noted above, therefore, are in the nature of obiter dicta. Otherwise, in view of our conclusions stated above, the observation made by the Bench to the extent that the karta would not be debarred from effecting partition even if he is the sole surviving coparcener or male member has to be overruled.

10. Learned counsel for the assessee also relied on a Supreme Court judgment in Apoorva Shantilal Shah, HUF Vs. Commissioner of Income Tax, Gujarat-I, Ahmedabad, and a judgment of the Allahabad High Court in CIT v. Govind Narain [1915] 101 ITR 602 but we need not discuss these decisions in detail because both of them are distinguishable on facts. In each of these decisions, the Hindu undivided family consisted of more than one coparcener or male member and as such any observation made therein has no bearing on the present case.

11. In the result, the decision in Commissioner of Income Tax Vs. Narain Dass Wadhwa, is overruled and the question referred to us is answered in the affirmative, that is, against the assesses and in favour of the Revenue. No costs.