

(1945) 08 PAT CK 0012

In the Patna High Court

Sunder Koeri and Another

APPELLANT

Vs

Commissioner of Sasaram Municipality

RESPONDENT

Date of Decision : 23-08-1945

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 82(1)(a), 82(x)(a)

Citation : AIR 1946 Patna 153

Hon'ble Judges : Fazl Ali, C.J.; Ray, J

Bench : Full Bench

Judgement

Fazl Ali, C.J.—This appeal arises out of a suit instituted by the plaintiff-appellants for a declaration that the assessment of a personal tax u/s 82(x), Clause (a), Bihar and Orissa Municipal Act, upon them by the Municipal Commissioners of Sasaram was illegal and ultra vires. The suit was decreed by the trial Court but has been dismissed by the lower appellate Court and hence this second appeal. Plaintiffs 1 and 2 are full brothers and they have been found to be members of a joint Mitakshara family. The case of the Municipality was that the plaintiffs were separate and resided in two separate holdings and had separate income. They also resisted the suit on the ground that the civil Court had no jurisdiction to disturb the assessment. On a reference to the municipal record of the case it appears that there are two separate holdings, one bearing No. 112 and another bearing No. 117. One of the plaintiffs has been assessed by the Municipality with a personal tax of Rs. 9 by reason of his occupation of one of the holdings and the other has been assessed at Rs. 6 per cent, by reason of his occupation of another holding. The Munsif held that because the plaintiffs belonged to a joint Hindu family, there cannot be any separate assessment u/s 82 (1), Clause (a). The learned Subordinate Judge has arrived at two alternative conclusions. In the first place, he has held that "the two plaintiffs though joint have undoubtedly separate earnings." The second conclusion is expressed in these terms:

Assuming however that the plaintiffs are joint in business and property and they have no separate earnings of their own, still they would be liable to separate

assessment of personal tax under the clear provision of law enacted in Section 82(1), Clause (a) of the Bihar and Orissa Municipal Act.

2. It must be stated at once that the second conclusion of the learned Subordinate Judge is wrong in law. Section 82 provides among other things that the Commissioners may impose within the limits of the Municipality a tax upon persons in sole or joint occupation of holdings within the Municipality according to their circumstances and property within the Municipality. The view expressed by the learned Subordinate Judge is that the joint family is not a person and, therefore, individual members of such a family may be separately assessed; but it seems to me to be quite clear that if they have no separate income and no separate earnings, they cannot be so assessed. The joint family is one entity and if the entire income of the family is derived from joint property and there are no separate earnings of the individual members then the individual members cannot be assessed u/s 82(1), Clause (a).

3. The question, however, remains as to the effect of the finding of the learned Subordinate Judge (the lower appellate Court) that the plaintiffs, though joint, have separate earnings. In my opinion, the words of the Section are broad enough to permit assessment of members of a joint family having separate earnings. But the question which was raised by Mr. Varma, the learned advocate for the appellant, was that in the present case there was no evidence before the learned Subordinate Judge to enable him to come to the conclusion that the plaintiffs had separate earnings. In arriving at his finding, the learned Subordinate Judge simply says that he is driven to that conclusion as

otherwise they (the plaintiffs) cannot be imagined to maintain themselves and their family members on an insignificant income from 12 bighas of land only.

4. It is pointed out that the khatians which have been filed in this case show that they have a little more than 12 bighas and it is further contended that the inference drawn by the learned Judge from the circumstances to which he refers is unwarranted.

5. If there had been no evidence at all in this case, I would have been inclined to accept this contention, but there is no special ground taken in the grounds of appeal that the finding is based upon no evidence and on looking into the record of the case I find that at least one of the witnesses examined on behalf of the Municipality has stated that the two plaintiffs have separate earnings.

6. In these circumstances, I am compelled to hold that the finding arrived at by the learned Subordinate Judge is a finding of fact and is binding on this Court and though the learned Subordinate Judge has taken a wrong view on the first question, this appeal fails on the ground that the two plaintiffs have been found to have separate earnings.

7. I would accordingly dismiss this appeal, but there will be no order for costs.

Ray, J.

I agree.