Privy Council Appeal No. 86 *of* 1944

Allahabad Appeal No. 3 *of* 1941

The Commissioner of Income Tax, Central and United Provinces - - - - - - - - - *Appellant*

v.

Musammat Bhagwati - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH APRIL, 1947

Present at the Hearing:

LORD WRIGHT
LORD DU PARCQ
LORD NORMAND
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal by special leave by the Commissioner of Income-tax, Central and United Provinces (hereinafter called "the appellant") from a judgment and decree of the High Court of Judicature at Allahabad, dated 15th October, 1940, passed on a reference made under Section 66 (2) of the Indian Income-tax Act No. XI of 1922 which set aside an Order of the Assistant Commissioner of Income-tax dated 7th September, 1938.

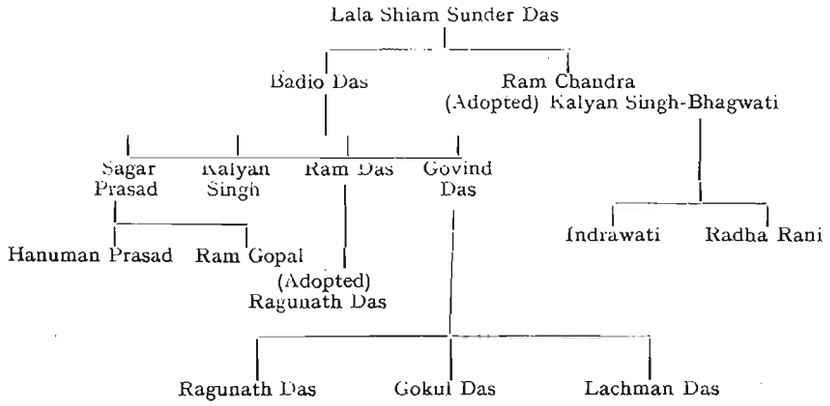
The assessee (hereinafter called "the respondent") was assessed to income-tax for the year 1935-1936 on the allowance of Rs.12,000 per annum which she was receiving for maintenance as the widow of one Kalyan Singh. The tax payable comes to Rs.875.

The question of law referred to the decision of the High Court was "whether the sum of Rs.1,000 per month received by the petitioner (meaning the respondent) in the account year 1934-1935 was received by her as a member of a Hindu undivided family within the meaning of Section 14 (1) of the Act." That Section reads as follows:—

> "The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family."

The Income-tax Officer answered the question in the negative, and on appeal, his decision was confirmed by the Assistant Commissioner of Income-tax. The appellant also was of opinion that the question should be answered in the negative. The High Court, however, answered the question in the affirmative.

Kalyan Singh, the husband of the assessee, along with his brothers, nephews and cousins formed a Hindu undivided family governed by the Mitakashara law. The genealogical tree of the family is as follows:—



Kalyan Singh died on 18th October, 1918, and the surviving members of the family became entitled to the whole of the family estate including the share of Kalyan Singh deceased. In the course of the mutation proceedings, the respondent contended that her husband died as a separated member of the family and that she was heir to her husband. This contention was disallowed by the Revenue Court. The parties, however, eventually came to a compromise and a " deed of agreement " was executed on 10th October, 1919, whereby as mentioned in the statement of the case submitted by the appellant, the assessee " acknowledged her status to be that of a widow in a Hindu undivided family, and further declared that as such she was not entitled to the estate of Kalyan Singh." It was provided by this document that the first party (male members) " will pay as maintenance allowance a sum of Rs.1,000 every month to Musammat Bhagwati (the respondent) second party." It was also provided that in order to secure payment of the allowance to the respondent " the first party will be personally responsible and our property movable and immovable will both be liable." The deed ended with the statement " I the second party will have no rights or interests in the family property excepting as aforesaid." It is not necessary to refer to the other provisions of the agreement for the purpose of this appeal.

Thereafter, the allowance was regularly paid to the respondent. On 9th April, 1923, there was a partition in the family which disrupted into five separate groups, as follows:—

(1) Hanuman Prasad and Ram Gopal, sons of a deceased brother of Kalyan Singh.

(2) Govind Das, brother of Kalyan Singh.

(3) Ragunath Das, the son of Govind Das, who was adopted by Ram Das, a deceased brother of Kalyan Singh and Govind Das.

(4) Gokul Das.

(5) Lachhman Das.

At the disruption, Hanuman Prasad and Ram Gopal on the one side (group 1), and Govind Das on the other side (group 2), each agreed to contribute Rs.500 to the respondent towards the monthly allowance of Rs.1,000 that was being paid to her. Thus, at the material period the respondent was in receipt of a maintenance allowance of Rs.1,000 a month, partly from the first group and partly from the second group. It should be stated here that to none of the disruption proceedings was the respondent a party.

In the above circumstances, the Income-tax Officer assessed the respondent on her allowance of Rs.12,000 received by her during the account year 1934-1935, overruling the objections raised on her behalf that she was receiving the amount as a member of a Hindu undivided family within the meaning of Section 14 (1) of the Act, holding that after the disruption of the family in 1923 " owing to the fact of the payment of the allowance to Musammat Bhagwati (respondent) by these persons the Mussamat cannot be said to be a member of the family of

either of them. It is clear that she is not a member of any Hindu undivided family existing at present . . . " He also added as a supplemental ground that the allowance that the respondent had been getting was only by virtue of the deed of agreement and as such was not exempt under the Act. As already mentioned this Order was confirmed by the Assistant Commissioner.

In stating the case to the High Court, the appellant based his opinion on the ground that the Hindu undivided family to which the respondent once belonged became disrupted in 1923, and partitioned itself into five separate entities in none of which the respondent has any " legal place ". According to his view, " the maintenance allowance which the petitioner is now receiving from two of these entities is not being received by her as a member of a Hindu undivided family as there is no undivided family in existence to which she can at present be said to belong." It will be observed that in negativing her claim he did not refer to the supplemental ground based on the agreement of 10th October, 1919, relied on by the Income-tax Officer and the Assistant Commissioner. Thus, the question that fell to be decided by the High Court on the reference was whether the respondent who was receiving Rs.1,000 per month for maintenance up to 9th April, 1923, as a widow in a Hindu undivided family was entitled to claim exemption from payment of the income-tax with respect to that amount under Section 14 (1) of the Act, after the disruption of the undivided family.

In support of the exemption, two grounds were urged in the High Court on behalf of the respondent. In the first place, it was argued that having originally received the allowance as a member of a Hindu undivided family, the capacity in which she was receiving it was unaffected by the subsequent disruption among the coparceners and that even if she is to be considered as being no longer a member of the Hindu undivided family, she is nevertheless receiving the allowance in that capacity within the meaning of Section 14 (1) of the Act. The learned judges did not deal with this ground, but characterising it as one " not altogether without force " they proceeded to discuss the other ground next urged which they thought was " a firmer one " for the respondent, namely, that she has not ceased to be a member of a Hindu undivided family at all, despite the subsequent disruption amongst the coparceners, and on this, they came to the conclusion that " after the disruption of the family on 9th April, 1923, the assessee continued to be a member of a Hindu undivided family with each of the entities into which the family disrupted irrespective of whether any such entity consisted of one male member or of several male members." Upon this view of the matter they held that the respondent was entitled to claim exemption under Section 14 (1) of the Act. The learned judges answered the reference, as expressly stated by them, on the assumption that up to 9th April, 1923, the respondent was receiving her allowance as a widow of a Hindu undivided family.

To show that the decision of the High Court cannot be supported, Mr. Tucker, the learned Counsel for the appellant, submitted two arguments for their Lordships' consideration, viz.:—(1) Assuming that the respondent was receiving the maintenance allowance as a member of a Hindu undivided family till the disruption of the family into 5 groups in 1923, she is not entitled to claim the benefit of Section 14 (1) of the Indian Income-tax Act, as according to the learned Counsel's reading of the Section the three following conditions required for its operation cannot be said to exist in her case, these being (*a*) the assessee must be a member of a Hindu undivided family at the time of the assessment, (*b*) the income in question must be received by the assessee in virtue of her capacity as a member of the joint family, and (*c*) the allowance must be received out of the income of the joint family, explained as meaning that what is received must be part of the income of the family of which the assessee was a member. Shortly stated, this argument has reference to the two facts that at the time of the assessment, the Hindu undivided family from

which the respondent was receiving the maintenance allowance had become disrupted in 1923 into 5 groups, to none of which it is alleged she belonged, and that at the time of the assessment she was receiving the allowance under the deed of agreement of 1919 and not from the taxable income of the Hindu undivided family. (2) The learned Counsel's second argument was that under the deed of agreement the respondent must be considered to have surrendered all her rights to maintenance *as such* out of the income of the family and what she received has become a money allowance taxable under the Act.

The law is well settled that the widow of a deceased coparcener in a joint Hindu family has a right of maintenance against the surviving coparceners of the joint family *quoad* the share of her deceased husband which they take by the rule of survivorship. This is an absolute right which accrues to her as a member of the joint family. It does not form a charge on the properties of the family, but when necessary it may be made into a charge on a specific portion of the joint family properties not exceeding her husband's share. Separate maintenance may be provided for, by an allowance of money, or by an assignment of land.

It cannot be disputed that at its inception, the allowance made payable by the male members under the deed, was maintenance which the respondent was entitled to receive in her capacity as the widow of a Hindu undivided family. She received it as maintenance due to her, as the widow of Kalyan Singh. The first line of argument proceeds upon the assumption that up till 1923 the respondent was receiving maintenance as the widow of a Hindu undivided family. Whether under the deed of 1919, the allowance lost its nature as maintenance allowance is a different question which their Lordships will consider later. The argument on the part of the respondent is that the allowance is being received by her in her capacity or status as a widow of a Hindu undivided family and the capacity in which she was receiving it, is not affected by the severance in joint status that took place subsequently in 1923, in the family, to which she was not a party; and it is therefore exempt from taxation under Section 14 (1) of the Act, as the only requisite to be proved under the Section is that she was receiving the allowance in question in her capacity as a member of the Hindu undivided family. As already stated this was the first argument put before the High Court which the learned Judges did not consider.

Under the Act, a Hindu undivided family is treated as a unit of taxation. Section 14 (1) of the Act exempts an assessee from payment of the tax in respect of any sum which he receives as a member of a Hindu undivided family. It is clear that the object of the Section is to avoid double taxation. The question in the present case is what has the respondent to prove in order to claim the benefit of the Section. In support of his contention, Mr. Tucker relied on two decisions (1) *Commissioner of Income-tax, Bihar and Orissa* v. *Maharani Lakshmipathi Saheba* I.L.R. 14 Patna 313, and (2) *Commissioner of Income-tax, Bihar and Orissa* v. *Visheswar Sing* I.L.R. 14 Patna 785. The judgments in both cases were delivered by Agarwala J. In the first case, the learned Judge stated that Section 14 (1) of the Act premises (1) a Hindu undivided family; (2) that the person claiming exemption is a member of the family; and (3) that the sum referred to is received as a member of the family. Then the learned Judge made general observations about the meaning and application of the section; but no occasion arose for the application of the principles which the learned Judge elucidated, to the case before him, as he held on the facts " that the assessee did not, during the assessment by the income tax officer or in her appeal from that assessment, raise the issues necessary for the determination of the questions of fact which arise under Section 14 (1)." The learned Counsel submitted that as the conditions required for applying the section as stated in the judgment did not exist with respect to the respondent at the time of the assessment for reasons already explained, she is not entitled to claim exemption under the section.

In their Lordships' view all that is required to be proved by the respondent at the time of the assessment in order to claim exemption under the section is that she is receiving the sum in question in her capacity as a widow of the deceased coparcener of a Hindu undivided family. If she proves that she is receiving the sum in that capacity or status, then she is entitled to exemption under the section. If the decision means that the respondent should prove anything more than what their Lordships have stated she should prove to claim the exemption, then they are unable with great respect to agree with it. The second decision relied on does not advance the appellant's case much further. In the next decision of the same court, *Commissioner of Income-tax, Bihar and Orissa v. Maharani Manjuri Kuari* (13 Ind. Tax Reports 55) which was stated by Mr. Tucker to be against him, the test to be applied when exemption is claimed under the section was thus stated by Fazl Ali, C.J.: " The quesion is whether the maintenance is received by her (the assessee) by virtue of some right whether based on custom or law, or is in the nature of a gift or indulgence." The learned Chief Justice followed the previous decision of his own Court, *Commissioner of Income-tax, Bihar and Orissa* v. *Visheswar* (*supra*), and various other decisions of other Courts including one of the Madras High Court, viz., *Commissioner of Income-Tax v. Zemindar of Chemudu* (I.L.R. 57 Mad., p. 1023), where it was held by Ramesam J. with reference to the facts of the case that, " the question in the case is not whether the income belongs to the Zemindar or whether it belongs to the joint family of which the assessee is a member, but whether the assessee received his payment as a member of a Hindu undivided family." Agarwala J. in the second decision of the Patna High Court referred to above, thought that the principle was stated too widely in that case. A few other decisions were also referred to by the learned Counsel. Their Lordships do not propose to discuss these decisions in detail, as it appears to them that the test to be applied when exemption is claimed under the section is clear and is what they have already stated, viz., if as in the present case a Hindu widow proves that she is receiving the allowance in question by virtue of her right or in her capacity as a member of the Hindu undivided family, then she is entitled to claim the benefit of the section. It was strenuously argued that because of the disruption of the joint family in 1923, the respondent can no longer claim herself to be member of a Hindu undivided family. Their Lordships are unable to accept this contention. The respondent was not a party to the partition; it is true that the coparceners can break up the family, but they cannot by so doing deprive the widow of her right to receive maintenance as a member of the Hindu undivided family. In their view, the question to which of the groups the respondent belongs after the disruption of the joint family in 1923, does not arise for decision in this case.

The next question is whether by the deed of agreement the respondent has surrendered her rights to maintenance from the joint family income and got substituted in its place by virtue of the deed, the payment of a money allowance which on account of its character *as such* has become taxable in her hands. Their Lordships have already referred to the real nature of a Hindu widow's right of maintenance. It is perhaps the most valuable right which a Hindu widow in a joint Hindu family under the Mitakshara law can have, as she has no right to a share in the joint family property and her right is to maintenance and maintenance only. The extreme worth of this right to a childless widow who has usually no other resource in a joint Hindu family must have been one of the aspects of the problem present to the mind of the legislature when it exempted generally from taxation any sum which an assessee receives as a member of a Hindu undivided family.

Turning to the deed of agreement in the present case, it shows that the parties resorted to litigation in the revenue courts where the respondent raised the question that her husband died separate from the other members of the family, and as a result of the agreement which ended the dispute, she got what is described in the deed " as maintenance allowance, a sum

of Rs.1,000, every month " and what is more important, " in order to secure the payment of the monthly allowance " the first party under the deed (the male members) became personally responsible and our property movable and immovable became liable ". It is clear that by the creation of a " charge ", this provision in the deed made her right of maintenance safe and secure. The deed ended with the statement that the respondent " will have no rights or interests in the family property excepting as aforesaid ", which means as correctly described by the income tax commissioner, " whereby the petitioner (respondent) acknowledged her status to be that of a widow in a Hindu undivided family and declared that as such, she was not entitled to the estate of Kalyan Singh ", her husband.

Their Lordships fail to see how by the above provisions the respondent has surrendered her rights to maintenance from the family properties. It was argued by Mr. Tucker that, " even though the respondent technically remained a member of the family, she ceased to receive the income by her title as a member of the family, but began to receive it by virtue of the deed which fixed a liability on the people concerned, irrespective of the land which belonged to them." Their Lordships cannot accept this view. As they read the deed, the respondent by virtue of it effectively secured her maintenance right which was an inchoate one, by getting a charge created to safeguard it. Referring to provisions for maintenance Sir Thomas Strange in his Hindu Law—see vol. 1, page 231—observes " In whatever way the provision is made, care should be taken to have it secured. The manner of doing this is discretionary, there being no special law directing how provision is to be made." The respondent in the present case has only acted on the advice generally tendered to make the position secure in such cases. Instead of surrendering her right to maintenance from the family income, she has now made it by the deed more secure and definite with the result that subsequent disposition if any of the property by the male members will leave her rights unaffected. In their Lordships' view, the maintenance right has not lost its original character, of what is due to her from the income of the joint family as a member of the Hindu undivided family. To read the deed in any other sense will be to put a wrong construction on the document.

Before they conclude, their Lordships should add that Sir Herbert Cunliffe, in further support of his case, urged that the appeal should be dismissed having regard to Section 25A of the Income-tax Act which deals with " Assessment after partition ' of a Hindu undivided Hindu family.' " That Section after stating in Clause (1) that:—" Where at the time of making an assessment under Section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit and if he is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions, he shall record an Order to that effect. . . ." states under Clause (3) " where such an Order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family." It was argued that when in the course of assessment proceedings initiated after a partition in a joint Hindu family, the question is raised, as in the present case, whether the assessee still remains a member of a Hindu undivided family, it is incumbent on the Income-tax Officer to pass an Order as required by Clause (1) of Section 25A, and such an order not having been produced in this case, the appeal should be dismissed. The point is a new one and except for some departmental correspondence proper materials for deciding the question have not been placed before their Lordships. In the circumstances their Lordships refused to hear arguments on this new point.

For the reasons mentioned above their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

(51815) Wt. 8013—20 170 5/47 D.L. G. 338

In the Privy Council

THE COMMISSIONER OF INCOME TAX, CENTRAL AND UNITED PROVINCES

v.

MUSAMMAT BHAGWATI

DELIVERED BY SIR MADHAVAN NAIR

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