Kiran Devi vs Bihar State Sunni Wakf Board on 5 April, 2021

Equivalent citations: AIR 2021 SUPREME COURT 1775, AIRONLINE 2021 SC 181

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Bench: Hemant Gupta, S. Abdul Nazeer, Ashok Bhushan

REPOR

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6149 OF 2015

KIRAN DEVI .....A

VERSUS

THE BIHAR STATE SUNNI WAKF BOARD
& ORS. .....RES

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Judicature at Patna dated 6.2.2013 whereby a writ petition filed by respondent No. 41 herein was allowed, holding that the tenant in the premises in question was representing a 1 Hereinafter referred to as the 'plaintiff' joint Hindu family and that the Karta was not competent to surrender the tenancy rights in favour of respondent No. 1-The Bihar State Sunni Wakf Board 2 and consequently the induction of the appellant as a tenant by the Wakf Board was illegal. Accordingly, a direction was issued to dispossess the appellant from the suit premises and to handover the vacant possession to the plaintiff.

2. The plaintiff had filed a suit for declaration before the competent civil court stating that he is a tenant in the suit premises and is entitled to continue in the suit premises as a tenant on payment of monthly rent. The basis of such declaration was that Ram Sharan Ram, the great grandfather of the

plaintiff, predeceased his brother Ram Sewak Ram who died issueless and his widow predeceased him. Ram Sewak Ram was carrying out joint family business of hotel in the premises of the Wakf Board. Due to advanced age, he handed over the possession of the hotel business to his nephew Devendra Prasad Sinha, the grandfather of the plaintiff. The grandfather of the plaintiff succeeded to the tenancy as member of the joint Hindu family. After his death, defendant Nos. 1 to 3 succeeded to tenancy as members of the Joint Hindu Family. The shop was being run by Surendra Kumar, son of Devendra Prasad Sinha, when the grandfather of the plaintiff fell ill. Surendra Kumar, the father of the plaintiff started 2 Hereinafter referred to as the 'Wakf Board' paying rent to the Wakf Board. However, Surendra Kumar later joined service and the hotel was being run through the servants. The plaintiff had started running the hotel since 1988. On account of disputes over the management, the hotel was closed and it remain closed for several years. It is the plaintiff who wanted to resume the hotel business in the premises in question and thus communicated with the Wakf Board to continue the hereditary tenancy of the shop as Karta in his name.

3. The cause of action was stated to arise on 21.3.1996, when the plaintiff's grandfather along with others broke the lock of the suit premises and removed the belongings available in the shop. The father of the plaintiff went to the Police for lodging of the report but they refused to register the case. A complaint was subsequently filed in the court of Chief Judicial Magistrate, Patna, which is stated to be pending. Later, the plaint was amended and the present appellant was impleaded as defendant No. 5 alleging that the lease in her favour by the Wakf Board is forged, fabricated, anti-dated and collusive paper.

4. The Wakf Board in its written statement asserted that Md.

Salimuddin was the duly appointed Mutawalli of the Janki Bibi Wakf Estate No. 465B and the appellant is a tenant duly inducted by the Management Committee. It was also pleaded that the defendants had no knowledge that Ram Sewak Ram was carrying any business of hotel but that Devendra Prasad Sinha was a tenant in the suit premises who had surrendered his tenancy rights in favour of Md. Salimuddin through a written letter dated 31.5.1996 and thereafter handed over vacant possession of the premises. Subsequently, the appellant had been inducted as a tenant on a monthly rent of Rs.600/- on 5.6.1996. This was also indicated in the written statement filed by the appellant herein. In a separate written statement filed on behalf of defendant Nos. 1 and 2, it was asserted that defendant No. 1 was making payment of rent to the landlord i.e. Mutawalli of the Wakf and that he had surrendered the shop premises on 31.5.1996 to the landlord/Mutawalli of the Wakf as he was unable to continue the business due to old age. It was denied that the plaintiff and his father went to lodge FIR on account of opening of the locks by defendant No. 1. It was asserted that the plaintiff had no occasion of claiming the shop on 21.3.1996 as the said shop was never in his possession nor under his lock and key.

5. The appellant and the Wakf Board filed applications before the Civil Court for transfer of the suit for adjudication by the Wakf Tribunal in terms of provisions of Section 85 and 85A of the Wakf Act, 19953. The suit was thus transferred by the learned Munsif on 4.2.2009. Such order of transfer of the suit to the Tribunal was challenged by the plaintiff by way of a revision petition before the 3 For short, the 'Act' Patna High Court. Such revision was found to be frivolous and dismissed on

19.5.1999 with cost of Rs.3,000/-.

6. The parties went to trial on the following issues before the Wakf Tribunal:

> "(i) Whether Devendra Prasad was running a joint family business?
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> (ii) Whether Devendra Prasad as Karta of joint family business has got authority to surrender the joint family business?
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> (iii) Whether Devendra Prasad surrendered joint family business or premises of joint family business?
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> (iv) Whether the plaintiff is entitled to any other relief?"

7. Devendra Prasad Sinha (defendant No. 1) appeared as DW-5 whereas Dilip Kumar (defendant No. 2) appeared as DW-14 before the Wakf Tribunal. The said witnesses supported their stand that the tenancy was surrendered on 31.5.1996. The learned Tribunal held that defendant No. 1 was running a hotel business and had later surrendered the shop to Mutawalli. The writing on paper to surrender the possession was admitted by the witness. It was also observed that there was no oral or documentary evidence that Devendra Prasad Sinha had surrendered the premises where he was running joint family business. The Tribunal noted that the plaintiff did not even suggest that Devendra Prasad was managing a joint family business and thus in the absence of such suggestion it was difficult or rather impossible to believe that Devendra Prasad was managing a joint family business. Consequently, the suit was dismissed.

8. The High Court in a writ petition against the said order held that the suit premises were let out to Ram Sewak Ram who carried out joint family hotel business in the said premises until his death in January, 1960. Thereafter, defendant No. 1 became the Karta and succeeded to joint family business including the suit premises. It was observed that he could not have surrendered the tenancy in favour of Mutawalli on 31.5.1996 without the consent of other members of the joint family. Consequently, the judgment of the Tribunal was set aside and also a direction was issued to dispossess the appellant from the suit premises and to handover the vacant possession of the suit premises to the plaintiff.

9. Learned counsel for the appellant has raised the following arguments:

> (1) That the Tribunal had no jurisdiction to entertain the suit filed by the plaintiff in view of the judgment of this Court in Ramesh Gobindram (Dead) through LRs. v. Sugra Humayun Mirza Wakf4. After the aforesaid Judgment, the Wakf Act was amended by Central Act No. 27 of 2013. This Court recently in Punjab Wakf Board v. Sham Singh 4 (2010) 8 SCC 726 Harike5 has considered the amendment in the Act, wherein, the proceedings instituted prior to the amendment were to continue as per the unamended provisions of the Act.

Therefore, a suit for declaration of the plaintiff as a tenant was not maintainable before the Wakf Tribunal as there was no estoppel against the statute and that the consent would not confer jurisdiction on the Wakf Tribunal, which it did not have in view of the judgments referred.

(2) The order of the Wakf Tribunal could not be challenged by way of writ petition before the High Court under Article 226 of the Constitution of India as only a revision in terms of proviso to sub-section (9) of Section 83 of the Act could be preferred. Learned counsel for the appellant relies on judgment reported as Sadhana Lodh v. National Insurance Co. Ltd. & Anr.6 and of Patna High Court in Md. Wasiur Rahman & Anr v. The State of Bihar & Ors.7.

(3) The High Court could not have reappreciated facts in a petition under Article 227 of the Constitution. The High Court has illegally set aside findings of fact recorded by the Wakf Tribunal. The reliance was placed on Chandavarkar Sita Ratna Rao v. Ashalata S. Guram8. It was also argued that 5 (2019) 4 SCC 698 6 (2003) 3 SCC 524 8 (1986) 4 SCC 447 in petition under Article 226 or 227 of the Constitution, no interference is permitted in tenancy matter. Reference was made to Ganpat Ladha v. Sashikant Vishnu Shinde9 to support the said contention.

(4) The surrender of possession of the tenanted premises by defendant No. 1 was not of a business of joint Hindu family but of the tenancy which was not been carried out for large number of years even as admitted by the plaintiff. (5) Even if it was assumed that defendant No. 1 was a Karta of the joint Hindu family, he had the right to surrender the tenancy without the consent of the other coparceners as such surrender was for the benefit of the family inter-alia for the reason that no business was carried out for the last many years.

10. On the other hand, Mr. Sanyal, learned counsel for the plaintiff ar-

gued that the nomenclature as to whether the jurisdiction of the High Court under Article 226 of the Constitution of India is invoked or the jurisdiction in terms of the proviso to sub-section (9) of Section 83 of the Act is invoked, is immaterial as the jurisdiction in ei- ther case is that of the High Court. The nomenclature in exercise of the jurisdiction does not render the order passed by the High Court to be illegal or unwarranted or beyond jurisdiction. Refer- 9 (1978) 2 SCC 573 ence was made to Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.10.

11. It was further argued that Ram Sewak Ram was inducted as a ten-

ant and therefore, the plaintiff has a right by birth in the tenancy which could not be surrendered by the then Karta, defendant No. 1 without the consent of the other coparceners. Since the posses- sion was delivered to the appellant as a consequence of illegal sur- render of tenancy rights, therefore, the order of the High Court is just and proper.

12. Mr. Sanyal referred to Full Bench judgment of the Allahabad High Court reported as Ram Awalamb & Ors. v. Jata Shankar & Ors.11 to contend that the personal law of Hindus regarding the devolution of joint Hindu family property is applicable to tenanted property also. Reference was also made to a judgment of this Court reported as Commissioner of Income Tax, Madhya Pradesh v. Sir

Hukamchand Mannalal & Co.12 that members of Hindu Undivided Family can enter into contract with a stranger.

13. We have heard learned counsel for the parties and find that it is not open to the appellant at this stage to dispute the question that the suit filed before the learned Munsif could not have been transferred to the Wakf Tribunal. The plaintiff had invoked the jurisdiction of the Civil Court in the year 1996. It is the Wakf Board 10 (1998) 5 SCC 749 11 AIR 1969 All. 526 12 (1970) 2 SCC 352 and the appellant who then filed an application for transfer of the suit to the Wakf Tribunal. Though, in terms of Ramesh Gobindram, the Wakf Tribunal could not grant declaration as claimed by the plaintiff, but such objection cannot be permitted to be raised either by the Wakf Board or by the appellant as the order was passed by the Civil Court at their instance and was also upheld by the High Court. Such order has thus attained finality inter- parties. The parties cannot be permitted to approbate and reprobate in the same breath. The order that the Wakf Tribunal has the jurisdiction cannot be permitted to be disputed as the parties had accepted the order of the civil court and went to trial before the Tribunal. It is not a situation where plaintiff has invoked the jurisdiction of the Wakf Tribunal.

14. The argument raised by the learned counsel for the appellant that there was no estoppel against the statute as consent could not confer jurisdiction upon the Authority which did not originally have jurisdiction. Hence, it was submitted that the decision of the Tribunal was without jurisdiction. It is to be noted that the plaintiff had filed proceedings before the Civil Court itself but the same was objected to by the appellant as well as by the Waqf Board. Thus, it is not conferment of jurisdiction by the plaintiff voluntarily but by virtue of a judicial order which has now attained finality between parties. The suit was accordingly decided by the Waqf Tribunal. We do not find that it is open to the appellant to raise the objection that the Waqf Tribunal had no jurisdiction to entertain the suit in the facts of the present case. Therefore, we do not find any merit in the first argument raised by the learned counsel for the appellant.

15. To appreciate the second argument, the relevant provisions of Section 83 and sub-section (9) of Section 83 of the Act are extracted below:

> "83. Constitution of Tribunals, etc. – (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.
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> xx xx xx (9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:
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> Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose

> of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit."

16. The judgments referred to by the appellant in Sadhana Lodh and of Patna High Court in Md. Wasiur Rahman are not applicable to the facts of the present appeal. Sadhana Lodh is a judgment wherein an award of the Motor Accident Claim Tribunal was challenged by way of a Writ Petition. This Court held that the Writ Petition was not maintainable when an alternative remedy is provided under a statute. Therefore, the said judgment deals with availability of the writ jurisdiction in view of the remedy of appeal provided. In the present case, the statute provides for a remedy under proviso of sub-section (9) of Section 83 of the Act against an order passed by the Wakf Tribunal. Such remedy is before the High Court alone.

17. The judgment in Md. Wasiur Rahman arises out of the fact where the order of the Waqf Tribunal was challenged by way of a Writ Petition. An objection was raised before the writ court that there was an alternative statutory remedy available, therefore, the Writ Petition was not maintainable. The learned Single Judge held that a petition under Article 226/227 of the Constitution of India was not maintainable but liberty was given to the petitioners to invoke the jurisdiction in terms of proviso to sub-section (9) of Section 83 of the Act. The said judgment does not show that any argument was raised that a petition under Article 226/227 of the Constitution of India could be treated as a petition in terms of proviso to sub-section (9) of Section 83 of the Act. Therefore, such judgment is also not relevant for the question arising for consideration in the present appeal.

18. A perusal of the proviso to sub-section (9) of Section 83 of the Act shows that it confers power on the High Court to call for and ex- amine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination. In fact, the statutory provision is acceptance of the principle that the jurisdiction of the High Court under Article 226 or 227 of the Constitution of India cannot be curtailed in terms of L. Chandra Kumar v. Union of India & Ors.13. The rel- evant extract reads thus:

> "90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. .... On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. ...We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In R.K. Jain case [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , after 13 (1997) 3 SCC 261 taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforestated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls."

19. A three Judge Bench in a judgment reported as Radhey Shyam & Anr. v. Chhabi Nath & Ors.14 held that the observations in para 25 of the judgment in Surya Dev Rai v. Ram Chander Rai & Ors.15 to be not good law. In Surya Dev Rai, it was held that the order of Civil Court could be challenged in a petition under Article 226 and that the distinction between Articles 226 and 227 of the Constitution of India stood almost obliterated. This Court in Radhey Shyam held:

"27. ... we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

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29. Accordingly, we answer the question referred as 14 (2015) 5 SCC 423 15 (2003) 6 SCC 675 follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is overruled."

20. Therefore, when a petition is filed against an order of the Wakf Tri-

bunal before the High Court, the High Court exercises the jurisdic- tion under Article 227 of the Constitution of India. Therefore, it is wholly immaterial that the petition was titled as a writ petition.

It may be noticed that in certain High Courts, petition under Article 227 is titled as writ petition, in certain other High Courts as revi- sion petition and in certain others as a miscellaneous petition. However, keeping in view the nature of the order passed, more particularly in the light of proviso to sub-section (9) of Section 83 of the Act, the High Court exercised jurisdiction only under the Act. The jurisdiction of the High Court is restricted to only examine the correctness, legality or propriety of the findings recorded by the Wakf Tribunal. The High Court in exercise of the jurisdiction conferred under proviso to sub-section (9) of Section 83 of the Act does not act as the appellate court.

21. We find merit in the argument raised by Mr. Sanyal that the nomenclature of the title of the petition filed before the High Court is immaterial. In Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal16, this Court held that wrong reference to the power under which an action was taken by the Government would not per se vitiate the action, if the same could be justified under some other power whereby the Government could lawfully do that act. The Court held as under:

> "5. ....It is well settled that the exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provisions was mentioned. See in this connection the observations in Pitamber Vajirshet v. Dhondu Navlapa [ILR (1888) 12 Bom 486, 489] . See in this connection also the observations of this Court in the case of L. Hazari Mal Kuthiala v. ITO, Special Circle, Ambala Cantt. [AIR 1961 SC 200 : (1961) 1 SCR 892 : (1961) 41 ITR 12, 16 : (1961) 1 SCJ 617] This point has again been reiterated by this Court in the case of Hukumchand Mills Ltd. v. State of M.P. [AIR 1964 SC 1329 : (1964) 6 SCR 857 : (1964) 52 ITR 583 : (1964) 1 SCJ 561] where it was observed that it was well settled that a wrong reference to the power under which action was taken by the Government would not per se vitiate that action if it could be justified under some other power under which Government could lawfully do that act. See also the observations of the Supreme Court in the case of Nani Gopal Biswas v. Municipality of Howrah [AIR 1958 SC 141 :
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> 1958 SCR 774, 779 : 1958 SCJ 297 : 1958 Cri LJ 271]."

22. Later, in Pepsi Foods Ltd., this Court held that nomenclature under which the petition is filed is not quite relevant and it does not debar the Court from exercising its jurisdiction which otherwise it possesses. If the Court finds that the appellants could not 16 (1983) 2 SCC 422 invoke its jurisdiction under Article 226, the Court can certainly treat the petition as one under Article 227 or Section 482 of the Code. This Court held as under:

> "26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its

> jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."
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> 23. Therefore, the petition styled as one under Article 226 would not bar the High Court to exercise jurisdiction under the Act and/or un-

der Article 227 of the Constitution. The jurisdiction of the High Court to examine the correctness, legality and propriety of deter- mination of any dispute by the Tribunal is reserved with the High Court. The nomenclature of the proceedings as a petition under Article 226 or a petition under Article 227 is wholly inconsequen- tial and immaterial.

24. The judgment referred to by Mr. Sanyal in Sir Hukamchand Mannalal & Co. that a member of an HUF is competent to enter into a contract with stranger does not support the argument raised. It has been held that if a member of the HUF enters into contract with a stranger, he does so in his individual capacity. It was held as under:

> "5. The Indian Contract Act imposes no disability upon members of a Hindu undivided family in the matter of entering into a contract inter se or with a stranger. A member of a Hindu undivided family has the same liberty of contract as any other individual: it is restricted only in the manner and to the extent provided by the Indian Contract Act. Partnership is under Section 4 of the Partnership Act the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all: if such a relation exists, it will not be invalid merely because two or more of the persons who have so agreed are members of a Hindu undivided family. ....."

25. This Court has quoted with the approval of the judgment reported as P.K.P.S. Pichappa Chettiar & Ors. v. Chockalingam Pillai & Ors.17 wherein it has been held that when a manager of a joint family enters into a partnership, that would not ipso facto makes the other member of his family as partners. The Court held as un- der:

> "In their Lordships' opinion, the law in respect of the matter now under consideration is correctly stated in Mayne's Hindu Law (9th Edn.) at page 398, as follows:
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> "Where a managing member of a joint family enters into a partnership with a stranger the other members of the family do not 'ipso facto become partners in the business so as to clothe them with all the rights and obligations of a partner as defined by the Indian Contract Act. In such a case the family as a unit does not

> become a partner, but only such of its members as in fact enter into a contractual relation with the 17 AIR 1934 Privy Council 192 stranger: the partnership will be governed by the Act." In this passage reference is made to the Indian Contract Act, which would be applicable to the facts of this case. It is to be noted that the sections referring to partnership in the said Act have been repealed and are now embodied in the Indian Partnership Act, 1932. Even assuming, therefore, that Virappa was the manager of his joint Hindu family in 1908, his entering into partnership with the Chetties in that year would not "ipso facto" make the other members of his family partners ..."

26. The next question is as to whether Shri Devendra Prasad Sinha was running the joint family business and/or whether the act of surrender of possession was that of a joint Hindu family business or only of surrender of tenancy; or that as a Karta, surrender of tenancy was for the benefit of the joint Hindu family.

27. The plaintiff has pleaded that when father of the plaintiff joined service, the shop was being run through the servants and that the plaintiff began to run the hotel since 1988. Thereafter, the disputes cropped up over the management and accounting of the in- come and the hotel was closed for many years. The plaintiff has pleaded as under:

> "4. That when the grandfather of the plaintiff fell ill the shop was being looked after and began to run by his eldest son Surendra Kumar and Surendra Kumar began to pay rent to Waqf Board under receipt granted to him in the name of Devendra Prasad Sinha, which are all with Surendra Kumar, later when Surendra Kumar joined the Service the shop is bring run through the servant but later on the Hotel began to run by the plaintiff since 1988 and thereafter dispute cropped up over the management and accounting of income and as such the Hotel became closed and remained closed for several years."

28. The High Court held that the existence of joint family is estab-

lished from the Ration Card issued on 2.4.1949 and from the pay- ment of rent for the period 1947–1955 that the premises were let out to joint family. The High Court also rejected the surrender of tenancy on the ground that it was without the consent of other co- parceners. It was held as under:

> "37. ...After death of Ram Sharan Ram, Ram Sewak Ram became the Karta of the joint Hindu family of which defendant No. 1, his three sons Surendra Kumar, father of the plaintiff, Dilip Kumar, Defendant No. 2, Suresh Kumar, plaintiff and his three brothers were the members. Existence of the joint family of which Ram Sewak Ram was the Karta is established from perusal of the Ration Card issued under the order of the Government by the Secretary to the Government, Exhibit-9/A dated 2.12.1949. After death of Ram Sharan Ram, Ram Sewak Ram having become Karta of the joint family managed the affairs of the joint family including the hotel business in the suit

premises let out to the joint family by the Mutawalli of the Wakf Estate which owned the suit premises as is evident from perusal of 46 rent receipts (Exhibits-8 to 8/45) granted by the Bihar State Sunni Wakf Board through Mutawalli Md. Suleman for the period 1947-1955 indicating payment of rent for the suit premises by the tenant Ram Sewak Ram.

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43. Rent receipts, Water Board receipt and electricity bill receipt aforesaid obtained by Defendant No. 1 are subsequent to the death of the original tenant i.e. Karta of the joint family Ram Sewak Ram from whom Defendant No. 1 succeeded to the tenancy along with the other coparceners of the joint family. On the basis of the subsequent receipts it cannot be said that the tenancy is created only in favour of Defendant No. 1 ignoring the other descendants/successors of Ram Sewak Ram. Reference in this connection is also required to be made to the statement of Defendant No. 4 who examined himself as D.W. 2 paragraph 24 wherein he has categorically stated that in the Wakf Board there is no Kirayanama executed in favour of Devendra Babu, Defendant No. 1.

44. The case set out by the defendants regarding surrender letter dated 31.5.96 is also fit to be rejected as after the death of Ram Sewak Ram, the Karta of the Hindu undivided family, Defendant No. 1 became the Karta of the Hindu undivided family and as per the tenets of Hindu Law Defendant No. 1 was not entitled to surrender the tenanted premises without the consent of the other coparceners of the Hindu undivided family....

45. In view of my findings above, there is no difficulty in concluding that the suit premises was let out to Ram Sewak Ram who carried joint family hotel business in the said premises until his death i.e. in January, 1960 whereafter Defendant No. 1 became the Karta of the family and succeeded to the joint family business including the suit premises along with his sons and grandsons constituting the joint family, as such, without the consent of the other members of the joint family could not have surrendered the tenancy in favour of Mutawalli of the Wakf Estate through the so-called surrender letter dated 31.5.1996."

29. Thus, even if a male member had taken premises on rent, he is tenant in his individual capacity and not as Karta of Hindu Undi- vided Family in the absence of any evidence that Karta was doing the business for and on behalf of Joint Hindu Family. The High Court has presumed the existence of the joint family of which Ram Sewak Ram was said to be the Karta from perusal of the Ration Card issued on 2.12.1949. The Hindu Joint Hindu Family cannot be presumed to be in existence only on the basis of Ration Card un- less there is evidence that the funds of joint Hindu Family were in-

vested in the business in the tenanted premises.

30. The Allahabad High Court in Ram Awalamb held that notions of Hindu law, or Mohamedan law, or any other personal law cannot be imported into the rights created by the U.P. Zamindari Abolition and Land Reforms Act. The Court held as under:

> "8. Hindu joint families have existed from times immemorial and they exist even now. However, it is by no means necessary that every Hindu Joint family should be possessed of joint family property also. Where any property is ancestral or it is acquired by all the members of a joint Hindu family or after having been acquired by one member of the joint family only it is thrown in the common stock it is regarded to be joint family property or coparcenary property. Until partition takes place, or only one member of the family is left, without having any male issue, the coparcenary property remains with the family and upon the death of any one member only his interest devolves on the surviving coparceners. The Karta or manager of the family alone has the right to transfer the property either for legal necessity or for the benefit of the estate.
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> 45. Our conclusions can, therefore, be briefly summarised as follows:— (1) Where members of a joint Hindu family hold bhumidhari rights in any holding, they hold the same as tenants in common and not as joint tenants. The notions of Hindu law cannot be invoked to determine that status.

(2) Where in certain class of tenancies, such as permanent tenure holders, the interest of a tenant was both heritable and transferable in a limited sense and such a tenancy could, prior to the enforcement of the Act, be described as joint family property or coparcenary property, the position changed after Act 1 of 1951 came into force. Thereafter the interest of each bhumidhar, being heritable only according to the order of succession provided in the Act and transferable without any restriction other than mentioned in the Act itself, must be deemed to be a separate unit. (3) Each member of a joint Hindu family must be considered to be a separate unit for the exercise of the right of transfer and also for the purposes of devolution of bhumidhari interest of the deceased member.

(4) The right of transfer of each member of the joint Hindu family of his interest in bhumidhari land is controlled only by Sec. 152 of the Act and by no other restriction. The provisions of Hindu law relating to restriction on transfer of coparcenary land, e.g., existence of legal necessity, do not apply."

31. We thus find that the High Court has committed a basic error of law and fact that the payment of rent or the Ration Card proves that the tenant was carrying business as a Joint Hindu Family Business. There can be presumption of Hindu joint family property if the property has been acquired by the male member or if the same has been treated as joint Hindu family. But no such pre- sumption is attached to a business activity carried out by an indi- vidual in a tenanted premise.

32. A perusal of the facts on record would show that it was a contract of tenancy entered upon by great grandfather of the plaintiff. Even if the great grandfather was maintaining the family out of the income generated from the hotel business, that itself would not make the other family members as coparceners in the hotel business. It was the contract of tenancy which was inherited by the grandfather of the plaintiff who later surrendered it in favour of the Wakf Board. The tenancy was an individual right vested with the grandfather of the plaintiff who was competent to surren- der it to the landlord. The High Court has clearly erred in law by holding that since the grandfather was a tenant, the tenancy is a joint family asset. The contract of tenancy is an independent con- tract than the joint Hindu family business.

33. In fact, the evidence produced by the plaintiff is payment of rent by either Ram Sewak Ram or by the grandfather of the plaintiff. Such payment of rent is not indicative of the fact that the hotel business was by the joint Hindu family. This Court in a judgment reported as G. Narayana Raju (Dead) by his Legal Representative v. G. Chamaraju & Ors.18, held that there is no presumption under Hindu Law that business standing in the name of any member of the joint family is a joint business even if that member is the manager of the joint family, unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate. This Court held as under:

> 18 AIR 1968 SC 1276 "3. ... It is well established that there is no presumption under Hindu Law that business standing in the name of any member of the joint family is a joint business even if that member is the manager of the joint family. Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate. .....
>
> xxx xxx xxx
>
> 6. ... It is a well-established doctrine of Hindu Law that property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into joint stock with the intention of abandoning all separate claims upon it. The doctrine has been repeatedly recognised by the Judicial Committee (See Hurpurshad v. Sheo Dayal, (1876) 3 Ind App 259 (PC) and Lal Bahadur v. Kanhaia Lal, (1907) 34 Ind App 65 (PC). But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred merely from acts which may have been done from kindness or affection (See the decision in Lala Muddun Gopal v. Khikhindu Koer, (1891) 18 Ind App 9 (PC). For instance, in Naina Pillai v. Daivanai Ammal, AIR 1936 Madras 177 where in a series of documents self-

acquired property was described and dealt with as ancestral joint family property was not sufficient but an intention of the coparcener must be shown to waive his claims with full knowledge of his right to it as his separate property. The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention, by his waiving or surrendering his special right in it as separate property. A man's intention can be discovered only from his words or from his acts and conduct. When his intention with regard to his separate property is not expressed in words, we must seek for it in his acts and conduct. But it is the intention that we must seek in every case, the acts and conduct being no more than evidence of the intention. ..." (Emphasis Supplied)

34. This Court in a judgment reported as P.S. Sairam & Anr. v. P.S. Rama Rao Pissey & Ors.19 following the above said judgment held that so far as immovable property is concerned, there would be a presumption that the same belongs to joint family, provided it is proved that the joint family had sufficient nucleus at the time of its acquisition, but no such presumption can be applied to a business. It was held as under:

> "7. Crucial question in the present appeal is as to whether business which was conducted by defendant No. 1 was his separate business or it belonged to joint family, consisting of himself and his sons. It is well settled that so far as immovable property is concerned, in case the same stands in the name of individual member, there would be a presumption that the same belongs to joint family, provided it is proved that the joint family had sufficient nucleus at the time of its acquisition, but no such presumption can be applied to business....."

35. Thus, mere payment of rent by great grandfather or by the grand-

father of the plaintiff raises no presumption that it was a joint Hindu family business. The High Court has clearly erred in law to hold so without any legal or factual basis.

36. Even if Devendra Prasad Sinha is considered to be representing the joint Hindu family while carrying out hotel business in the ten- anted premises, the question as to the act Karta to surrender of tenancy was for the benefit of the joint Hindu family. The powers 19 (2004) 11 SCC 320 of Karta of a Joint Hindu Family have been described in 22 nd Edition of Hindu Law by Mulla (para 240) inter alia to the following effect:

> "Alienation by manager of coparcenary property for legal necessity. – (1) The power of the manager of a joint Hindu family to alienate the joint family property is analogous to that of a manager for an infant heir, as defined by the Judicial Committee.
>
> (2) The manager of a joint Hindu family has the power to alienate for value, joint family property, so as to bind the interest of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity, or for the benefit of

> the estate. A manager (not being the father) can alienate even the share of a minor coparcener to satisfy an antecedent debt of the minor's father (or grandfather) when there is no other reasonable course open to him (Dharmaraj Singh v. Chandrasekhar Rao, (1942) Nag 214). It is not necessary to validate the alienation that the express consent of the adult members should have been obtained.

In Suraj Bunsi Koer v. Sheo Proshad, (1879) 6 IA 88, p. 101, the Judicial Committee stated that it was not clearly settled whether where an alienation is made by a manager for a legal necessity, but without the express consent of the adult coparceners, the alienation is binding on them. However, in later decisions of the same tribunal, the view taken is that if legal necessity is established, the express consent of the adult coparceners is not necessary (Sahu Ram v. Bhup Singh, AIR 1917 PC 61). As to alienation by manager for joint family business.

Where any such transaction has been entered into for legal necessity by a manager, it would be deemed to be on behalf of the family and would bind it. The position is not worsened by the fact that a junior member joins the transaction and the joining by him is abortive by reason of his minority (Radha Krishnadas v. Kaluram, AIR 1967 SC

574)."

37. The pleaded stand of the Plaintiff is that the hotel was closed for several years. Therefore, the liability to pay monthly rent contin- ued to accrue upon karta - Devendra Prasad Sinha. The question is as to whether, in these circumstances, on account of cessation of activities of running of the hotel, the act of the surrender of ten- ancy is in fact for the benefit of the joint family. The learned High Court found that the letter of surrender was not reliable or ten- able. The executor of the surrender letter has admitted such sur- render letter in the written statement and while appearing as a witness as DW-5. The Mutawalli Md. Salimuddin has also accepted the surrender letter in the written statement and while appearing in the witness box as DW-10. Merely for the reason that signa- tures in the translated copy do not tally with the Urdu copy is not sufficient to hold the surrender letter as unreliable as the transla- tion can be incorrect but the correctness of the document in has not been disputed by the executor or by the acceptor. The said document could not have been said to be unreliable on the basis of the statement of the plaintiff who is not a party to such transac- tion. It is one thing to say that the document is unreliable and an- other to say that the document does not bind the plaintiff. We have no hesitation to hold that the document was validly proved and accepted by the Wakf Board. Therefore, the act of surrender of tenancy was for the benefit of the Joint Hindu family.

38. We thus hold that the order of the High Court is not sustainable for the reasons recorded above. Consequently, the present appeal is allowed. The order of the High Court is set aside and that of the Wakf Tribunal is restored with no order as to costs.

.....J. (ASHOK BHUSHAN) .....J. (S. ABDUL NAZEER) .....J. (HEMANT GUPTA) NEW DELHI;

APRIL 05, 2021.