

B. Jyoti Bhushan Gupta vs Commissioner Of Income Tax on 8 May, 1950

Equivalent citations: AIR1950ALL622, [1950]18ITR777(ALL), AIR 1950 ALLAHABAD 622

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66 (l), Income-tax Act, 1922. The question referred to us runs as follows:

" Whether in the circumstances of this case, the definition of shares as made by the preliminary decree of the partition amounted to a partition in 'definite portions' within the meaning of those words as used in S. 25-A?"

2. The assessee was assessed as a Hindu undivided family up to the assessment year 1938-39. In the year 1939-10 the assessee-applicant B. Jyoti Bhushan Gupta, claimed that as there had been a family partition in definite portions the joint Hindu family had ceased to exist and the assessment should be made on the assessee as an individual.

3. One B. Lakshmi Prasad had three sons viz. Raja Moti Chand, B. Gokul Chand and B. Mangala Prasad. The family continued to remain joint with Raja Moti Chand as Karta of the family. Raja Moti Chand died on 18th of March 1934, leaving behind no issue. On 2nd of June, 1936 B. Jyoti Bhushan Gupta, son of B. Mangala Prasad, Mangla Prasad being dead, filed Suit No. 49 of 1936 in the Court of the Additional Civil Judge, Banaras on the allegation that the joint family status having been broken upon 28th September 1931 he was not liable, after the date of partition for the transactions entered into by B. Gokul Chand and his sons and was entitled to claim half share in the property. In the written statement on behalf of B. Gokul Chand, the fact that B. Jyoti Bhushan Gupta was entitled to half share in the property was admitted. It was, however, alleged that the joint family status had continued up to 15th April 1936. On 26th March, 1941, the learned Additional Civil Judge passed a preliminary decree for partition and he held in the plaintiff's favour that the status of the joint family was broken up on 28th September 1934.

4. On behalf of B. Jyoti Bhushan Gupta it was claimed that under the decree passed by the learned

Additional Civil Judge, the family property had been partitioned in definite portions and he was, therefore entitled to an order to that effect under Section 25A, Income-tax Act. The Income-tax Officer examined B. Gokul Chand and B. Jyoti Bhushan Gupta. B. Gokul Chand stated in his statement recorded on 8th September 1941, that "the properties had had not been divided in definite portions till then." B. Jyoti Bhushan Gupta in his letter, dated 4th October 1941, said, "partition by metes and bounds has not yet taken place." On these admissions and on other materials before the Income-tax Officer, he came to the conclusion that the family property not having been partitioned in definite portions, he was entitled to hold that the status of the assesses, for the purposes of assessment, continued to be of a Hindu-undivided family. This decision was upheld by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal. The assessee then filed an application for the reference of certain questions which, he claimed arose out of the appellate order. The Appellate Tribunal, however, decided to refer only one question which we have set out in the opening portion of our judgment.

5. Section 25-A (1), Income-tax Act, provides that if a family has been assessed as a Hindu undivided family and it is claimed by any member of such family that a partition has taken place among the members, the Income-tax Officer shall make enquiries whether :

"The joint family property has been partitioned among the various members or groups of members in definite portions".

It would be clear from the above that it is with reference to the family property that a decision has to be made and not with reference merely to the status of the family, i.e. it is not enough that a joint family status should have been broken up; what is necessary is that the joint family property should have been partitioned in definite portions. Before the amendment in the year 1939, the Income-tax Officer had to be satisfied on two points; (1) Whether the separation of the members in the family had taken place; and (2) whether the joint family property had been partitioned in definite portions. The first point has been omitted by Section 31, Income-tax (Amendment) Act, 1939, (Act VII [7] of 1939). It is significant that if the Legislature had intended that the mere breaking up of the family status were enough, it would have omitted not the first part relating to the separation of the members of the family but the second part relating to the partition of the property in definite portions.

6. What amounts to partition in a joint family property in definite portions has given rise to some difference of opinion. In *Biradhmah Lodha v. Commr. of Income-tax*, 1934-2 I. T. R. 164 : (A. I. R. (21) 1934 All. 217), Niamatullah, J. held that Section 25-A contemplated a case in which a disruption of the family had occurred so that the joint family as such had ceased to exist and no property previously belonging to it had retained the character of a joint family property. He went on to hold that it was immaterial whether the property was divided by metes and bounds or was held in defined shares. This was merely obiter and the point did not really arise in that case. That case was decided long before the amendment of 1939 and as the joint status of the family had not been broken, it was held that Section 25-A, Income-tax Act, did not apply. A contrary view was, however, taken in an unreported decision of this Court in *Lala Baijnath v. Commr. of Income-tax, Central and United Provinces, Lucknow*, (Misc. Case No. 391 of 1943) decided on 8th May 1946. There are several

decisions of the other High Courts in which also a contrary view was expressed, for example, *Bansidhar Dhandhanias v. Commr. of Income-tax, B & O.*, 1944-12 I.T.R 126 : (A.I.R. (31) 1944 Pat. 137), *Gordhandas T. Mangaldas v. Commr. of Income-tax, Bombay*, 1943-11 I.T.R. 183 : (A. I. R. (30) 1943 Bom. 116) and *Waman Satwappa v. Commr. of Income tax*, (1946-14 I.T.R. 116 : (A. I. R. (33) 1946. Bom. 328).

7. The question whether the property has been partitioned in definite portions is really a question of fact and it must be decided on the evidence in each case. The decision might depend upon the nature of the property and the right that the joint family had in it. To our minds, the point has been very well summarised, if we may say so with respect, in the decision of Beaumont, C. J. in *Gordhandas T. Mangaldas v. Commr. of Income-tax, Bombay* 1943-11 I. T. R. 183 at p. 195 : (A .I. R. (30) 1943 Bom. 116) and we cannot do better than quote his words with which we fully agree :

"Apart from authority, I should feel no doubt that Section 25-A contemplates a physical division of the property. I think that the expression 'definite portions' indicates a physical division in which a member takes a particular house in which he can go and live, or a piece of land which he can cultivate, or which he can sell or mortgage, or takes particular ornaments which he can wear or dispose of, and that the expression 'definite portions' is not appropriate to describe an undivided share in property where all a particular member can claim is a proportion of the income, and a division of the corpus, but where he cannot claim any definite portion of the property ... but in connection with property I should say that a 'portion' means a part of the property, whereas a 'share' indicates the interest of some individual in the property. A room may be said to be a portion of a house; it cannot be said to be a share of a house, although it may represent the share of a particular person in the house. 'Portion' seems to me the apt word for division of property, and 'share' for division of interest and it is significant that 'portion' is used in Section 25-A. No doubt the expression 'division in definite portions' will have to be construed with regard to the nature of the property concerned. A business cannot be divided into parts in the same manner as a piece of land; division may only be possible in the books. Special cases will have to be dealt with by the Income-tax Officer when they arise. If he comes to the conclusion that, having regard to the nature of the property, what has been done amounts to a division in definite portions, he will record his finding under Sub-section (1) if he comes to the conclusion that it does not, then he will have to go on assessing the family under Sub-section (3)."

It appears to us that the difference of opinion has really arisen because the Courts have not kept in mind the point that the division in definite portions will have to be construed with regard to the nature of the property and, as has been pointed out by Sir John Beaumont, a division of a business in definite portions can only be possible by entries in the books. The cases have been discussed at some length in the judgment of Beaumont, C. J. and they have also been considered in a later decision of the Bombay High Court in *Waman Satwappa Kalghatgi v. Commissioner of Income-tax*, 1946-14 I. T. R., 116 : (A. I. R. (83) 1946 Bom. 828). Reliance was placed by the learned counsel for the assessee on a decision of the Lahore High Court reported in *Sher Singh Nathu Ram v.*

Commissioner of Income-tax, Punjab, 1834-2 I. T. R. 479 : (A. I. R. (22) 1935 Lah. 81 S. B.). A previous decision of that Court had taken a different view in the earlier part of the judgment, Dalip Singh, J. observed that the Income, tax Officer has to be satisfied that the joint family property had been partitioned among the various members or groups of members in definite portions; but later; when dealing with the partition of the business, he held that when shares have been ascertained and are separately owned so that different members who own the property are no longer joint tenants but tenants in common of the property, that would be quite enough to satisfy the requirements of Section 25-A Income-tax Act. These observations cannot be applied to mean that the breaking up of the family status is sufficient and partition of the property is not required. If it is to be interpreted in that sense, this decision is against the provisions of Section 25-A, Income-tax Act, from which the necessity of the Income tax Officer enquiring into the question of the family status having been broken up has been omitted and the Income, tax Officer is required to enquire only into the question whether the family property has been partitioned in definite portions. It appears that the learned Judge intended to lay down what Beaumont, C. J. had made clear in the portion quoted above that a physical division of a business may take place in a manner different from the way in which a piece of land can be divided and that special cases will have to be dealt with by the Income-tax Officer on the materials placed before him.

8. The terms of the preliminary decree passed by the learned Additional Civil Judge on 26th March 1941, has been summarised in the statement of the case as follows:

- (1) That the plaintiff's share in the property specified in the schedule attached to the plaint was half and that the share of B. Gokul Chand and his descendants was half;
- (2) that the half share of the plaintiff in the properties specified in the plaint except those paying land revenue be partitioned and separate possession over that half be given to them;
- (3) that the accounts be taken and the amount of cash that might be found to exist on accounts being rendered by the parties would be divided between them in two equal shares and the parties would be liable for payment of debts due from them and incurred before the date of the suit, in equal shares;
- (4) that the plaintiff would pay Rs. 400/- per month and B. Gokul Chand and his descendants would also pay Rs. 400/- per month as maintenance to Smt. Sahodra Kunwar from the date of the partition suit, that is, from and June 1936:
- (5) that a Commissioner or Commissioners be appointed to prepare maps of all house properties, make a valuation of all properties except those paying land revenue, to determine if the plaintiff suffered a loss by B. Gokul Chand giving up the Managing Agency of the Naskarpara Jute Mills, Limited and finally to partition the properties; and (6) that a preliminary decree for partition and rendition of account be prepared.

The summary of the preliminary decree, as stated above, makes it clear that the property belonging to the joint family was not partitioned in definite portions under that decree but the partition was left to be done later by the Commissioners appointed by the Court. This is our answer to the question referred to us. The applicant must pay the costs of the Department which we assess at Rs. 300/- only.