

## **Ram Kumar Ram Niwas Nanpara vs Commr. Of Income-Tax, U.P. And Ajmer ... on 29 August, 1952**

**Equivalent citations: AIR1953ALL150, AIR 1953 ALLAHABAD 150**

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**Bench: V. Bhargava**

### **JUDGMENT**

Malik, C.J.

1. The Income-tax Officer refused an application under Section 26A, Income-tax Act, for registration of a partnership firm. This order was upheld by the Appellate Tribunal and thereafter an application was made that a case be stated to this Court under Section 66(1), Income-tax Act. The Tribunal has thereupon referred to this Court the following two questions.

1. Whether the inclusion of Ghanshayam Das and Sunder Lal (two brothers constituting a Hindu undivided family) in the deed of partnership dated 7-3-1945, as partners of  $3\frac{1}{5}$  as a co-parcenary unit, without specification of their shares inter se, rendered the partnership inoperative and illegal within the meaning of Section 4, of Partnership Act.

2. Whether the application under Section 26A, Income-tax Act, seeking registration of the Instrument of Partnership dated 7-3-1945, in which application the collective share of  $3\frac{1}{5}$  annas of Ghanshyam Das and Sunder Lal had been shown against their names as a unit, which application was admitted before the Tribunal to have been signed by Ghanshyam Das only, was a proper and valid application within the meaning of Rule 2, Income-tax Act, on the basis of which registration could be allowed for purposes of Income-tax Act.

2. The facts, as gathered from the statement of the case and from the appellate order of the Tribunal are that there was a joint Hindu family comprising the descendants of one Jotha Ram which was carrying on business & was assessed to Income-tax as a Hindu undivided family. There was a partition in the family and, after the partition, a deed of partnership was executed in March 1945. In the deed of partnership it was mentioned that Ghanshyam Das Sunder Lal constituting a Hindu undivided family were joining this partnership through L. Ghanshyam Das and L. Sunder Lal, both being sons of L. Bilas Rai. The share of the joint family represented by Ghanshyam Das Sunder Lal was  $3\frac{1}{5}$  annas while the shares of the other four partners, Ram Kumar, Babu Lal Ram Niwas and Govind Prasad were also  $3\frac{1}{5}$  annas each. In the assessment year 1944-45 an application for

registration was made under Section 26A, Income-tax Act, on behalf of (1) Ram Kumar, (2) Babu Lal, (3) Ram Niwas, (4) Ghanshyam Das Sunder Lal and (5) Govind Prasad. The application, we are informed by learned counsel, was signed by Ram Kumar, Babu Lal, Ram Niwas, Govind Prasad and also by Ghanshyam Das and Sunder Lal. There was, however, some confusion whether both Ghanshyam Das and Sunder Lal had signed the application or only Ghanshyam Das had signed it. But we shall come to that point later.

3. Three points were raised before the Tribunal. Firstly, it was said that Ghanshyam Das Sunder Lal, a Hindu undivided family, could not as such be partners in this partnership firm. Secondly, it was said that there was no specification of shares as between Ghanshyam Das and Sunder Lal, if it was alleged that they were to be treated as partners in the partnership. Lastly, it was alleged that the application was defective inasmuch as Sunder Lal had not signed the original application under Section 26A.

4. On all these points the Tribunal, in its appellate order, decided against the assessee. At the time when the Tribunal decided the appeal the original application for registration under Section 26A was not before it, as it was with the Income-tax Officer at Gonda. It was assumed that the application was signed only by Ghanshyam Das and the case was argued on that hypothesis and the learned counsel had urged that the fact that Sunder Lal had not signed the application would make no difference.

5. After the case was decided by the Tribunal the assessee discovered that the original application under Section 26A had been signed by both Ghanshyam Das and Sunder Lal and an application was, therefore, made to the Tribunal bringing this fact to its notice. The Tribunal, however, rejected this application on the 24th of February 1948, and the statement of the case proceeds on the footing that the application was signed by only Ghanshyam Das. The Tribunal, when referring the case, directed that the original application under Section 26A shall form part of the statement of the case and it is Annexure 'A' (Copy) of the application dated the 6th of March 1945 for the registration of the firm. From the copy annexed it appears that there were, as a matter of fact, six signatories to the application. Though the names of the first five signatories are not mentioned in the copy, it may safely be presumed that one of the signatures was of Sunder Lal as stated by Mr. Pathak. As the mistake was made by him by inadvertence by reason of the original application being not available, as it was in the Income-tax office at Gonda, we do not think the Tribunal should have refused to make the correction. In any case the application being a part of the statement of the case, we cannot ignore the fact that it bears six signatures and there are six executants to the document.

6. Coming to the next point whether a Hindu undivided family as such could be a partner, learned counsel has urged that, whatever might have been the view of this Court prior to the year 1948, the decision of their Lordships of the Judicial Committee in --'Lachhman Das v. Commr. of Income-tax, Punjab', NWF and Delhi Provinces, Lahore' 1948-16 ITR 35 (P.C.) makes it now clear that that view should be re-considered. Reliance is also placed on a judgment of the Bombay High Court in --'Udhavji Anandji v. Bapudas Ramdas', AIR 1950 Bom 94.

7. In --'Lachhman Das's case', (1948-16 ITR 35 P. C.) the point for decision was whether a valid partnership could be entered into by a member of Hindu undivided family with the Karta as representing that family. Their Lordships of the Judicial Committee relied on the fact that a member of a joint Hindu family is competent to enter into a contract in his own individual capacity. Their Lordships pointed out that it was open to a managing member of a joint Hindu family to enter into partnership with a stranger and held that there was no reason, therefore, why a coparcener could not, in his individual capacity, enter into partnership with the Karta of the joint family. Learned counsel, has relied on a passage towards the end of the judgment which is as follows:--

"But, apart from this answer, it may be pointed out that though in its nature a joint Hindu family may be fleeting and transitory, it has been regarded as capable of entering, through the agency of its karta, into dealings with others. Without accepting the view of some eminent Hindu Judges that a Hindu joint family is, in its true nature, a "corporation" capable of a continuous existence in spite of fleeting changes in its constitution, it is enough to state that for the purpose of such a transaction effected through the medium of its karta, it has been, for a long time past, regarded as an entity capable of being represented by its manager."

It is argued that their Lordships must be deemed to have laid down that a joint Hindu family as such can enter into a partnership. It is difficult to understand how such a result can be derived from the decision in Lachhman Das' case or from the quotation given above. As a matter of fact, it would appear from the following passage that the point was left undecided: "Their Lordships are, therefore, concerned in this case only with the validity of a partnership between the Karta of the family representing it on the one hand and a member of that family in his individual capacity on the other. It is unnecessary to consider in this case the question relating to the validity of a partnership between a Hindu undivided family as such of the one part and one of its undivided members in his individual capacity of the other. With reference to the latter kind of partnership, there seems to be some authority favouring the view that such a partnership cannot exist under the rules of Hindu law, but their Lordships do not propose to deal with that question in this case." A person cannot enter into partnership with himself and the partnership of a co-parcener with the Karta of the joint Hindu family can be supported only on the ground that it was a partnership between the Karta on the one hand and the member on the other, though the Karta may be there in his representative capacity and may be accountable as such to the joint family.

8. It is now well recognised that the Karta or the adult members of a joint Hindu family may enter into a partnership with a stranger &, where it is a trading family, represent the joint Hindu family. In Lachhman Das's case (1948-16 ITR 35 P.C.) their Lordships did not consider the question whether a Hindu undivided family as such, which is a fleeting and changeable body, could enter into a partnership under the Partnership Act. Their Lordships pointed that the partnership is in its nature a contractual relationship and only such of its members as in fact enter into contractual relations with the stranger become partners.

9. The fact that it is the Karta who becomes the partner and not every member of the joint Hindu family or the joint Hindu family as such, is supported by the decision of the Madras High Court in

--'Sokkanadha Vannimundar v. Sokka-nadha Vannimunder', 28 Mad 344, where the manager of a joint Hindu family had entered into a partnership with a stranger and the partnership was entered into by the manager, not for his personal benefit but on behalf of the family, and it was held that the death of the manager dissolved the partnership. The learned Judge observed:

"It is scarcely necessary to say that a joint Hindu family though at times spoken of by Judges as a corporation cannot, as contended for by the plaintiff, be taken as a legal person in the strict sense of the term so as to constitute a partnership such as the present one subsisting between the plaintiff on the one hand and a real corporation on the other."

10. Reliance is placed, by learned counsel for the assessee on paragraph 14 of the judgment in --'Udhavji Anandji Ladha v. Bapudas Ramdas', AIR 1950 Bom. 94, where the learned Chief Justice (Chagla C. J.) pointed out that "There is nothing in Hindu law to prevent a member of a joint family becoming a partner with a stranger. Whether a Karta becomes a partner in his own right and incurs liabilities only personally or whether a joint family becomes a partner is always a question of fact and must be decided on the circumstances of each case."

It is said that from this quotation it appears that a joint Hindu family as such is a unit which can enter into a partnership. Partnership is a contractual relationship which can be entered into only by some one who is entitled to enter into a contract and it is possible that the Karta or the adult members of the family, acting within their rights under the Hindu law, may be able to enter into a partnership and make the entire joint family liable for the debts of the partnership and entitled to the benefits thereof, but in point of law it is only those who enter into the contract who can be deemed to be the partners, though they may be there in their representative capacity on behalf of the family. This view is not in conflict with the view expressed by the learned Chief Justice in --'Udhavji Anandji Ladha's case.

In that case, a partnership was started between the plaintiff's father and the defendant No. 1 in 1904. The plaintiff's father died on 30th of April 1927. The plaintiff filed a suit, out of which the appeal arose, for dissolution of partnership and for accounts alleging that even after the death of his father the partnership had continued. In 1935 the plaintiff applied for amending the plaint and added an alternative cause of action that even if after the death of the plaintiff's father there was no subsisting partnership and the partnership stood dissolved on his death, limitation was saved on other grounds mentioned in the application. The greater part of the judgment is devoted to the question whether limitation was saved by certain acknowledgments. If the learned Chief Justice had accepted the view now pressed for by Mr. Pathak that the partnership was not with the plaintiff's father but with the joint family as such, then the partnership would not have stood dissolved on the death of the plaintiff's father and no question of limitation would have arisen. The observations relied on were with respect to the point whether it is only the personal property of the manager or the entire joint family property that was liable for the debts of the partnership which had been entered into on behalf of the joint family and we respectfully agree with the view expressed by the learned Chief Justice that if a manager has had the right under the Hindu law to enter into the partnership the entire joint family property might be made liable for the debts of the partnership.

11. The next point for consideration is whether a Hindu undivided family as such has a legal entity distinct and separate from that of the members who constitute it. It may be that member of a Hindu undivided family may continue to have certain personal rights and may be able to own property in his own right and enter into a contract in his own right but a Hindu undivided family is not like a corporation or a limited concern and it cannot, therefore, be said that it has a legal entity quite distinct and separate from that of those who constitute it. A joint Hindu family is a unit to which no outsider can be admitted by agreement; it is a status which can only be acquired by birth or by adoption and the head or Karta of that family has certain rights and, while acting within those rights, he can bind every member of the family by his actions or deal with the joint family property which, though it does not belong to him and belongs to all, he has been given the power to manage or dispose of, in the interest of the family. It is difficult to equate or define the position of a joint Hindu family as understood under the Hindu Law with the modern conception of a company or a firm or association of individuals for trade or business purposes.

12. The important point, however, that has to be borne in mind in this connection is that a Hindu undivided family as such must act through some one and the only person under the Hindu law who can act for the Hindu undivided family is the Karta (who may be a single individual or several adult members). Partnership is defined in Section 4, Partnership Act, as the relationship between persons who have agreed to share the profits of a business. It is thus based on a contract. To say, therefore, that a Hindu undivided family can become a partner in a firm ignores the fact that this partnership agreement must be entered into either by the Karta or by such other members of the Hindu undivided family who may be adults, a minor being incompetent to enter into a contract. If the Karta enters into the contract on behalf of the family with a stranger, it is he who is the partner and his other coparceners cannot claim the rights and obligations which arise under the contract entered into by him, except through him. If the Karta has not acted within his powers under the Hindu Law, they would not be bound at all. If, however, he has acted within his rights under the Hindu Law he may be able to bind the entire joint family property for the liabilities that might be incurred by the partnership. When the adult members of a joint family enter into partnership they must be deemed to be partners in the partnership firm though, if they were acting on behalf of the family and have the right to bind the members of the family, the members of the family may be entitled to the benefits and the joint family property may be liable for the debts of the partnership. The joint Hindu family can, therefore, be a partner only in a loose sense. The persons entering into the contract of partnership alone are partners, and through them the joint Hindu family may be entitled to the benefits and the joint family property may be liable for the losses of the partnership.

13. The result, therefore, is that in our view it is the Karta of a joint family who becomes the partner and if he has acted within his rights as Karta and has joined the partnership, not in his individual capacity, but as representing the joint family, then he may bind other co-parceners who would be entitled to get the benefits of the partnership and whose share in the joint family property would be liable for the debts of the partnership. But the other members of the joint family cannot, each of them, claim in his individual right that he has become a partner in the partnership and is entitled to exercise the rights of a partner. He becomes a sort of sub-partner and can only act through the Karta who has joined the partnership on his behalf. If the contention of the learned counsel for the assessee is accepted then, on the Karta becoming a partner on behalf of a joint Hindu family, every

member of the joint family would become a partner and, even though some of them may not have been in existence or capable of entering into a contract, each member of a joint Hindu family would have the right to claim all the rights reserved to a partner under the Partnership Act and be liable for all the liabilities imposed on a partner under that Act. If a joint-Hindu family as a unit distinct and separate from its members is deemed to be the partner then also this absurd result would follow that the death of the Karta or those adult members who had entered into the partnership would not result in the dissolution of the firm, as on the death of one Karta there will be another to take his place and the partnership would continue so long as the joint family continued to exist even though there may come a time when a joint Hindu family consists of only minors. The whole scheme of the Partnership Act goes against such conclusions.

14. Having, therefore, carefully considered this matter we are of the opinion that :

1. The Hindu undivided family of Ghanshyam Das Sunder Lal, as a co-parcenary unit, could not as such be partners in the partnership. Ghanshyam Das and Sunder Lal could be partners in the partnership but in that case it was necessary that their shares should have been specified.

2. We have already said that the facts being as stated by learned counsel when he applied for correction, the Tribunal should not have gone on to hold that the application was signed only by Ghanshyam Das when it was apparent from the application itself that it had been signed by both.

15. The second question, therefore, does not arise.

16. The assessee must pay the costs to the Department which we assess at Rs. 300/-.