

## Govind Dass And Ors. vs Smt. Sarju Bai on 25 February, 1953

**Equivalent citations: AIR1954ALL449, AIR 1954 ALLAHABAD 449**

### JUDGMENT

Agarwala, J.

1. Govind Das, Bansidhar and Ram Das, brothers, as proprietors of the joint firm Bansidhar Ram-das, carrying on cloth business at Jhansi, made an application before the District Judge of Jhansi under Section 9, Provincial Insolvency Act praying that Shrimati Sarju Bai, opposite party, be declared as insolvent. In the application it was alleged that the debts due to the applicants from the opposite party amounted to a sum of Rs. 1,43,187/8/6, that the opposite party had not made any arrangements for the payment of the debt, but on the contrary had transferred six houses for Rs. 98,284/-/6 on 11-7-1949, in order to defeat the claim of the applicants and further that she was secluding herself so as to deprive the applicants of the means of communicating with her. The applicants further mentioned that they were carrying on cloth business as members of a joint Hindu family. One of the applicants, Bansidhar died during the pendency of the application on 25-5-1950. An application for bringing the sons of Bansidhar on the record was made beyond time and was dismissed. The question raised was whether the application as a whole had abated. The learned Judge held that it had, and dismissed the insolvency application.

2. Two grounds were urged before the learned Judge on behalf of the applicants for maintaining that the application had not abated : (1) that the applicants were members of a joint Hindu family and (2) that even in the absence of the heirs of Bansidhar the remaining two applicants could continue to maintain the application. On behalf of the opposite party it was alleged that the applicants did not form a joint Hindu family. They produced a copy of an affidavit which had been filed on behalf of Govind Das and others in this Court in Civil Revision No. 133 of 1950 which we have disposed of a short while ago in which the heirs of Bansidhar deceased were described as his four sons and it was stated that Bansidhar deceased formed a joint Hindu family with them. In this affidavit it was not stated that Bansidhar deceased was also a member of the joint Hindu family with the other two applicants, namely Govind Das and Ram Das, his brothers. From the omission to mention this fact in the affidavit that Bansidhar was joint with his brothers, Govind Das and Ram Das, the learned District Judge drew an inference that Bansidhar was not joint with them and held that it appeared "somewhat doubtful" that Bansidhar formed a joint Hindu family with Govind Das and Ram Das. Then the learned Judge went on to say that, even if it was assumed that they formed a Joint Hindu family, the question for consideration was whether the petition for insolvency was made by Govind Das as manager and Karta of the joint Hindu family. The learned Judge expressed his opinion that it was not made as such, because, in his view, if it had been so made, there was no necessity of impleading the two brothers Ram Das and Bansidhar, also as petitioners in the case. Lastly the

learned Judge considered whether the application had abated as a whole, and relying upon two cases in -- 'Basist Narayan Singh v. Mod Nath Das', AIR 1928 Pat 250 (A) and --'Rajendra Prasad v. Ganga Bux Singh', AIR 1945 Oudh 60 (B), held that the application had abated.

3. In this appeal it has been urged that the learned Judge was wrong both on questions of fact as well as of law involved in the case. After hearing learned counsel for the parties, we have come to the conclusion that the learned Judge was wrong in the views that he has expressed on all the points raised before him. In the petition it was specifically mentioned that the applicants were members of a joint Hindu family carrying on business as a joint family firm. Two witnesses Govind Das and Seth Raghubar Dayal were produced on behalf of the appellants to prove that they formed a joint Hindu family and carried on business as such. On behalf of the debtor, a Munim, Munna Lal was produced whose evidence was that all the three brothers were living in separate houses, and their mess was also separate. In his cross-examination he stated that he could not say definitely if Ram Das was separate from Govind Das or not but he said that Bansidhar was separate. This evidence is wholly inadequate to establish separation between the three brothers. The presumption of law was that the three applicants being own brothers were members of a joint Hindu family. The mere fact that they were, living and messing separately did not establish that they were separate in status. Separation in status comes about by proof of separate enjoyment of the income of the property. There was no such proof on the record.

4. The affidavit filed by the applicants in another case in which the heirs of Bansidhar were sought to be brought on the record did not show that Bansidhar was not joint with his brothers Govind Das and Ram Das. Because the sons of Bansidhar were sought to be brought on the record, it was not necessary to make any allegation about Bansidhar's jointness with his brothers. Again, the fact that in the application under Section 9 of the Insolvency Act, the manager of the joint, Hindu family had included his younger brothers also as applicants, does not show that the application was not made on behalf of a joint Hindu family, especially when a mention of the fact was made in that application itself.

5. Lastly assuming that the applicants were separate they would be assumed to own the debt of Rs. 1,42,000/- and odd which they claimed was due to them from the opposite party, in equal shares. The two remaining applicants Govind Das and Ram Das would in any event be entitled to more than Rs. 500/- from the opposite party. It could not, therefore, be said that the remaining applicants Govind Das and Ram Das were not competent to maintain the application against the opposite party under Section 9 of the Act. All that the section requires is that the applicants should be creditors to whom a debt of Rs. 500/- or more is due from the debtor. Govind Das and Ram Das, the remaining two applicants, fully satisfied this condition. There was no reason to hold that the application had abated. The rulings relied upon by the learned Judge do not relate to applications for insolvency. They were wholly inapplicable to the facts of this case.

6. The result, therefore, is that we allow this appeal, set aside the order of the learned District Judge and direct that by the death of Bansidhar the application under Section 9 did not abate. The learned Judge will now proceed to decide the case according to law. The record of the case shall be sent down to the court below forthwith.

7. The applicants will have their costs of both the courts from the opposite party.