Naim Singh vs Tikam Singh And Ors. on 19 August, 1954

Equivalent citations: AIR1955ALL388, AIR 1955 ALLAHABAD 388

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Bench: Raghubar Dayal

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for partition. The facts of the case, in so far as they are relevant for this appeal, are as follows: Tikam Singh, the original plaintiff, Naim Singh, defendant 1, and Chattar Singh, defendant 2, are own brothers, being the sons of Girwar Singh. Girwar Singh had two brothers, Mohan Singh and Ulfat Singh. Ulfat Singh died issueless. Mohan Singh, had two sons, Ram Prasad Singh deceased and Padam Singh, defendant 3. Balmukund Singh defendant 4, is the son of Ram Prasad Singh deceased. Tikam Singh's case in the plaint was that the whole family was at one time joint owning property, as well as money-lending business, that about the year 1937-1938 the Zamindari property was partitioned, but that the money-lending business remained joint. He, therefore, wanted a partition of his 1/6th, share out of the money-lending business.

Chattar Singh, Padam Singh and Balmukund Singh practically admitted the plaintiff's case, while Naim Singh, defendant 1, contested it and alleged that he was the exclusive owner of the money-lending business as it was started by him in the year 1916 or 1917 after the death of Mohan Singh with a sum of Rs. 500/- gifted to him by his father-in-law. Tikam Singh, plaintiff, absented himself from the suit when the case came up for final hearing, but defendants 2, 3, and 4 stated that they wanted their shares to be separated and that the suit should proceed. Accordingly, the suit for partition was not allowed to be dismissed for default of Tikam Singh's appearance and defendants 2, 3 and 4 were treated as plaintiffs in the case. The Court below held that the money-lending business was a joint Hindu family business and, accordingly, decreed the suit for partition and for allotment of separate shares to the parties. This is an appeal against that decree by Naim Singh and the only question that falls to bo considered is whether the money-lending business was the joint family business or was it a separate, self-acquired business of Naim Singh.

2. In deciding the above question the Court below proceeded to examine whether the defendant/-appellant's case was true or false and having found that it was untrue and having regard to some other evidence came to the conclusion that the business was joint family business. It did not direct its attention to the question whether" any, and if so, what money was invested by the joint family in the money-lending business. The learned Judge mainly relied upon certain income-tax

returns and orders in which the entire income of the family including the income from, the money-lending business was jointly shown as the income of the joint family.

3. Now, it is weE settled that where a joint family is possessed of joint property the mere fact that a particular item of the property stands in the name of a single member of the family does not raise the presumption that it is the separate and self acquired property of that member. The presumption, on the other hand, is that that property also is joint family property like every other joint family property. In the case of a business, however, there is no such presumption. In --'Bhuru Mal v. Jagannath', AIR 1942 PC 13 (A), Sir George Rankin delivering the opinion of the Judicial Committee observed:

> "Special considerations apply to the question whether or not the business belongs to the family or to the individual member who carries it on. If it be a joint family business, then all the members of the family are liable for its debts upon the terms and to the extent laid down by the Hindu law. Whether or not it can be said that if a joint family is possessed of some joint property, there is a presumption. that any property in the hands of an individual member is not his separate individual property but joint property, no such presumption can be applied to a business."

Then his Lordship quoted the observations of Lord Buckmaster in -- 'Annamalai Chetty v. Subramanian Chetty', AIR 1929 PC 1 (B):

> "A member of a joint undivided family can make separate acquisition of property for his own benefit and, unless it can be shown that the business grew from joint family property, or that the earnings were blended with joint family estate, they remain free and separate."

4. In the present case it was conceded that the money-lending business in dispute was carried on in the name of Naim Singh, defendant-appellant, alone. It was admitted that it was not an ancestral business. Again, it was admitted by defendant Balmukund that no money was ever taken from the income of this money lending business to meet the expenses of the joint family and if it was taken at any time for some necessity it used to be returned later on, that Naim Singh used to keep the income from money-lending business, that there were two boxes in the family, one to keep the income from the money-lending business and the other for keeping the income from the Zamindari property and that the key of the box in which the income from the money-lending business was kept, used to be in the possession of Naim Singh. Balmukund Singh further stated that there were two sets of account books, one for the income from the money-lending business and the other relating to the other property of the family, and that he did not know how much money was given to Naim Singh to start the business. Padam Singh, defendant who examined himself, stated that the money-lending business was started from the income of the joint-family from Sir and Zamindari. But he could not give any details of the amount that was invested in the money-lending business.

As against these facts the only evidence on which the defendants-respondents rely are the returns of income-tax and the orders of assessment by the Income-tax Officer. As the entire income including

the income from the money-lending business was below Rs. 2000/- no income-tax was ever levied on the family. In the year 1932-33 a return was called for, for the first time by the Income-tax Officer because he had heard reports that the family was carrying on extensive money-lending business and an Arhat shop and a cloth business. The family made a return showing the income of the Zamindari property alone but not of the Arhat shop or of the money-lending business. It does not appear whether the income from the cloth business was included in the amount shown as the total income of the family. It appears that later on upon a notice issued by the Income-tax Officer a fresh return was made and the incomes from money-lending business and from the Arhat Shop were included. Even so the total income was less than Rs. 2000/-. In the year of assessment, however, the Income-tax Officer stated that the family was a joint Hindu family and carried on money-lending business, as well as an Arhat shop and cloth business. The same was the case in the two subsequent years, 1933-34 and 1934-35. It is obvious that since the total income was not taxable it was unnecessary for Naim Singh to contend before the Income-tax Officer that the money-lending business was his own separate business.

5. It was contended by the learned counsel for Naim Singh before us that these documents, the Income-tax returns and the assessment orders produced on behalf of the defendants-respondents, were inadmissible in evidence by reason of Section 54, Income-tax Act, read with Sections 74 and 76, Evidence Act, and reliance was placed upon a decision of a learned single judge of the Calcutta High Court in -- 'Prematha Nath v. Nirade Chandra', AIR 1940 Cal 187 (C).

6. Section 54, Income-tax Act, provides:

> "That the assessment proceedings shall be confidential and no particulars In any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings in this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand prepared for the purpose of this Act shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no "Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof."

Section 74, Evidence Act, defines public documents, and Section 76 states:

> "Certified copies of public documents shall be issued by every public officer having, the custody of a public document, 'which any person has a right to inspect', shall give that person on demand a copy of it on payment of the legal fees therefor,....."

Section 77 lays down:

> "That such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies."

7. The learned Judge in the Calcutta case considered that the expression "which any person has a right to inspect" in Section 76 indicated that where no person has a right to inspect the public document concerned no copies thereof can be given, and if copies are given of documents of which a person has no right to make an inspection, the certified copies are not admissible in evidence, The learned Judge held that by reason of S, 54 Income-tax Act, no one could as of right make an inspection of any document contained in proceedings under the Income-tax Act. In our opinion, the conclusions drawn by the learned Judge are not justified by the provisions on which reliance has been placed by him. Section 54, Income-tax Act, does not prohibit the assessee or assessees themselves to require the Income-tax Officer to furnish certified copies of the assessment order, or of any statement made therein in the proceedings held before him. The object of the provision in Section 54 of the Act appears to be that the proceedings would be of a confidential nature and the contents of any statements or order or other proceedings may not be disclosed to outsiders.

We do not think that It was intended that the assessee himself was not to be supplied the copies of such statements or orders. Indeed, the Income-tax Manual clearly lays down that a copy of the assessment order will be. supplied free of cost to the assessee, and that subsequent copies may be supplied on payment of charges. If an assessee was not entitled to such copies it would not be possible for him to file appeals or to go to higher Income-tax authorities against the order of an income-tax Officer. Our view finds support from a decision of our own Court reported in -- 'Suraj Narain v. Jhabhu Lal, AIR 1944 All 114 (D).

8. Even though, however, we find that the income-tax documents are admissible in evidence not much reliance should be placed on statements made before the Income-tax Officer. The reason, as stated already, is that such statements are Intended to be of a confidential nature and it is well known that what has been stated in confidence is not to be used against the maker of the statement. The lower Court found, as already stated, that the defendant-appellant's case that there was a separation . in the family in 1923 was false, further that his statement that he started the money lending business with the aid of a sum of Rs. 500/- advanced to him by his father-in-law was also false. But, in our opinion, even so these findings are immaterial.

The burden of proof lay wholly on the plaintiff or on the defendants-respondents to establish that the business, which was since its inception carried on in the name of the defendant-appellant and the income of which was never blended with the joint family fund or utilised by the joint family, was joint family -business. The burden was all the more made heavier by the admission that on the date of the suit there had already been a separation in the family in respect of everything else except the money-lending business. This burden, in our opinion, was not satisfactorily discharged. Indeed, upon the evidence as a whole we have no doubt whatsoever that the business was the separate and self-acquired property of the defendant-appellant.

9. In this view of the matter, this appeal must succeed. We, therefore, allow the appeal, set aside the decree of the Court below and dismiss the suit with costs to the appellant in both the Courts.

10. We are informed that the lower Court has passed a final decree in terms of its preliminary decree and that a first appeal is pending in this Court against that decree. Since, we have set aside the

preliminary decree and dismissed the suit in its entirety the appeal from the final decree should be put up for further orders at an early date.