

Narendrakumar J. Modi vs Commissioner Of Income Tax, Gujarat ... on 4 August, 1976

Equivalent citations: 1976 AIR 1953, 1977 SCR (1) 112, AIR 1976 SUPREME COURT 1953, 1976 4 SCC 456, 1976 TAX. L. R. 847, 1977 (1) SCR 112, 1976 SCC (TAX) 19, 1977 UPTC 181, 105 ITR 109, 1976 44 TAXATION 159, 1976 UJ (SC) 733

Author: N.L. Untwalia

Bench: N.L. Untwalia, Hans Raj Khanna, V.R. Krishnaiyer

PETITIONER:

NARENDRAKUMAR J. MODI

Vs.

RESPONDENT:

COMMISSIONER OF INCOME TAX, GUJARAT II, AHMEDABAD

DATE OF JUDGMENT 04/08/1976

BENCH:

UNTWALIA, N.L.

BENCH:

UNTWALIA, N.L.

KHANNA, HANS RAJ

KRISHNAIYER, V.R.

CITATION:

1976 AIR 1953

1977 SCR (1) 112

1976 SCC (4) 456

ACT:

Income Tax Act, 1922 ---Section 25-A(3)--Claims for partition and disruption of the Hindu Undivided Family disallowed by I.T.O.--Appeal under the Act filed against the orders of I.T.O. also dismissed--No reference under the Act challenging the Tribunal's order dismissing the appeal was taken, but subsequently got a preliminary decree for partition, passed by the civil court during the pendency of the appeal--Whether the Income Tax Authorities are bound by the subsequent partition decree of the civil court.

Right of management--Hindu Law--Joint Hindu Undivided Family--Whether a junior member of the family can act as a karta with the consent of all the other members, if the senior member gives up his right.

HEADNOTE:

Bapalal Purshottamdas Modi was the karta and head of a Hindu Undivided Family possessing many immovable properties and carrying on business of various types including money lending. Bapalal had five sons, viz. Vadilal Ramanlal, Jayantilal, Gulabchand and Kantilal; out of whom Ramanlal and Jayantilal predeceased him in 1933 and 1956 respectively and the appellant was one of the sons of Jayantilal. As per the general power of attorney dated 5-10-1948, executed by Bapalal in his favour, Gulabchand, the third son was acting as a karta and was filing the various tax returns without any objection whatsoever by the other members of the Hindu Undivided Family. Bapalal relinquished all his rights in the joint family property on 22-10-54 leaving the corpus of the joint family properties to his four surviving sons and Rajnikant, son of Ramanlal. All of them executed on 24-10-54, a memo of partition disrupting the Hindu Undivided Family and partitioning the properties the course of the proceedings of the income-tax assessment for the assessment year 1955-56 against the H.U.F. of Bapalal Purshottamlal Modi, an application under s. 25A of the Income Tax Act, 1922 claiming partition was made. The claim was disallowed by the I.T.O. by his order dated 28-1-1960. During the pendency of the appeal, a suit for partition was filed in 1961 and a decree for partition was obtained on June 30, 1965. The appeal to the Appellate Assistant Commissioner was dismissed on September 30, 1965 and the second appeal to the Income Tax Appellate Tribunal was also dismissed on March 28, 1969. The appellants did not ask for a reference to the High Court, as provided under the Act, but went on filing the returns in respect of the subsequent assessment years. When the Income Tax Officer got attached the entire amount in the Savings Bank A/c towards the tax liability by an order dated May 12, 1970, the appellant filed a writ petition challenging the various orders passed in the proceedings under s. 25A for the assessment years 1955-56 to 1965-66 and the several attachment orders. The High Court dismissed the writ in limine, but granted a certificate under Art. 226(1)(b) of the Constitution.

Dismissing the appeal, the Court,

HELD: (1) Sub section (3) of s. 25A provides that where an order accepting partition had not been passed in respect of a Hindu Undivided Family assessed as undivided, such family shall be deemed for the purposes of the Act to continue to be Hindu Undivided Family. The Income Tax Officers who had their own view to take, were not bound by the decree, since in the instant case the partition preliminary decree came much later and there was no reference under the Income Tax Act challenging the order of the Tribunal. [116

C-D]

(2) A junior member of the family can, with the consent

of all the other members. act as a karta, if the senior member gives up his right. [116 E]
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 156 of 1971. From the Judgment and Order dated 19-10-1970 of the Gujarat High Court in Special Civil Appln. No. 1177/70. B.R.L. Iyengar, S.K. Dholakia and R.C. Bhatia, for the appellant.

B.B.Ahuja, for respondent No. 1.

The Judgment of the Court was delivered by UNTWALIA, J. The appellant's writ petition filed in the High Court of Gujarat was dismissed in limine by a Bench of the High Court on October 19, 1970. The Commissioner of Income tax, Gujarat II, respondent no. 1 was the authority against whom several reliefs had been claimed in the writ petition. Subsequently were added the other members of the family of the appellant as respondents to the writ petition. The appellant obtained a certified from the High Court for appeal to this Court under sub-clause (b) of clause (1) of Article 133 of the Constitution of India as it stood before the 30th Constitution Amendment Act. Hence tills appeal to this Court.

Having heard Mr. B.R.L. Iyengar, Senior Advocate for the appellant at some length we found that the appellant was ill-advised to file the writ petition and to. pursue the matter upto this Court. The appeal being devoid of any substance must fail. We proceed to state the facts and discuss the points urged before us very briefly. One BapalaI Purshottamdas Modi was the head of a Hindu Undivided family. The joint family possessed many immovable properties and carried on business of various types such as money-lending etc. Bapalal had five sons namely Vadilal, Ramanlal, Jayantilal, Gulabchand and Kantilal. Ramanlal died long ago in or about the year 1933. Jayantilal died in 1956. The appellant is one of the sons of Jayantilal. The appellant's case in the writ petition was that Bapalal was the karta of the Hindu Undivided family. He executed a general power of attorney on October 5, 1948 in favour of his third son Gulabchand to manage his (Bapalal's) separate property. On October 22, 1954 Bapalal relinquished his right, title and interest in the joint family properties on taking a sum of Rs. 75,000/- leaving the corpus and management of the joint family properties to his four sur- living sons and Rajnikant, son of late Ramanlal. These five members also executed a memo of partition on October 24, 1954 disrupting the erstwhile Hindu Undivided family and partitioning the properties.

In course of the proceedings for assessment of the income- tax for the assessment year 1955-56 against the Hindu Undi- vided family of Bapalal Purshottamlal Modi, an application under Section 25A of the Income-tax Act, 1922 was made claiming partition w.e.f. October 24, 1954. Notices of the enquiry under section 25A were served on all the members of the family. At the enquiry the statements of various persons including the appellant were recorded by the Income tax Officer. He, by his order, dated January 28, 1960 disallowed the claim under section 25A of the Income-tax Act,

1922. It is asserted that in the year 1961 a suit for partition had also been filed and the City Civil Court Ahmedabad passed a decree for partition on June 30, 1965. In an appeal filed before the Appellate Assistant Commissioner from the order of the Income-tax Officer dated January 28, 1960 reliance was placed on the Civil Court partition decree also. The Appellate Assistant Commissioner, however, dismissed the appeal by his order dated September 30, 1965. A second appeal to the Income tax Appellate Tribunal was dismissed on March 28, 1969. Income tax assessment was made against the Hindu Undivided family for the year 1955-56. Assessments were also made against the Hindu Undivided family, sometimes treating it as Association of Persons or Unregistered Partnership Firm as per returns filed from time to time, for the subsequent years upto the assessment year 1965-66. Copies of all the assessment orders were enclosed with the writ petition as Annexure 'I' collectively. Appeals taken to the Tribunal from some of the assessment orders were also dismissed. Notices were being issued and served under sections 22 and 23 of the Income tax Act, 1922 for the assessment years which were governed by the said Act. In respect of the assessment years 1962-63 onwards notices were issued and served under sections 142 and 143 of the Income tax Act, 1961. A large sum of tax and penalty became due as the demands from time to time were partly paid. The Income-tax authorities took steps for realization of the income tax dues against the appellant's family and got attached various properties. In Civil Suit No. 806 of 1961 in which the preliminary partition decree was passed on June 30, 1965, respondent Kantilal had been appointed as a receiver. Later on one Mr. Bhatt was appointed Receiver. A Savings Bank Account No. 412002 was being operated by the Receiver. The Income-tax Officer attached the entire amount of Rs. 56,294.43 in the said account by his orders dated May 12, 1970. Thereupon, the appellant filed the writ petition challenging the various orders passed in the proceedings under section 25A of the Income tax Act, 1922; the assessments made for the years 1955-56 to 1965-66 and the attachment orders on various grounds. In a single writ petition rambling allegations were made challenging the multifarious proceedings and the orders on various grounds and the following prayers were made:

"(a) declaring void and illegal and quashing the proceedings of the income tax authorities making assessments on Hindu Undivided Family, Association of persons and unregistered partnership firm afore-

said for the years beginning from the assessment year 1955-56 and also the proceedings for the recovery of the taxes so assessed, and

(b) quashing the orders of the income-tax authorities refusing to record partition and directing the Respondent and his Subordinates to record under Section 25A of the Act that the erstwhile joint family property has been divided or partitioned in definite portions, each member getting an equal share, on October, 1954;

(c) directing the respondent and his subordinates to cancel or withdraw the impugned orders and all steps taken for the recovery of the amounts so assessed;

(d) directing the respondent and his subordinates not to take any further steps for the recovery of the tax so assessed;

(e) quashing all the penalty orders and such other orders passed in pursuance of the assessment proceedings aforesaid;

(f) quashing all the orders of attachment or in the nature attachment passed by the Income tax Authorities in these proceedings for the assessment year 1955-56 onwards, and

(g) to pass such other and further orders as your Lordships deem just and expedient in the circumstances of the case."

It seems to us that the High Court rightly dismissed the appellant's petition in limine. Since the valuation under Article 133(1)(b) was beyond Rs. 20,000/-, the appellant was granted a certificate as a matter of course.

It was pointed out to the appellant's counsel that so many proceedings and orders could not be challenged in one writ petition and he was asked to make his submissions in the appeal confining the writ petition to one matter only. Counsel chose to confine it to the attack on the attachment order of the Income tax Officer in respect of the money lying in the Savings Bank Account. While doing so, he traversed the entire allegations in the petition by adopting an ingenious method. Counsel submitted that the attachment had been made for realization of the income tax dues based upon various orders which were void and ultra vires. All those orders could be attacked collaterally while attacking the attachment order.

Mr. Iyengar urged the following points in support of the appeal.

(1) That the orders of the various authorities rejecting the claim of the partition under section 25A of the Income tax Act, 1922 were without jurisdiction and on their face suffered from many infirmities of law.

(2) That after Bapalal relinquished his interest in the joint family properties and ceased to be the karta, there was no karta of the family. Gulabchand--a junior member of the family could not act as a karta. Other members of the family did not accept him to be the karta.

(3) That even after the death of Bapalal in the year 1958 various notices under the Income tax Act were issued and served in the name of Bapalal Purshottamdas Modi--a dead person--and hence the entire proceedings and assessment orders were nullities.

(4) That the appellant had no opportunity of taking any part in the income tax proceedings and his property cannot be made liable for realization of the dues determined in such proceedings. None of the points urged on behalf of the appellant merits any detailed discussion. We were taken through the power of attorney executed by Bapalal in favour of Gulabchand, the deed of relinquishment executed by him on October 22, 1954 and the alleged memorandum of partition of October 24, 1954; the orders of the Income tax officer, the Appellate Commissioner and the Tribunal in the proceedings under section 25A of the Income tax Act, 1922. In our opinion, the orders do not suffer from any infirmity of law or any such defect which will make them void. Notice of the enquiry had

been given to all the members as admitted by the appellant himself. He had been examined in the proceedings. Sub-section (3) of Section 25A provides. that where an order accepting partition had not been passed in respect of a Hindu family assessed as undivided such family shall be deemed for the purposes of the Act to continue to be Hindu undivided family. A partition preliminary decree came much later. The income tax authorities had their own view to take. They were not bound by the decree. No reference was taken under the income tax Act challenging the order of the Tribunal dismissing the appeal.

It was clear from some of the assessment orders that Gulabchand was acting as a karta even during the life time of Bapalal as he had retired to live in Brindaban. At the relevant time no body disputed his authority to act as karta. His eldest brother Vadilal was an old man of about 70 years of age. His elder brother Jayantilal--father of the appellant died in the year 1956. In these circumstances he appears to have acted as the karta with consent of all the other members. A junior member of the family could do so. See Mulla's Hindu Law 296, fourteenth edn. Where occurs the following passage:

"So long as the members of a family remain undivided, the senior member of the family is entitled to manage the family properties," including even charitable properties (q); and is presumed to be the manager until the contrary is shown(r). But the senior member may give up his right of management, and a junior member may be appointed manager(s) ."

Notices were being issued in the name of the family which was carrying on the business in the assumed name of Bapalal Purshottamdas Modi. They were neither issued to nor served on Bapalal the dead person. In response to the notices returns were being filed by the managing member of the family. At no stage before the income tax authorities a contention was raised that the notice was served on a dead person. There is no substance in the third point. Coming to the fourth and the last point urged on behalf of the appellant we find that the appellant is bound by the assessment made in respect of the income of his family which continued in the eye of law to be joint. The share of the appellant's properties received by him from the joint family or the income thereof is liable for the income tax dues in question. The appellant, as we have said above, was ill-advised to file a misconceived petition on wholly untenable grounds.

In the result the appeal fails and is dismissed with costs to respondent no. 1.

S.R.
dismissed.

Appeal