Pushpa Devi vs Commissioner Of Income Tax, New Delhi on 30 August, 1977

Equivalent citations: 1977 AIR 2230, 1978 SCR (1) 329, AIR 1977 SUPREME COURT 2230, 1977 4 SCC 184, 1977 TAX. L. R. 1396, 1977 2 SCWR 415, 1977 SCC (TAX) 568, 1978 (1) SCJ 335, 1978 (1) SCR 329, 1977 49 TAXATION 1, 1978 (10) LAWYER 28, 1978 UPTC 26, 1977 HINDULR 598, 1978 (1) ITJ 445, 109 ITR 730, 1977 U J (SC) 580

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, P.S. Kailasam

PETITIONER:
PUSHPA DEVI

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, NEW DELHI

DATE OF JUDGMENT30/08/1977

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
KAILASAM, P.S.

CITATION:
1977 AIR 2230 1978 SCR (1) 329
1977 SCC (4) 184

ACT:
Doctrine of blending under the Hindu Law-Whether a Hindu female who is a member of an undivided family can impress an absolute self-acquired property with a character of joint family property-Doctrine of blending, explained.

HEADNOTE:
The appellant, a member of the joint Hindu family, in her individual capacity and with the aid of her personal assets entered into a partnership with her father-in-law in the name and style of "Gur Narain Jagat Narain & Co." Her minor son, Ravi Narain Khanna was admitted to the benefits of that

partnership. The partnership firm owned two cinema houses- Nishat Talkies, Kanpur and Novelty Talkies, Lucknow. On August 31, 1961, a sum of Rs. 67,284.57 stood to the credit of the appellant in the books of Nishat Talkies being her individual share of the income from that Talkies. On September 1, 1961, the appellant made a sworn declaration stating that she was the sole and absolute owner of the amounts standing to her credit in the books of Nishat Talkies and of her share in that business and declaring unequivocally her intention to treat both the capital and her share in the business of Nishat Talkies as the joint family property of the Hindu undivided family of which she Was a member. By clause (6) of the declaration, the appellant stated that she had abandoned for ever her separate interest and ownership over the capital investment of Rs. 67,284.57, her one-third share in the net profits and 1/3rd share in the net losses in the business of Nishat Talkies in favour of the joint Hindu family to be solely and exclusively enjoyed by it. As such, in her tax return for the assessment year 1963764 for which the previous accounting year ended on August 31, 1962, she omitted a sum of Rs. 20,865/- being 1/3rd share of the income from the business of Nishat Talkies for the year in question on the ground that the said sum was credited to the account of the joint Hindu family in the books of the firm as per the declaration dated September 1, 1961 and the Hindu undivided family has also paid advance tax on the said amount. The Income Tax Officer in his assessment order held that the individual share of the income is exigible to tax since throwing the capital amount into the family stock was of no avail as the sine qua non of the matter was that "the Karta should become partner in consequence of investment' " On appeal, the Appellate Assistant Commissioner affirmed the order of the I.T.O. and held (i) the appellant, not being a copartner, it was not open to her to impress her personal property with a character of joint family property; and (ii) as the joint family did not possess any joint family property there was no joint family stock in which the appellant could throw her separate property. But, in further appeal, the Appellate Tribunal accepted the appellant's contention and held that there was no justification for discriminating against a Hindu female on the ground of sex and that there was no reason why a Hindu female who was a member of an undivided family could not by an unequivocal expression of intention impress her separate property with the character of joint family property, so long as she was not trying to enlarge her rights under the Hindu law or to improve her status under that law by abandoning her exclusive right in the self-acquired property. On a reference, the Delhi High Court disagreed with the Tribunal and answered the question in favour of the Revenue on the ground that the right of blending could be exercised only by a coparcener and since the appellant,

though a member of the joint family was not a coparcener she could not throw her separate property into joint family stock. 'The High Court, however, rejected the contention of the Revenue that since the joint family did not possess any property no member thereof could blend hi-, separate property with joint family property. In appeal by certificate granted by the High Court under s. 261 of the Income Tax Act. 1961, by a judgment dated September 24, 1976, this Court directed the Tribunal to send a supplementary statement in the case on the question "Whether there was a gift of the appellant's capital investment and her share in the business of Nishat
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Talkies in favour of the Hindu undivided family?" Pursuant to the directions of this Court, the Tribunal further found by its order dated 31st January 1977 that there was a gift by the appellant in favour of joint family and that the latter had accepted that gift.

Allowing the appeal partly, the Court,

HELD : (1) The true rule of blending is that the right to blend is limited to coparceners only. It is the coparcener who alone can blend his separate property with joint family property and the said right is not available to a female who though a member of joint family is not a coparcener. Whether that separate property is the female's absolute property or whether she has a limited state in that property would make no difference to that position. 1335A, E-F]

Mallesappa Bandappa Desai and Ors. v. Desai Mallappa & Ors., 1961 (3) SCR 779. applied.

Lakkireddi Chinna Venkata Reddi v. Lakkireddy Lakshmamma (1964) 2 S.CR. 172; Rajjani Kanta Pal & Ors. v. Jaga Mohan Pal 50 I.A. 173 and Commissioner of Gift tax, Delhi v. Munshi Lal 85 I.T.R. 129, held not applicable.

Goll Eswariah v. Commissioner of Gift-tax 76 ITR 675, referred to.

Shiva Prasad Singh v. Rani Prayag Kumari Debi 59 I.A. 331, distinguished.

(2) The theory of blending under the Hindu Law involves the process of a wider sharing of one's own properties by permitting the members of one's joint family the privilege of common ownership and common enjoyment of such properties. But, while introducing. new sharers in one's exclusive property one does not by the process of blending efface oneself by renouncing one's own interest in favour of others. To blend is to share along with others and not to surrender one's interest in favour of others to the exclusion of oneself. If a Hindu female who is a member of an undivided family impresses her absolute exclusive property with the character of joint family property, she creates new the exclusion of herself because not being a to demand a share in the joint family She has no right for survivorship and is of the joint family property. Her right to property is contingent, inter alia, on a husband

and his sons. Under s. 3 (2) and claimants to her property to coparcener she has no right property by asking for a partition. entitled only to be maintained out demand a share in the joint family partition taking place between her (3) of the Hindu Women's Right to Property Act, 1937, her right to demand a partition in the joint family property of the Mitakshara joint family accrued on the death of her husband. Thus, the expression 'blending' is inapposite in the case of a Hindu female who puts her separate property, be it her absolute property or limited estate, in the joint family stock.

(3) In the instant case :

(i) the income of Rs. 21,544/- from Nishat Talkies was not assessable in the hands of a Hindu undivided family on the basis that the appellant had blended it with the joint family property;

(ii) the appellant must be deemed to have made a gift of the items mentioned in her declaration dt. September 1, 1961 to the undivided family of which she was a member. The income of the property gifted to the Hindu undivided family will be liable to be brought to tax in accordance with law.

(iii) The High Court is not quite correct in the unqualified statement it has made in its order granting certificate to the appellant to appeal to this Court that this question is res integra. [333F, 337A-D, F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1738 of 1971.

From the Judgment and Order dated the) 18th January 1971 of the Delhi High Court in Income Tax Reference No. 19 of 1970.

M. B. Lal for the Appellant.

B. B. Ahuja and Girish Chandra for the Respondent. The Judgment of the Court was delivered by CHANDRACHUD, J. Two questions arise for consideration 'in this appeal one of them being subsidiary to the other. The main question is whether a Hindu female who is a member of an undivided family can blend her separate property with joint family property.

The appellant, Pushpa Devi is a member of a joint Hindu family consisting of herself, her husband, her father-in- law, her mother-in-law, her minor son and three daughters. On June 19, 1958 the appellant, in her individual capacity and with the aid of her personal assets entered into a partners* with her father-in-law, Gur Narain Khanna, in the name and style of Gur Narain Jagat Narain & Co.

Her minor son, Ravi Narain Khanna, was admitted to the benefits of that partnership. Each of the three partners had a one- third share in the profits of the partnership, while the appellant and her father-in-law had an equal share in the losses.

The firm owned two cinema houses: Nishat Talkies, Kanpur and Novelty Talkies, Lucknow. Separate accounts were maintained in respect of the two businesses and separate profit and loss accounts used to be drawn up. On August 31, 1961 a sum of Rs. 67,284.57 stood to the credit of the appellant in the books of Nisliat Talkies. That amount consisted of a sum of Rs. 16,666.67 in the capital account and Rs. 50,617.90 in the current account.

On September 1, 1961 the appellant made a sworn declaration stating that she was the sole and absolute owner of the amounts standing to her credit in the books of Nishat Talkies and of her share in that business and declaring unequivocally her intention to treat both her capital and her share in the business of Nishat Talkies as the joint family property of tile Hindu undivided family of which she was a member. By clause (6) of the declaration, the appellant stated that she had abandoned for ever her separate interest and ownership over the capital investment of Rs. 67,284.57, her one-third share in the net profits and one-half share in the net losses in the business of Nishat Talkies, in favour of the joint Hindu family to be wholly and exclusively enjoyed and possessed by it. We are concerned in this appeal with the assessment year 196364, for which the previous accounting year ended on August 31, 1962. A sum of Rs. 20,865, being one-third share of the income from the business of Nishat Talkies for, the year in question, was credited to the account of the joint Hindu family in the- books of the firm. That income would have originally fallen to the share of the appellant in the business of Nishat Talkies, but it was credited to the account of the joint Hindu family in consequence of the declaration made by the appellant on September 1, 1961. The Hindu undivided family paid advance tax on the amount and filed its return in respect of that income. The appellant, on the other, hand, did not include that income in her return for the year. She appended a note at the end of the return saying: "Share of income from Nishat Talkies, Kanpur Rs. 20,865/-.Please see note on back page of computation of assessable income."In the note on the back page of the return, the appellant referredto the declaration of September 1, 1961 and stated that her one-third share in the income of Nishat Talkies was assessable in, the hands of the Hindu undivided family since the income had ceased to be hers by reason of the declaration.

The Income-tax Officer rejected the appellant's contention, on the ,ground that throwing the capital amount into the family stock was of on avail as the "sine qua non" of the matter was that "the Karta should become a partner in consequence of investment". The Appellate, Assistant Commissioner affirmed the order of the I.T.O. on the, ground that since the appellant, though a member of the joint family, was not) a coparcener, it was not open, to her to impress her, personal property with the character of joint family property. The second ground on which the appellant's claim was rejected by the A.A.C. was that the joint family did not possess any joint family property and, therefore, there was no joint family stock in which the appellant could throw her separate property.

In a further appeal, the Income-tax Appellate Tribunal accepted the appellant's contention, holding that there was no justification for)discriminating against Hindu female on the ground of sex and that there was no reason why a Hindu female who was a member of an are undivided family could

not, by an unequivocal expression of intention, impress her separate property with the character of joint family property. The Tribunal observed that the appellant was, not trying to enlargeher rights under the Hindu law or to improve her status under thatlaw by abandoning her, exclusive right in her self-acquired property. Surrender of interest by a female was not, according to the Tribunal, foreign to the genius of Hindu law and, therefore, no restriction could be placed on a female's fight to abandon her exclusive interest in favour of the join family of which she was a member.

At the instance of the revenue, the Tribunal referred for the opinion of the Delhi High Court the following question :

> Wheher on the facts and in the circumstances of the cases, the tribunal rightly held that the income of Rs. 21,544/was not the individual income of the appellant but was the income of the Hindu undivided family of which she was a member., Disagreeing with, the Tribunal, the High Court answered the question in favour of the revenue on the ground that the right of blending could be exercised only by a coparcener and since the appellant, though a member of the joint family was not a coparcener, she, could' not throw her separate property into the joint family stock. The High Court, however, rejected the contention of the revenue that since the joint family did not possess any property, no member thereof could blend his separate property with joint family property.
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> The High Court has granted to the appellant a certificate under section 261 of the, Income-tax Act, 1961 to file, an appeal to. this Court on the ground that the case involves a substantial question of law as to the right of a female member of a joint Hindu family to impress her self-acquired property with the character of joint Hindu family property. The question, according to the High Court, is res integra. Thisappeal had come up for hearing before a three-Judge Bench earlierwhen it was felt that the question referred by the Tribunal for the opinion of the High Court was comprehensive enough to cover the point.
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> Whether there was a gift of the appellant's capital investment and her share in the, business of Nishat Talkies in favour of the Hindu undivided family.
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> By a judgment dated September 24, 1976 Khanna J., on behalf of the Rench, directed the Tribunal to send a supplementary statement of the case on that question.
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> In pursuance of the direction, the Tribunal has forwarded to this Court a supplementary statement of the case along with its finding on ,the question which it was directed to consider. By its order dated January 31, 1977 the Tribunal has taken the view that there was a gift by the appellant in favour of the joint family and that the latter had accepted that gift.
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> We are thus required to consider two questions in this appeal one relating to the right of a Hindu female, who is a member of an undivided family, to impress her absolute

self- acquired property with the character of joint family property and the other as to whether, if ,there has been no such blending, the transaction in the instant case can amount to a gift in favour of the undivided family. We will proceed to a gift in favour of the undivided family. We will proceed to examine the first questions The High Court is not quite correct in the unqualified statement it has made in its order granting a certificate to the appellant to appeal to this Court that this question is res intera. The question, in our opinion, is fairly, if not fully, covered by a considered judgment of this Court in Mallesappa Bandappa Desai & Ors. v. Desai Mallesappa & Ors.(1). The appellants therein brought a suit against their uncle and another for partition of joint family properties, their case being that they and respondent 1 were each entitled to a half share hi those properties. The trial court passed a decree in favour of the appellants, except in regard to certain items. That decree was challenged by res- pondent 1 in the Madrus High Court, one of his contentions being that in any case, the appellants were not entitled to a share in the properties at Jonnagri, items 4 to 61. This contention was accepted by 'the High Court which modified to that extent the decree of the trial court. (1) [1961] 3 S.C.R. 779.

In an appeal filed in this Court by certificate granted by the High Court, one of the main contentions raised on behalf of the appellants, was that the Jonnagiri properties were as much properties of the joint family as the other items and, therefore, the High Court had fallen into error in refusing to grant to the appellants a share in those properties.The Jonnagiri properties belonged originally to one Karnam Chan- nappa, on whose death the properties' devolved on his widow Bassamma. Bassamma died in 1920, leaving behind her three daughters, one of whom was Channamma. Channamma married Ramappa, Aid the couple gave birth to four sons, including the appellants' father Bandappa and respondent 1, Mallappa. It was common ground between the parties that the Jonnagiri properties were obtained by Channamma by succession from her father and were held by her as a. limited owner. Channamma was a member of the joint family consisting of herself, her husband, their sons and others. The appellants' case was that after the Jonnagiri properties had devolved on Chan- namma by succession, she allowed the said properties to be thrown into the common stock of the other properties belonging to the joint family and that, by virtue of such a blending, the Jon properties of Channamma had acquired the character of joint family property.

Gajendragadkar J., who spoke for the Court began an examination of the appellants' contention by posing the fundamental question whether the doctrine of blending can be invoked in such a case. After stating that the Privy Council in Shiba Prasad Singh v. Rani Prayag Kumari Debi(1) was in error in observing that the doctrine of blending was based on the text of Yagnavaikya (Ch.1, Sect. 4, pl.30) and the commentary made on it by Vijnyaneshwara (Mitakshara, ch.1, sect. 4, pl.31), the learned Judge observed that it was unnecessary to investigate whether any other text can be treated as the foundation of the doctrine of blending since the doctrine, as evolved by Judicial decisions, had received a wide recognition and had become a part of Hindu law. The Court then proceeded to examine the question whether the principle of blending applied in regard to property held by a Hindu female as a limited owner and answered that question in the negative.

It is undoubtedly true, as contended by the appellant's learned counsel, that the question which the Court posed for its consideration at page 785 of the report speaks of properties held by a Hindu female as a limited owner. But the question was framed in that manner because the properties which had developed on Channamma on her father's death were held by her as a limited owner and not as her absolute properties. The ultimate decision of the Court that the Jonnagiri properties which had devolved on Channamma could not be treated as the properties of the joint family is not based upon or governed by the consideration that she had a limited estate in those properties. The decision of the Court, as Gajendragadkar J. has stated at more than one place in the Judgment is :

> "The rule of blending postulates that a coparcener who is interested in the coparcenary property and who owns sep-
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> (1)59 I.A. 331.

arate property of his own may by deliberate and intentional conduct treat his separate property as forming part of the coparcenary property. If it appears that- property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property then the said property becomes a part of the joint family estate; in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and gets thrown into the common stock of which it becomes a part. This doctrine therefore inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to- blend his separate property with the coparcenary property." (pp.785786).

After stating the position thus, the Court again adverts to the fact that Channamma held the Jonnagiri properties as a limited owner, but having done so, it restates the position that a Hindu female, not being a coparcener has no interest in the coparcenary property and cannot blend her property with the joint family property. The frequent reference in the judgment in Mallesappa (supra) to the fact that Channamma held a limited estate and the further reference by the Court to the Hindu law principle that a Hindu female owning a limited estate cannot circumvent the rules of surrender and allow the members of her husband's family to treat her limited estate as part of the joint family property belonging to the family is apt to confuse the true issue, but we have no doubt that the judgment rests squarely and principally on the consideration that Channamma was not a coparcener. While. concluding the discussion on this topic, the, Court observed at page 787 that on first principles, the result which was canvassed by the appellants was inconsistent both with "the basic notion of blending"

> and with "the basic character of a limited owner's title to the property held by her". The "basic notion of blending' which the Court has highlighted at several places in its judgment is that it is the coparcener who alone can blend his separate property with joint family property and that the said right is not available to a female who, though a member of the joint family, is not a coparcener. We are clear that Mallesappa (supra) is an authority for the proposition that a Hindu female, not being a coparcener,

> cannot blend her separate property with joint family property. Whether that separate property is the female's absolute property or whether she has a limited estate in that property would make no difference to that position. We may mention that Mallesappa (supra) is quoted in Mulla's Hindu Law (14th Ed. p. 277) as an authority for the proposition that the doctrine of blending cannot be applied to the case of a Hindu female who has acquired immovable property from her father, for she is not a coparcener. The Judgment of this Court in Lakkireddi Chinna Venkata Reddi v. Lakkireddy Lakshmama,(1) that of the Privy Council in Rajani (1) [1964] 2 S.C.R. 172.

33 6 Kanta Pal & Ors. v. Joga Mohan Pal(1) and of the Delhi High Court in Commissioner of Gift-tax, Delhi v. Munshi Lal (2) do not deal with the question whether a Hindu female, not being a coparcener, can blend her separate property with joint family property. The statement of law in Lakkireddi (supra) that property, separate or self-acquired, of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein is to be understood in the context that property devised under a will was alleged in the case to have been impressed with the charac- ter of joint family property, by the male members of the family. In Rajani Kanta Pal (supra) also, the blending was alleged to have been done by a male member of a joint family and the real controversy was whether the Mitakshara rule of blending applied in the case of brothers living together and forming a joint family governed by the Dayabhaga school of law. The Privy Council held that the rule of blending ex- tended to Dayabhaga families also. In the case decided by the Delhi High Court in Munshi Lal, (supra) it is true that one of the assessees was a female member of a Hindu undivided family and the contention was that she had impressed her separate property with the character of joint family property. It is, however clear from the judgment of the High Court that the question whether a female member of a joint Hindu family can blend her property with joint family property was not urged or considered in that case. The capacity or competency to blend was assumed both as, regards the male and the female assessee who were members of joint Hindu family. It was on that assumption that the question was referred to the High Court for its opinion under section 26(1) of the Gift-tax Act, 1958 whether the act of throwing the self-acquired property into the common hotchpotch amounted to a gift as defined in the Gift-tax Act. Following the decision of this Court in Goli Eswariah v. Commissioner of Gift-tax, (3) the Delhi High Court held that the transaction did not amount to a gift and, therefore, the gift-tax was not attracted. Thus, in none of these three cases cited by the appellant, was the competency of incorporation of separate property with joint family property in issue.

The decision of the Privy Council in Shiba Prasad Singh v. Rani Prayag Kumari Debi (supra) is also not to the point. It was held therein that unless the power is excluded by statute or custom, the holder of a customary impartable estate, by a declaration of his intention, can incorporate with the estate his self-acquired immovable property, and thereupon the property accrues to the estate and is im- pressed with all its incidents, including the custom of descent by primogeniture. The appellant argues that if the holder of an impartable estate can blend his separate property with the estate of an impartible estate, there is no reason why a Hindu female should not have the right to blend her separate property with joint family property. The analogy is misconceived because the true rule of blending, as we have explained above, is that the right to blend is limited to coparceners.

(1) 50 I.A. 173.

(2) 85 I.T.R. 129.

(3) 76 I.T.R. 675.

Having considered the decisions cited at the bar, it may be useful to have a fresh look at the doctrine of blending. The theory of blending under the Hindu law involves the process of a wider sharing of one's own properties by permitting the members of one's joint family the privilege of common ownership and common enjoyment of such properties. But while introducing new sharers in one's exclusive pro- perty, one does not by the process of blending efface oneself by renouncing one's own interest in favour of others. To blend is to share along with others and not to surrender one's interest in favour of others to the exclusion of oneself. If a Hindu female, who is a member of an undivided family, impresses her absolute, exclusive pro- perty with the character of joint family property, she creates new claimants to her property to the exclusion of herself because not being a coparcener, she has no right to demand a share in the joint family property by asking for a partition. She has no right of survivorship and is entitled only to be maintained out of the joint family property. Her right to demand a share in the joint family property is contingent, inter alia, on partition taking place between her husband and his sons (see Mulla's Hindu Law, 14th Ed. p. 403, para 315). Under section 3 (2) and (3) of the Hindu Women's Rights to Property Act, 1937 her right to demand a partition in the joint family property of the Mitakshara joint family. accrued on the death of her husband. Thus, the expression 'blending' is inapposite in the case of a Hindu female who puts her separate property, be it her absolute property or limited estate, in the joint family stock.

It is well settled that a Hindu coparcenary is a much narrower body than the joint family and it includes only those persons who acquire by birth an interest in _the joint or coparcenary property. These are the three generations next to the holder in unbroken male descent (see Mulla's Hindu Law, 14th Ed. p. 262, para 213). A Hindu female therefore is not a coparcener. Even the right to reunite is limited under the Hindu law to males (Mulla, p. 430, para

342). It does not therefore militate against the fundamental notions governing a Hindu joint family that a female member of the joint family cannot blend her separate property, even if she is an absolute owner thereof, with the joint family property.

In our opinion, therefore, the income of Rs. 21,544 from Nishat Talkies was not assessable in the hands of the Hindu undivided family on the basis that the appellant had blended it with the joint family property.

As regards the second question on which this Court had called for a supplementary statement, there is no serious controversy that by the declaration dated September 1, 1961 the appellant must be deemed to have made a gift of the items mentioned therein to the undivided family of which she was a member. The Tribunal's finding to that effect must, therefore, be confirmed. The income of the property gifted to the Hindu undivided family will be liable to be brought to tax consistently with this finding and in accordance with law.

In the result, the appeal fails in regard to the first question but will succeed in regard to the second. There will be no order as to costs.

S.R. Appeal allowed in part.