Supreme Court of India
Lal Rajendra Bahadursingh vs The State Of M.P. on 30 January, 1969
Equivalent citations: 1969 (1) UJ 82 SC
Author: Grover
Bench: Shah, Ramaswami, Grover
JUDGMENT Grover, J.

1. These three appeals by special leave are from a common judgment of the High Court of Madhya Pradesh In the reference made by the Board of Revenue, Gwalior, under Section 24(1) of the United Provinces Agricultural Income tax Act, 1948 (U.P. Act III of 1949), hereinafter called the "Act" ('as modified and extended to Vindhya Pradesh ) arising out of the orders made by the Board relating to the assessment years 1951-52, 1952-53 and 1953-54.

2. The appellant was a Pawaidar of the erstwhile State of Rewa (Vindhya Pradesh) under the Rewa State Land Revenue and Tenancy Code, 1935. He had two wives, two sons, two daughters and a nephew. By a deed dated December 30, 1949, the appellant made an arrangement about the payment of income to the family members. It was recited in the deed that according to the family usage appellant's younger son Kr. Lal Gambhir Singh was entitled maintenance but the maintenance which he would get according to the custom would be insufficient and, therefore, he would be given a sum of Rs. 8,175/- as maintenance in accordance with the annual cess of the thirty five items of properties described in the list attached to the document. To his eldest son Kr. Lal Mrigendra Singh the appellant gave for maintenance Rs. 34,072/- in accordance with the annual cess of 128 items of properties described in the list. For himself the appellant kept what he called "the remaining portion of Rs. 23,053/- " in accordance with the annual cess of the villages described in the list. Out of his own share he purported to give to his elder wife for life Rs. 3,170/- and 10 the younger wife Rs. 3,122/-. It was further provided that after the death of his wife his eldest son Kr. Lal Mrigendra Singh would be entitled to those amounts. The appellant gave to his elder daughter Kiran Kumari. Rs. 5,173/- and to his younger daughter Manorma Devi Rs. 4,003/- in accordance with the annual cess of properties in the villages described in the list. He similarly gave to his nephew Lal Dhirendra Singh Rs. 811/-. Towards the concluding portion of this document this is what was stated:

"Whereas both of my sons and both of my daughters are minors, I will look after the listed properties myself, and I shall keep separate accounts of the income and expenditure as regards these listed properties and I shall get the mutation of the above-mentioned village in the government records.

In witness whereof, I have got this deed of partition and management written out of my own free will and desire, and it will be of use when needed."

The contention of the appellant before the Tehsildar, who was the assessing authority, was that he had effected partition between the venous members of his family by virtue of the aforesaid deed but this contention was not accepted and the appellant was assessed to tax on the footing that there had been no partition of the joint Hindu family properties. The appellant went up in appeal to the Commissioner who made a direction that he be given an opportunity to produce evidence and the

assessment should be made after consideration of the evidence. After the remand the assessing authority held that every shareholder had separate account and made separate realisations and was in possession of his or her respective share, in other words, it was found that the partition had been acted upon. The State filed a revision petition to the. Board of Revenue. The Board upheld the order of the assessing authority and came to the conclusion that partition had been duly effected by the registered deed. The Board referred the following four questions to the High Court for its opinion on an, application made by the State as well as on its own motion. This was done under Section 24 (1) of the Act :

(1) Whether the partition deed dated 31.12.49 is in essence and fact a partition of the shares ?

(2) Whether the said partition deed of the shares invalid and ineffective in view of the Section 24 (i) of the Rewa State Land Revenue and Tenancy Act ?

(3) If the said partition deed is a partition of shares and is valid and effective, then the partition effected by it amounts to transfer, and it is hit by Section 24 (i) of the Rewa State Land Revenue and Tenancy Act ?

(4) Whether the assessee is liable to be assessed on whole of the property irrespective of the said partition deed ?

3. The High Court was of the view that the document dated December 30 1949 did not bring about any partition of the pawai held by the appellant and although it was stated in the document that the appellant was making a partition and providing for the management of his property, what he actually did was to distribute and make provision for the maintenance of members of his family. This is what the conclusion of the High Court was :

"Upon a construction of the document dated December 30, 1949. we have reached the conclusion that it did not effect any partition of shares, if any, which others had in the property.

As shown, the document did not purport to transfer the pawai nor did it transfer any interest therein by sale, gift or will. That being so the document was not made in contravention of the inhibitions contained in Section 24 (1) of the Rewa Land Revenue and Tenancy Code, 1935. It follows that assessments have to be made without regarding and giving effect to the document as a deed of partition".

The questions were answered accordingly against the appellant.

4. The sole controversy that has to be resolved is whether the deed dated December 30, 1949, effected a partition between the various members of the family of the appellant or whether it merely provided for the payment of maintenance to each member of the family separately. It has been contended by learned counsel for the appellant that the decision of the Board of Revenue and in particular its findings relating to the intention of the, appellant to effect partition and to transfer possession of the various properties to the members of the Joint Hindu Family were conclusive and

binding and that the document on the face it clearly effected a partition of the family properties. In spite of the statement in the deed that the younger son was only entitled to maintenance, counsel for the appellant says that the appellant and the other family members constituted a Joint Hindu Family and that the properties were not impartible. It is difficult to accept that the document dated December 30 1949 brought about any partition between the members of the family on the assumption that the estate was partible. There even is no unequivocal declaration of intention to effect partition nor have the shares of the coparceners been defined. The deed says in express terms that the income which is being earmarked is only meant for the maintenance of the various members of the family to whom it has been allotted. The method adopted was that in the first instance income from certain groups of properties was to be given to the appellant's two sons and himself. Even the amounts allotted were widely divergent and whereas the eldest son was given an annual income of Rs. 34072/-, the younger son was given an annual income of only Rs. 8,175/-. The appellant took fur himself an income of Rs. 23,053/-. Out of his income as stated before, he made apportionments in favour of his two wives, daughters and his nephew. The appellant has purported throughout in the document to make an arrangement by which he was giving the income for maintenance to the various members of the family. It has not been explained that if partition was intended why the second son was given properties which yielded an in-come of Rs. 8,175/- only whereas the eldest son was given properties yielding an income which was more than four times that amount. In an ordinary partition of Joint Family properties each co-parcener is entitled to an equal share and even the wife, in case a partition takes place between her husband and sons, is entitled to receive a share equal to that of a son. The document in question shows so much disparity that even if incomes were to be taken as a measure of determining the share the document cannot be regarded as effecting partition of the joint family properties. The Board of Revenue did not apply its mind to all these matters and travelled beyond the document by looking at some evidence which was produced to show that every shareholder had a separate account and had made separate realisations and was in possession of his or her respective share. In view of the fact that the document was not properly read and construed and the other facts and circumstances which have been mentioned were ignored it was open to the High Court to come to an independent conclusion at which it arrived.

5. We find no error in the judgment of the High Court which is affirmed. The appeals are therefore dismissed with costs. One hearing fee.