Supreme Court of India
N. V. Narendranath vs Commissioner Of Wealth Tax, ... on 7 March, 1969
Equivalent citations: 1970 AIR 14, 1969 SCR (3) 882
Author: V Ramaswami
Bench: Ramaswami, V.

PETITIONER:
N. V. NARENDRANATH

Vs.

RESPONDENT:
COMMISSIONER OF WEALTH TAX, ANDHRA PRADESH,HYDERABAD

DATE OF JUDGMENT:
07/03/1969

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
GROVER, A.N.

CITATION:
1970 AIR 14 1969 SCR (3) 882
1969 SCC (1) 748
CITATOR INFO :
R 1971 SC 33 (8)
F 1976 SC 109 (14,15,33,36)
R 1978 SC 504 (7)
R 1985 SC 716 (7)

ACT:
Wealth Tax Act, 1957, section 3-Family consisting of sole surviving Hindu coparcener, his wife and daughters, whether assessable as Hindu Undivided Family or as individual-Assessee receiving property from coparcenary on partition-Character of.

HEADNOTE:
In respect of his assessment to wealth tax for the assessment years 1957-58, 1958-59 and 1959-60, the appellant filed returns in the status of a Hindu Undivided Family. His family at the material time consisted of himself, his wife and two minor daughters. The appellant claimed to be assessed in the status of a Hindu Undivided Family inasmuch as the wealth returned consisted of ancestral property received or deemed to have been received by him on partition with his father and brothers. The Wealth Tax Officer did

not accept the contention of. the appellant and assessed him as an individual. The Appellate Assistant Commissioner confirmed this view. However the Appellate Tribunal held that the appellant should be assessed in the status of Hindu Undivided Family but the High Court, upon a reference, disagreed with the view of the Appellate Tribunal and held that as the appellant family did not have any other male coparcener, all the assets forming the 'subject matter of the returns filed by the appellant belonged to him as an individual and not to a Hindu Undivided Family.

On appeal to this Court,

HELD:Allowing the appeal:

The status of the appellant was rightly determined as that of a Hindu ,Undivided Family by the Appellate Tribunal. The expression "Hindu Undivided Family" in the Wealth Tax Act is used in the sense in which a Hindu joint family is understood in the personal law of Hindus. Under the Hindu system of law a joint family may consist of a single male member and his wife and daughters and there is nothing in the scheme of the Wealth Tax Act to suggest that a Hindu Undivided Family as an assessable unit must consist of at least two male members. [886 C]

Under s. 3 of the Wealth Tax Act not a Hindu coparcenary but a Hindu Undivided Family is one of the assessable legal entities. A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary is a much narrower body than the Hindu joint family; it in-cludes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grand-sons and great grand-sons of the holder of the joint property for the time being. [885 F-H]

Kalyanji Vithaldas v. Commissioner of Income Tax, 5 I.T.R. 90, Commissioner of Income Tax v. Gomedalli Lakshminarayan [1935] 3 T.R. 367 considered.

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Commissioner of Income Tax v. A. P. Swamy Gomedalli, 5 I.T.R. 416, Attorney General of Ceylon v. A.R. Arunachallam Chettiar [1957] A.C. 540, Gowali Buddanna's [1960] 6 I.T.R. 203 referred to.

T.S. Srinivasan v. Commissioner of Income Tax 60, I.T.R. 36 distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1477 to 1479 of 1968.

Appeals from the judgment and order dated November 30, 1964 of the Andhra Pradesh High Court in Case Referred No. 49 of 1962.

S.T. Desai and K. Jayaram, for the appellant (in all the appeals).

D.Narsaraju, G. C. Sharma, R. N. Sachthey and B. D. Sharma, for the respondent (in all the appeals). The Judgment of the Court was delivered by Ramaswami, J. These appeals are brought by certificate from the judgment of the Andhra Pradesh High Court, dated 30th November, 1964 in Reference Case No. 49 of 1962. N. V. Rangarao, the father of the appellant, was the holder of an impartible estate called the "Munagala Estate" in the Krishna District in the State of Andhra Pradesh. This estate was abolished under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, and compensation under' section 45 of the Act was paid severally to the appellant, his father and his brothers. Other properties belonging to the joint family of the appellant, his father and brothers were also partitioned between them from time to time. The assets forming the subject of reference to the High Court consisted of investments made from the compensation amount received by the appellant in securities, shares etc. and also other assets such as deposits in Banks. The appellant filed returns for the assessment years 1957-58, 1958-59 and 1959-60 in the status of a Hindu Undivided Family. The appellant's family during the material time consisted of himself, his wife and his two minor daughters and there was no other male member. The appellant claimed to be assessed in the status of a Hindu Undivided Family inasmuch as the wealth returned consisted of ancestral property received or deemed to have been received by him on partition with his father and brothers. The Wealth Tax Officer did not accept the contention of the appellant and assessed him as an individual for the assessment years 1957-58, 1958-59 and 1959-60. On appeal to the Appellate Assistant Commissioner of Wealth Tax the finding that he must be assessed as an individual was confirmed.

L 11 Sup.CI/69-7 The Income Tax Appellate Tribunal however on appeal by the appellant held that he should be assessed in the status of a Hindu Undivided Family. Thereupon, the Commissioner of Wealth Tax applied to the Tribunal to state a case to the High Court under section 27(1) of the Wealth Tax Act (Act No. 27 of 1957) (hereinafter called the Act). The Tribunal accordingly referred the following question of law for the opinion of the High Court :

> "Whether the status of the assessee was rightly determined as Hindu Undivided Family ?"

The High Court disagreed with the view of the Appellate Tri- bunal and hold that as the appellant's family did not have any other male coparcener all the assets forming the subject matter of the returns filed by the appellant belonged to him as an individual and not to a Hindu Undivided Family. The High Court answered the question in favour of the appellant and against the Commissioner of Wealth Tax. It is necessary at this stage to set out the relevant provisions of the Act as they stood at the material time :-

> "Section 2 : In this Act, unless the context otherwise requires-
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> (e)"assets" includes property of every description, movable or immovable, but does not include-

(i) agricultural land and growing crops, grass or standing trees on such land;

(ii) any building owned or occupied by a cultivator or receiver of rent or revenue out of agricultural land

(iii)animals;

(ix)a right to any annuity in any case of where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant;

(v)any interest in property where the interest is available to an assessee for a period not exceeding six years;

(m)"net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assesses on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assesses on the valuation date other than,-

(i)debts which under section 6 are not to be taken into account; and

(ii)debts which are secured on, or which have been incurred in relation to, any asset in respect of which wealth-tax is not payable under this Act.

Section 3 Charge of Wealth-tax Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of every individual, Hindu Undivided Family and company at the rate or rates specified in the Schedule. Section 5 : Exemption in respect of certain assets:

(i)Wealth-tax shall not be payable by an assesses in respect of the following assets and such assets shall not be included in the net wealth of the assessee-

(ii)the interest of the assessee in the coparcenary property of any Hindu Undivided Family of which he is a member".

Under s. 3 of the Wealth Tax Act not a Hindu coparcenary but a Hindu Undivided Family is one of the assessable legal en- tities. A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary is a much narrower body than the Hindu joint family; it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grand-sons and great grand-sons of the holder of the joint property for the time being. In Kalyanji Vithaldas v. Commissioner of Income Tax,(1) Sir George Rankin observed :

> "The phrase "Hindu Undivided Family" is used in the statute with reference, not to one school only of (1) 5 I.T R. 90.
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> Hindu law, but to all schools; and their Lordships think it a mistake in method to begin by pasting over the wider phrase of the Act the words "Hindu co-parcenary", all the more that it is not possible to say on the face of the Act that no female can be a member".

The first question involved in this case is whether the status of the appellant was that of a Hindu undivided family consisting of himself, his wife and his daughters. In our opinion, there is no warrant for the contention of the respondent that there must be at least two male members to form a Hindu Undivided Family as a taxable unit. The expression "Hindu Undivided Family" in the Wealth Tax Act is used in the sense in which a Hindu joint family is understood in the personal law of Hindus. Under the Hindu system of law a joint family may consist of a single male member and his wife and daughters and there is nothing in the scheme of the Wealth Tax Act to suggest that a Hindu Undivided Family as an assessable unit must consist of at least two male members.

The next question is whether the assets which came to the share of the appellant on partition ceased to bear the character of joint family properties and became the individual property in his hands. In this connection, a distinction must be drawn between two classes of cases where an assesses, is sought to be assessed in respect of ancestral property held by him : (1) where property not originally joint is received by the assessee and the question has to be asked whether it has acquired the character of a joint family property in the hands of the assessee and (2) where the property already impressed with the character of joint family property comes into the hands of the assessee as a single coparcener and the question required to be considered is whether it has retained the character of joint family property in the hands of the assessee or is converted into absolute property of the assessee. In Kalyanjis(1) case there were six appeals presented before the Judicial Committee by six partners of the firm of M/s. Moolji Sicka and Co., viz., Moolji, Purshottam, Kalyanji, Chaturbhuj, Kanji and Sewdas. Moolji, Purshottam and Kalyanji each had a son or sons from whom he was not divided. It was found by the appellate tribunal that the capital supplied by them to the partnership business belonged to them in their individual capacities and was their self acquired property. Hence the income of the firm which had to be assessed to super-tax was the separate income of each of these partners. Chaturbhuj had a wife and daughter but no son. Kanji and Sewdas, sons, of Moolji, were married men but neither had a son. It was found by the appellate tribunal that Chaturbhuj Kanji and Sewdas had (1) 5 I.T.R. 90 received by gift from Moolji their respective share capital in the firm, that the, share capital belonged to them in their individual capacities and was self acquired. The question at issue was whether the existence of a son and a wife or a wife and a daughter made the income of the partners the income of the Hindu Undivided Family rather than the income of the individual partner. The Judicial Committee held that though the income was from an ancestral source, the fact that each partner had a wife or daughter did not make that income from ancestral source income of the Hindu Undivided Family of the partner, his wife and daughter.

Different considerations would be applicable, where property already impressed with the character of joint family property comes into the hands of a single coparcener. The question to be asked in

such a case is whether the property retains the character of joint family property or whether it sheds the character of joint family property and becomes the absolute property of the single coparcener. In Commissioner of Income Tax v. Gomedalli Lakshminarayan,(1) the property was ancestral in the hands of the father and the son had acquired an interest in it by birth. There was a subsisting Hindu Undivided Family during 'the life-time of the father and that family did not come to an end on his death. On these facts, the Bombay High Court held that the income received from the property was liable to super-tax as the income of the Hindu Undivided Family in the hands of the son who was the sole surviving male member of the Hindu Undivided Family in the year of assessment. The reasoning was that the property from which income accrued originally belonged to a Hindu Undivided Family and on the death of the father it did not cease to be property of that Hindu Undivided Family but continued to belong to that Hindu Undivided Family and its income in the hands of the son was, therefore, assessable as income of the Hindu Undivided Family. There was a vital distinction between the facts of this case and the facts in Kalyanjis case(1). This distinction was not noticed by the Judicial Committee in Kalyanji's case(2) when it observed that the Bombay High Court "arrived too readily at the conclusion that the income was the income of the family". When Gomedalli's case(1) was carried on appeal the Judicial Committee once again failed to notice the distinction and wrongly reversed the decision of the Bombay High Court holding that the facts of the case were not materially different from the facts in Kalyanji's case(2) [See the decision of the Judicial Committee in Commissioner of Income Tax v. A. P. Swamy Gomedalli(3)]. (1)(1935) 3 I.T.R. 367.

(2) 5 I.T.R. 90.

(3) 5 I.T.R. 416.

The recent decision of the Judicial Committee in Attorney General of Ceylon v. AR. Arunachalam Chettiar(1) is important,. One Arunachalam--Nattukottai Chettiar and his son constituted a joint family governed by the Mitakshara school of Hindu law. The father and son were domiciled in India and had trading and other interests in India, Ceylon and Far Eastern countries. The undivided son died in 1934 and Arunachalam became the sole surviving coparcener in the Hindu Undivided Family to which a number of female members belonged. Arunachalam died in 1938 shortly after the Estate Ordinance No. 1 of 1938 came into operation in Ceylon. By section 73 of the Ordinance it was provided that property passing on the death of a member of the Hindu Undivided Family was exempt from payment of estate duty. On a claim to estate duty in respect of Arunachalam's estate in Ceylon, the Judicial Committee held that Arunachalam was at his death a member of the Hindu Undivided Family, the same undivided family of which his son, when alive, was a member and of which the continuity was preserved after Aruna- chalam's death by adoptions made by the widows of the family and since the undivided Hindu family continued to persist, the property in the hands of Arunachalam as a single coparcener was the property of the Hindu Undivided Family. The Judicial Committee observed at page 543 of the Report ".....though it may be correct to speak of him as the owner', yet it is still correct to describe that which he owns as the joint family property. For his ownership is such that upon the adoption of a son it assumes a different quality; it is such, too, that female members of the family (whose members may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which arise,

notwithstanding his so- called ownership, just because the property has been and has not ceased to be joint family property. Once again their Lordships quote from the judgment of Gratiaen, J. (2) "To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener". To this it may be added that it would not appear reasonable to impart to the legislature the intention to discriminate, so long as the family itself subsists, between property in the hands of a single copar-

(1) [1957] A.C. 540. (2) (1953) 55 C.N.L.R. 496-501.

cener and that in the hands of two or more coparceners".

The Judicial Committee rejected the contention of the appellant that since a single coparcener had full power over the property ,held by him, he must be held to be the absolute owner and observed that fact that he possesses a large power of alienation ".....appears to their Lordships to be an irrelevant consideration. Let it be assumed that his power of alienation is unassailable : that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it and, if he does not alienate it, that is what it remains. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as joint property' of the undivided family."(1) The basis of the decision was that the property which was the joint family property of the Hindu Undivided Family did not cease to be so because of the "temporary reduction of the coparcenary unit to a single individual". The character of the property, viz., that it was the joint property of a Hindu Undivided Family, remained the same. The same principle was applied by this Court in Gowali Bud- danna's (2) case. In that case, one Buddappa, his wife, his two unmarried daughters and his unmarried son, Budanna, were members of a Hindu Undivided Family. Buddappa died and after his death the question arose whether the income of the properties held by Buddanna as the sole surviving coparcener was assessable as the individual income of Buddanna or as the income of the Hindu Undivided Family. It was held by this Court that since the property which came into the hands of Buddanna as the. sole surviving coparcener was originally joint family property, it did not cease to belong to the joint family and income from it was assessable in the hands of Buddanna as income of the Hindu Undivided Family. In the course of the judgment Shah, J. speaking for the Court examined the decision of the Judicial Committee in Kalyanji's case(") and Gomedalli's (4) and pointed out that there was a clear distinction between the two classes of cases :

> "It may however be recalled that in Kalyanji Vithaldas's case(3) the income assessed to tax belonged separately to four out of six partners; of the remaining two (1) (1966) 60 I.T.R. 293.
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> (2) 60 I.T.R. 293.
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> (3) 5 I.T.R. 90.

(4) (1935) 3 I.T.R. 367.

> it was from an ancestral source, but the fact that each such partner had a wife or daughter did not make that income from an ancestral source income of the undivided family of the partner, his wife and daughter. In Gomedalli Lakshminarayan's case(1), the property from which income accrued belonged to a Hindu Undivided Family and the effect of the death of the father, who was a manager, was merely to invest the rights of a manager upon the son. The income from the property was and continued to remain the income of the undivided family. This distinction, which had a vital bearing on the issue falling to be determined, was not given effect to by the Judicial Committee in A. P. Swami Gomedalli's case(1).

At page 302 Shah, J. referred to the decision of the Judicial Committee in Arunachalam's (2) case and concluded as follows:-

> "Property of a joint family, therefore, does not cease to belong to the family merely because the family is represented by a single coparcener who possesses rights which an owner of property may posesss. In the case in hand the property which yielded the income originally belonged to a Hindu Undivided Family. On the death of Budappa, the family which included. a widow and females, born in the family was represented by Buddanna alone, but the property still continued to belong to that undivided family and income received therefrom was taxable as income of the Hindu undivided family".

In the present case the property which is sought to be taxed in the hands of the appellant originally belonged to the Hindu Undivided Family belonging to the appellant, his father and his brothers. There were joint family properties of that Hindu Undivided Family when the partition took place between the appellant, his father and his brothers and these properties came to the share of the appellant and the question presented for determination is whether they ceased to bear the character of joint family properties and became the absolute properties of the appellant. As pointed out by the Judicial Committee in Arunachalam's case(2) "it is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as "joint property of the undivided family". Applying this test it is clear that, though in the absence of male issue the dividing coparcener may be properly described in a sense as the owner of the properties, that upon the adoption of a son or birth of a son to him, it would assume a different quality. It con- (1) (1935) 3 I.T.R. 367.

(2) [1957] A.C. 540.

tinues to be ancestral property in his hands as regards his male issue for their rights hid already attached upon it I and the partition only cuts off the claims of the dividing coparceners. The father and his male issue still remain joint. The same rule would apply even when a partition had been made before the birth of the male issue or before a son is adopted, for the share which is taken at a

partition by one of the coparceners is taken by him as representing his branch. Again the ownership of the dividing coparcener is such "that female members of the family may have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it". (See Arunachalam's(1) case). It is evident that these are the incidents which arise because the properties have been and have not been ceased to be joint family properties. It is no doubt true that there was a partition between the assessee, his wife and minor daughters on the one hand and his father and brothers on the other hand. But the effect of partition did not affect the character of these properties which did not cease to be joint family properties in the hands of the appellant, Our conclusion is that when a coparcener having a wife and two minor daughters and no son receives his share of the joint family properties on partition, such property in the hands of the coparcener belongs to the Hindu Undivided Family of himself, his wife and minor daughters and cannot be assessed as his individual property. It is clear that the present case falls within the ratio of the decision of this Court in Gowali Buddanna's case (2) and the Appellate Tribunal was right in holding that the status of the respondent was that of a Hindu Undivided Family and not that of an individual. On behalf of the respondent reference was made to the decision of this Court in T. S. Srinivasan v. Commissioner of 'Income Tax(3), and it was contended that the decision proceeded on the basis that property received by the coparcener on partition cannot be regarded as property of a Hindu Undivided Family if he has merely a wife or daughter and no son. It is therefore necessary to examine the material facts and find out what is the ratio decidendi of that case. The appellant was a member of the Hindu Undivided Family with his father and brothers. As a result of partial partition of properties belonging to the Hindu Undivided Family the appellant received certain shares and with tsese shares as nucleus he acquired house properties, shares and deposits. His first son was born on 11 th December, 1952 and it was common ground that the conception of the child must have taken place some time in March, 1952. For the assessment year 1953-54 the relevant accounting year being the financial year 1st April 1952 to 31st March, 1953, the (1) [1957] A.C. 540.

(2) 60 I.T.R. 293.

(3) 60 I.T.R. 36.

8 92 appellant claimed that the income from the assets should be assessed in the hands of the Hindu Undivided Family consisting of himself and his son which, according to him, had come into existence in or about March, 1952 when the son was conceived. The Income Tax Officer recognised the Hindu Undivided Family only from the date of the birth of the son, viz. 11th December, 1952 and assessed the income till 11th December, 1952 in the hands of the appellant as an individual. The Appellate Assistant Commissioner and the Tribunal upheld this view on appeal. Before the High Court the question debated was whether the Hindu Undivided Family came into existence in or about March 1952 when the son was conceived and whether the assesses could be assessed in the status of an individual for any part of the relevant accounting year., The question was answered against the assessee by the High Court. The assessee appealed to this Court and the contention of the appellant was that according to the doctrine of Hindu law a son conceived is in the same position as a son actually in existence. The argument was rejected by this Court which held that the Hindu Undivided Family did not come into existence on the conception of the son as claimed by the appellant, but came into being when the son was actually born. It was suggested on behalf of the

respondent that the decision of this case must be taken to be implicitly, if not explicitly that there was no Hindu Undivided Family prior to the date of the birth of the son. But we do not think that any such implication can be raised. The case of the appellant throughout the course of the proceedings was that the Hindu Undivided Family came into existence for the first time in or about March, 1952 when the son was conceived and it was not his case at any time that a Hindu Undivided Family was in existence prior to the conception of the son. Indeed, it was common ground between the parties that there was no Hindu Undivided Family in existence prior to the conception of the son. The only dispute was whether the Hindu Undivided Family came into existence for the first time when the son was conceived as claimed by the assessee or whether it came into existence when the son was born as claimed by the Income Tax Department. The appellant relied on the doctrine of Hindu law that the son conceived is in the same position as the son born and the respondent contended that this doctrine was inapplicable. That was the only question raised before this Court which it was called upon to decide and which in fact it decided.- The question whether there was in any event even without a son conceived or born, a Hindu Undivided Family consisting of the appellant and his wife and whether the properties received on partition belonged to that Hindu Undivided Family was neither raised nor argued before this Court which had no occasion to consider it. The decision of T. S. Srini-

vasan's case(1) has therefore no bearing on the question now presented for determination in the present case. For the reasons already.expressed we hold that the status of the appellant was rightly determined as that of a Hindu Un- divided Family by the Income Tax Appellate Tribunal and the question of law referred to the High Court must be answered ill the affirmative and against the Commissioner of Wealth Tax. These appeals are accordingly allowed with costs. One hearing fee.

R.K.P.S. Appeals allowed,

(1) 60 I.T.R. 36.