Supreme Court of India
C. Krishna Prasad vs C.I.T., Bangalore on 12 November, 1974
Equivalent citations: AIR 1975 SC 498, 1974 97 ITR 493 SC, (1975) 1 SCC 160, 1975 2 SCR 709, 1975 (7) UJ 59 SC
Author: H Khanna
Bench: A Gupta, H Khanna
JUDGMENT H.R. Khanna, J.

1. This appeal on certificate is against the judgment of the Mysore High Court whereby the High Court answered the following question referred to it under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act) in the affirmative in favour of the revenue and against the assessee-appellant:

Whether on the facts and in the circumstances of the case the assessee was rightly assessed in the status of an individual for the assessment year 1964-65 ?

2. C. Krishna Prasad assessee-appellant along with his father Krishnaswami Naidu and brother C. Krishna Kumar formed a Hindu undivided family up to October 30, 1958, when there was a partition between Krishnaswami Naidu and his two sons. In the said partition the assessee got some house properties and vacant sites. The partition was recognised by the department and an order under Section 25-A of the Indian Income-tax Act, 1922 was passed recognising the partition with effect from November 1, 1958.

3. On the date of partition and also during the relevant period i e the year ending on March 31, 1964, the assessee was unmarried. Up to the year 1963-64 the assessee was assessed in the status of an individual. For the assessment year 1964-65 the assessee filed a return showing his status as an individual. In the course, however of the assessment proceedings for the assessment year 1964-65 the assessee claimed that he should be assessed in the status of a Hindu undivided family. The income-tax officer did not accept the claim of the assessee and held that his status was that of an individual. The order of the income-tax officer was affirmed on appeal by the Appellate Assistant Commissioner and on further appeal by the Appellate Tribunal. At the instance of the assessee, the question reproduced above was referred to the High Court. The High Court, as already mentioned, agreed with the departmental authorities and answered the question against the assessee.

4. The short, question which arises for determination, as would appear from the resume of facts given above, is whether an unmarried male Hindu on partition of a joint Hindu family can be assessed in the status of a Hindu undivided family even though no other person besides him is a member of the alleged family. This Court in the case of Gowli Buddanna v. Commissioner of Income-tax Mysore refrained from expressing an opinion on the point "whether a Hindu undivided family may for the purposes of the Indian Income-tax Act be treated as taxable entity when it consists of a single member male or female."

5. After hearing the learned counsel for the parties, we are of the opinion that the question which arises for determination in this appeal should be answered against the assessee.

6. Section 4 of the Act provides for the charging of income-tax on the total income of every person subject to the conditions prescribed in that section. "Person" has been defined in Section 2(31) of the Act and includes, inter alia, an individual and a Hindu undivided family. The inherent fallacy of the case set up on behalf of the asses-see-appellant, in our opinion, is that according to him a single individual can constitute a Hindu undivided family and be assessed as such. "Family" connotes a group of people related by blood or marriage. According to Shorter Oxford English Dictionary, 3rd Ed. the word "Family" means the group consisting of parents and their children, whether living together pr not; in wider sense, all those who are nearly connected by blood or affinity; a person's children regarded collectively; those descended or claiming descent from a common ancestor; a house, kindred, lineage; a race; a people or group of peoples. According to Aristotle (Politics I), it is the characteristic of man that he alone has any sense of good and evil, or just and unjust, and the association of diving beings who have this sense make a family and a State. It would follow from the above that the word "Family" always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. He or she would remain, what is inherent in the very nature of things, an individual, a lonely wayfarer till per chance he or she finds a mate. A family consisting of a single individual is a contradiction in terms. Section 2(31) of the Act treats a Hindu undivided family as an entity distinct and different from an individual and it would, in our opinion, be wrong not to keep that difference in view.

7. It is well settled that 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 joint family; it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grandsons, and great-grandsons of the holder of the joint property for the time being. The plea that there must be at least two male members to form a Hindu undivided family as a taxable entity has no force. Under Hindu law a joint family may consist of a single male' member and widows of deceased male members. The expression "Hindu undivided family" in the Income-tax Act is used in the sense in which a Hindu joint family is understood under the various schools of Hindu law (see Attorney-General of Ceylon v. Ar. Arunachalant Chattiar and Ors. [1958] 34 I.T.R. 42 and Gowli Buddana v. Commissioner of Income-tax Mysore (supra). In the case of Commissioner of Income-tax Madras v. Ram Ar. Ar. Veerappa Chettiar [1970] 76 I.T.K. 467 this Court observed that under the Hindu law it is not predicated of a Hindu joint family that there must be a male member. It was accordingly held that so long as the property which was originally of the joint Hindu family remains in the hands of the widows of the members of the family and is not divided among them, the joint family continues. One thing significant which follows from the above is that the assessment in the status of a Hindu undivided family can be made only when there are two or more members of the Hindu undivided family.

8. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issue. As regards other relations, it is separate property, and if the coparcener dies without leaving male issue, it passes to "his heirs by succession (see p. 272 of Mulla's Principles of Hindu Law 14th Ed). A person who for the time being is the sole surviving coparcener is entitled to dispose

of the coparcenary property as if it were his separate property. He may sell or mortgage the property without legal necessity or he may make a gift of it. If a son is subsequently born to him or adopted by him, the alienation, whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienations made by his father before he was born or begotten (see p. 320 ibid.). In view of the above it cannot be denied that the appellant at present is the absolute owner of the property which fell to his share as a result of partition and that he can deal with it as he wishes. There is admittedly no female member in existence who is entitled to maintenance from the above mentioned property or who is capable of adopting a son to a deceased coparcener. Even if the assessee-appellant in future introduces a new member into the family by adoption or otherwise, his present full ownership of the property cannot be effected. Such a new member on becoming a member of the coparcenary would be entitled to such share in the property as would remain undisposed of by the assessee. In order to determine the status of the assessee for the purpose of income-tax, we have to look to the realities as they exist at present and it would not be correct to project into the matter future possibilities which might or might not materalise. This would indeed amount to speculation and the same is not permissible excursions to the realm of speculation may be legitimate and justified when one is engaged in the study of philosophy and metaphysics; they are wholly unwarranted when one is dealing with the mundane subject of the status of the assessee for the purpose of the income-tax assessment. For this purpose we have to look to facts as they exist and emerge from the. record and not to what they may or may not be in future. As things are at present in the instant case, there can in our view he hardly any doubt that the assessee is an individual and not a family.

9. Mr. Desai on behalf of the appellant has referred to the case of Anant Bhikappa Patil v. Shankar Ramchandra Patil A.I.R. (30) 1943 P.C. 196. As considerable reliance has been placed upon that case, it may be necessary to deal with that case at some length. The dispute in that case was between parties governed by Hindu law and related to watan lands. The pedigree table of the parties was as under:

DHULAPPA | | ---------- Punnappa d. 1901 Hanamantappa ---------- | | | | Gundappa Narayan Ramchandra d. 1902 d. 1908 | | | | | Bhikkappa | d. 1905 | =Gangabai | ---------- ---------- | | | | Keshav Anant Shankar Hanmant Babu d. 1917 adopted defendant 1930 plantiff Dhulappa's sons Punnappa and Hanumantappa separated in 18S7. The watan lands in dispute went to the share of Punnappa, Narayan, one of the sons of Punnappa, separated from him in his lifetime. Thereafter Punnappa died in 1901. Bhikappa died in 1905, leaving his widow Gmgabai and son Kesha v. Narayan died issueless in 1908 leaving two Plots of watan lands. On the remarriage of the widow of Narayan, those two plots devolved by inheritance on Keshav. Keshav died unmarried in 1917. At that time bis nearest heir was his collateral Shankar defendant. Shankar obtained possession in 1928 of the land in dispute, which had been left by Keshav after bringing a suit against Gangabai. In 1930 Gangabai adopted Anant plaintiff as a son to her deceased husband Bhikappa. In 1932 Gangabai as the next friend of Anant brought suit for possession of the land in dispute against Shankar. The trial court decreed the suit. On appeal the High Court dismissed the suit for possession. On further appeal the Judicial Committee restored the decree of the trial court. It was held by the Judicial Committee that the power of a Hindu widow to adopt does not come to an end on the death of the sole surviving coparcener. Neither does it depend

upon the vesting or divesting of the estate, nor can the right to adopt be defeated by partition between the coparceners. The Judicial Committee also held that on the death of a sole surviving coparcener, a Hindu joint family cannot be finally brought to an end while it is possible in nature or law to add a male member to it. The family cannot be at an end while there is still a potential mother if that mother in the way of nature or in the way of law brings in a new male member. The Judicial Committee further held that an adopted son can claim as preferential heir the estate of any person other than his adoptive father if such estate has vested before the adoption in some heir other than the adopting mother.

10. The above case, in our opinion, can hardly be of any assistance to the assessee-appellant. As would appear from the facts of that case, the question involved there related to the adoption by a widow after the death of the sole surviving coparcener. The question with which we are concerned, as to whether one individual can constitute a Hindu undivided family, was not before the Judicial Committee and it expressed no opinion on that question. According to Mr. Desai it is implicit in that judgment that from 1917 when Keshav died till 1930 when Anant plaintiff was adopted, there was a joint Hindu family even though the joint family consisted of Gangabai alone. We find it difficult to agree with Mr. Desai in this respect As would appear from the facts of that case, Anant was adopted by Gangabai as a son of Bhikappa. It is now firmly established that the rights of the adopted son relate back to the date of the adoptive father's death and the adopted son must be deemed by a fiction of law to have been in existence as the son of the adoptive father at the time of latter's death (see p. 543 of Mullah's Principles of Hindu Law 14th Ed.1. This principle of relation back is subject to certain exceptions but we are not concerned with them. As Bhikhappa died in 1905, Anant should be deemed to have been in existence as the son of Bhikappa at the time of latter's death in 1905. A necessary corollary of the above legal fiction would be that Anant as the adopted son of Bhikappa would be taken to be in existence during the years 1917 to 1930. Gangabai consequently cannot be considered to be the sole member of the Hindu undivided family during the above period.

11. There is no merit in the appeal. It is accordingly dismissed with costs.