

Jagmohan Das And Ors. vs Official Liquidator, Banaras Bank And ... on 3 October, 1955

Equivalent citations: AIR1956ALL145, AIR 1956 ALLAHABAD 145, 1956 ALL. L. J. 212

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Agarwala, J.

1. This appeal arises out of proceedings under Section 183, Companies Act. The facts briefly stated are as follows.

2. In 1921, 703 shares were purchased by one Har Krishna Das. Then in 1928 another lot of shares 718 in number were purchased in the name of Hari Krishna Das, but in reality it was purchased by Har Krishna Das together with two other persons named Narottam Das and Ram Chandra Rao Naik Kalia. These shares were registered in the name of Har Krishna Das alone.

Later on 239 out of these 718 shares were registered in the name of Narottam Das and the remaining 479 shares remained registered in the name of Har Krishna Das. Har Krishna Das died in 1938. On 1-8-1939 the Banaras Bank went into liquidation and the liquidators had to determine who the legal representatives and heirs of Har Krishna Das were who should be brought on the register of share-holders as contributories.

At his death, Har Krishna Das had only one brother living, namely, Udai Karau Das. He had four other brothers who had died prior to his death. The liquidators held that Udai Karan Das was the legal representative and heir of Har Krishna Das. Udai Karan Das objected to this finding and on an appeal by him under Section 183, the Company Judge, Braund, J. upheld the official liquidator's order and directed the name of Udai Karan Das to be recorded as a contributory.

He, however, stated that he was not deciding the question as to from which property the amount due upon the shares was to be realised. Udai Karan Das also died on 10-9-1942 and again the question of bringing his heirs and legal representatives on the record arose. The official liquidators issued notices to his son Girdhar Das and to his six nephews, Jagmohan Das, Vithal Das, Bal-labh Das, Jamna Das, Bal Krishna Das and Brij Jiwan Das.

They all objected to their names being brought on the record as the heirs and legal representatives of Udai Karan Das deceased & to be considered as contributories, but the official liquidators decided that all of them were liable to be recorded as contributories.

There was an appeal to the Company Judge, Hon'ble Mr. Justice Mootham as he then was. He decided that the view taken by the official liquidators was correct in so far as 702 shares purchased by Har Krishna Das in 1921 were concerned, but he was of opinion that the evidence on the record with regard to the other lot of 479 shares which also formerly stood in the name of Har Krishna Das was not sufficient and he deferred the decision of the question of representation about those shares. In this appeal we are concerned with 703 shares alone.

3. The dispute before the learned Company Judge was really between the son of Udai Karan Das and his six nephews on the one hand and the three daughter's sons of Har Krishna Das. It may be mentioned that Har Krishna Das had left no son but had left two daughters Shrimati Jawahir Kaur and Shrimati Kundan Kaur. These daughters were dead and the three respondents, Bal Mukand, Har Govind and Vittal Das Gothi are their sons.

4. Before the official liquidators as well as before the learned Company Judge it was admitted that Har Krishna Das was a member of a joint Hindu family with all his brothers and nephews, that he owned no personal property of his own and that consequently the shares in question (we are only dealing with 703 shares purchased in 1921) formed part of the property of the joint family.

This position was also not disputed before us. Udai Karan Das having been substituted in place of Har Krishna Das and that decision of the company Judge having become final, we must take it that Udai Karan Das was the legal representative and heir of Har Krishna Das. The question now is who should be treated as the legal representatives and heirs of Udai Karan Das after his death in 1942. The question has to be decided under Section 160 of the Companies Act which lays down that 'If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the Company in discharge of his liability and shall be contributories accordingly.'

If this were the only provision of the section it might have been urged that in every case the personal legal representatives and heirs of a deceased contributory must be brought on the record and that if the deceased contributory held the shares as representative of a joint Hindu family, the coparceners could not be brought on the record as his legal representatives and heirs.

Indeed this was so held by a Bench of this Court in -- 'U. P. Oil Mills Co., Ltd. v. Jamuna Prasad', AIR 1933 All 334 (A), to do away with the effect of the aforesaid ruling the Legislature amended Section 160 by adding Sub-section (3) thereof, vide Section 87 of Act 22 of 1936. This sub-section reads as follows:

"(3) For the purpose of this section the surviving coparceners of a contributory who is a member of a Hindu joint family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs."

It has already been stated that it is not disputed that Udai Karan Das was at the time of his death a member of a joint Hindu family along with his son and nephews and that he held the disputed shares as the property of the joint family. According to the Hindu Law as interpreted in the Mita-kshara, Udai Karan Das's interest in the joint family property would be taken by his coparceners by right of survivorship, that is to say, his son and the six nephews would, *prima facie*, be liable to be treated as contributories in place of Udai Karan Das.

5. But it is contended by the learned for the appellants that this result does not follow in the present case, because of the particular language of Sub-section (3) which we have quoted above. He urges that Sub-section (3) only applies to persons governed by the Mitakshara School of Hindu Law and that because the appellants are governed by the Mayukha School of Hindu Law, they being Gujaratis who have carried their particular school of law when they migrated from Gujarat to this State, Sub-section (3) cannot apply to their case. We do not think that the contention of the learned counsel is correct.

6. It is now well known that there are two principal schools of Hindu Law in India, the Mitakshara School and the Dayabhaga school. The Dayabhaga school prevails in Bengal and the Mitakshara school prevails in the rest of India.

The Mitakshara school is sub-divided into four sub-schools, the Banaras School, the Mithila School, the Mayukha School and the Dravida School; but all these four sub-schools are really branches of the Mitakshara school of Hindu law, because the Mitakshara commentary written by Vigyaneshwar is considered as principal authority in the school except on a few points where other commentaries are held to be controlling.

7. There used to be some difference, of opinion on the question whether there are really any schools of Hindu Law in India. It appears that Colebrook was perhaps the first to use the phrase "schools of Hindu Law", see Banerji's 'Hindu Marriage and Stridhana' (Tagore Law Lectures 1878, p. 6 of 1913 edition).

After examining the question Mr. Banerji, comes to the conclusion that the expression "Schools of Law" is not, altogether foreign to Hindu Law; and as it represents a real distinction it may conveniently be retained. Sir Ganga Nath Jha in his book 'Hindu Law in its Sources' 1930 Edn. Vol. I, at pp. 15 and 16 points out how the idea of schools of Hindu Law arose. Says he:

"As early as the seventh century A. D. we find Kumarila declaring that while the Smriti of Manu is regarded as binding throughout Aryavarta all other Smritis have a limited jurisdiction; and from what he says in a subsequent passage it is clear that the limitation in the jurisdiction was not territorial; it rested upon the diversity of the Shakhas of Recensional Texts of the Vedas, the followers of different Shakhas accepting different Smritis for their supreme authority.

This seems to have been at the root of the conception of diverse schools of Law; although this conception as current among the older Hindu givers differs, from that

which has found currency in modern Indian Law, For the former, all law, based as it must be upon the Veda, must be equally binding on all men; and the only limitation that they would allow would be, either (1) that due to the capacity of individuals, or (2) that justified by qualifying words or phrases in the texts themselves."

According to him the modern conception of the schools of Hindu Law was based upon the diversity in the later interpretations of the older texts, and upon the subsequent predilections and customs of the particular peoples concerned. The learned author further observed:

"In view of the above facts, though there does appear to be some such division as into the 'Mitakshara school', the 'Mayukha, school' and so forth, there is no justification for assigning to those schools hard and fast territorial jurisdiction." But it appears that the various schools of law had assumed definite territorial limits by the time that the British Indian Courts applied the rules of Hindu Law in their decisions. As the Privy Council said in the -- 'Collector of Madura v. Moottoo Rama-linga Sathupathy', 12 Moo Ind App 397 (PC) (B) at p. 435:

"The remoter sources of the Hindoo Law are common to all the different schools. The process by which those schools have been developed seems to have been of this kind. Works universally or very generally received became the subject of subsequent commentaries. The commentator put his own gloss on the ancient texts; and his authority having been received in one and rejected in another part of India, schools with conflicting doctrines arose.

8. In the older books written by Anglo-Indian authors we find the division of Hindu Law into five schools, named by the territories in which they were considered to prevail. Thus in Tagore Law Lectures 1870 by Cowell, a mention is made of five schools of Hindu Law existing at that time. The Bengal, Mithila, Banaras, Maharashtra and Dravida schools. In his later book, "A short Treatise on Hindu Law, published in 1895, however the learned author says:

"There are five schools of Hindu Law, Bengal, Mithila, Banaras, Maharashtra and Dravida. The last four, however, only differ so far as they modify the Mitakshara and the variation between them are not radical. For most purposes it may be considered that there are only two schools, those of the Mitakshara and Dayabhaga."

Since then it has been generally recognised that there are only two schools of Hindu Law -- Mitakshara and Dayabhaga and that the Banaras, the Mayukha, the Dravida and Mithila are really sub-schools of the Mitakshara school. See Mayne's Hindu Law 11th Edn. at page 54; where the learned author says:

"The term 'school of law' as applied to the different legal opinions prevalent in different parts of India, seems to have been first used by Mr. Colebrooke. There are in fact only two main schools, the Mitakshara and the Dayabhaga."

The learned author at page 56 goes on to observe: "It is usual to subdivide the Mitakshara school of Hindu Law into four schools, namely the Banaras, the Mithila, the Maharashtra and the Dravida schools. The subdivision was once carried even to the event of dividing the Dravida into a Tamil, a Karnatak and an Andhra school for which however there was no justification. The variations between the sub-division of the Mitakshara school are comparatively few and slight.

Except in respect of the Mitakshara school, this division serves no useful purpose; nor does it rest upon any true or scientific basis. It is to a certain extent misleading as it conceals the fundamental identity of doctrine between the so-called Mithila, Banaras, Maharashtra, and Dravida schools and suggests that there are more differences than do really exist."

Mulla in his Hindu Law has also followed the same division at page 11 of the 10th Edn. The learned author says:

"Properly speaking, there are only two schools of law, namely, the Mitakshara school and the Daya-bhaga school. The Dayabhaga school prevails in Bengal; the Mitakshara school prevails in other parts of British India."

Then at page 12 it is stated that "The Mitakshara school is sub-divided into four minor schools; these differ between themselves in some matters of detail relating particularly to adoption and inheritance. All these schools acknowledge the supreme authority of the Mitakshara but they give preference to certain treatises and to commentaries which control certain passages of the Mitakshara. This accounts for the differences between those schools."

9. If we were to accept the contention of the learned counsel for the appellants, the result would be that Sub-section (3) of Section 160 would leave the cases of survivorship arising under the Mayukha, Dravida, and Mithila schools uncovered. That could hardly have been intended by the Legislature.

Section 87 of Act 22 of 1936 was undoubtedly intended to clarify the matter with regard to succession to a contributory who was a member of a joint Hindu family and whose succession was governed by the rule of survivorship. We are of opinion that the expression "Mitakshara school of Hindu Law" in Sub-section (3) of Section 160 covers all the schools or sub-schools of Hindu Law other than the Dayabhaga School of Hindu Law.

10. There is no force in this appeal. It is dismissed with costs. The costs will be shared between the official liquidators and the other respondents. The official liquidators will receive half the cost and the other respondents will get the other half.