COMMISSIONER OF WEALTH-TAX, WEST BENGAL Vs GOURI SHANKAR BHAR.

Court: Calcutta High Court

Date of Decision: March 26, 1967

Acts Referred: Wealth Tax Act, 1957 â€" Section 21, 27(1)

Citation: (1968) 68 ITR 345

Hon'ble Judges: K. L. Roy, J; Banerjee, J

Bench: Full Bench

Judgement

BANERJEE J. - This is a reference u/s 27(1) of the Wealth-tax Act, 1957.

The assessment year is 1959-60, the corresponding valuation date being March, 31, 1959.

The reference has been made in the circumstances hereinafter stated in brief. One Prafulla Chandra Bhar, a Hindu governed by Dayabhaga school

of law, died intestate on April 27, 1956. His mother, widow, three sons and one daughter survived him. Since the death had taken place before the

Hindu Succession Act, 1956, came into operation, he was succeeded by his widow, Sm. Radha Rani Bhar, and his three sons, namely, Uma

Sankar, estate. Gouri Sankar, a son of the deceased, took out letters of administration and filed the wealth-tax return, and his capacity as the

administrator to the estate of the deceased, therein describing the status of the assessee as a Hindu undivided family. The Wealth-tax Officer also

treated the status of the assessee as a Hindu undivided family. He took the net value of the assets at Rs. 8,39,125 and calculated the tax payable

thereon at Rs. 4,391.25 P.

Gouri Sankar, as the administrator to the estate, filed an appeal before the Appellate Assistant Commissioner and contended :

(1) that the Wealth-tax Officer was wrong in proceeding on the basis that the assessee was a Hindu undivided family and in charging tax on that

basis :

(2) that the family being governed by the Dayabhaga school of law and the share of the coparceners in the properties left by the deceased being

definite and ascertained, the assessment should not have been made in their status as a Hindu undivided family and each members of the family

should have been assessed separately upon the value of his or her respective share in the inherited property :

(3) that under the provisions of section 21 of the Wealth-tax Act, the assessment should have been made on the individual members and not on the

Hindu undivided family, because some of the members of the family were not at all owners of the property.

The objections on the aforesaid grounds, we need notice, were taken up, for the first time, before the Appellate Assistant Commissioner. The

Appellate Assistant Commissioner overruled the contentions, being of the opinion that even in a Dayabhaga family, notwithstanding the fact that the

shares of the co-parceners were definite and ascertained, the income from the property of the family did not belong to the several members in

specified shares but continued to belong to the Hindu undivided family as a whole. He expressed the further opinion that, unless and until there was

a partition in the family, the property and assets of the family belongs to the Hindu undivided family.

The assessee thereafter appealed before the Appellate Tribunal. The Appellate Tribunal reversed the order of the Appellate Assistant

Commissioner with the following observatios :

Unlike the principles that govern a Hindu undivided family in Mitakshara law, the coparcener under Dayabhaga law has a definite share in the

properties left by the deceased and he is legally the owner thereof. Owners, in the instant case, are determinate and the shares defined. Since the

wealth-tax is levied on the basis of the ownership, it is quite proper that the assessment should be made on the individual coparceners on their

respective shares. The assessment of the total wealth in the hands of the Hindu undivided family, some members of which are not owners of any

part of the property, would be illegal. Accordingly, we allow the contention of the assessee cancel the assessment.

In the above view, the Appellate Tribunal canceled the assessment and gave liberty to the wealth-tax authorities to make assessment on the

individual coparceners according to law.

Thereupon, at the instance of the Commissioner of Wealth-tax, there was a reference made to this court for opinion on the following question of

law :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in canceling the assessment made in the status of a Hindu

undivided family ?

Since the reference raises certain fundamental points concerning Dayabhaga law of succession, we not only heard the learned counsel for the

parties but also invited Mr. Sukumar Mitter, a well known counsel of this court, to help us as amicus curiae. Counsel for the parties as well as Mr.

Mitter rendered great assistance to us and we record our deep appreciation therefor.

We now turn to the question referred to us. Mr. B. L. Pal, learned counsel for the revenue, submitted that the joint and undivided family is the

normal condition of Hindu society. The existence of a joint estate is not an essential requisite for constitution of a joint family and a family which

does not own any property may nevertheless be joint. Under the Mitakshare school of Hindu law, he submitted :

(1) a Hindu coparcenary is a much narrower body than the joint family and includes only those persons who acquire by birth an interest in the joint

or coparnecary property, namely, the sons, grandsons and great grandsons of the holder of the property for the time being;

(2) a Mitakshara coparcenary is purely a creature of law, it cannot be created by act of parties, save in so far that by adoption a stranger may be

introduced as a member thereof;

(3) joint family or coparcenary property is that in which every coparcenary has a joint interest and a joint possession. Such property devolves by

survivorship and not by succession and therein the male issue of coparcenary acquire interests by birth;

(4) given a Hindu joint family there is a presumption that until the contrary is proved, the joint family continues to be joint. The presumption is the

greatest in the case of father and sons and the presumption is stronger in the case of brothers than in the case of cousins.

The above submission based on articles 212(2), 213, 214(2), 221 and 223 of Mullas Hindu law may be taken as correct submissions.

Mr. Pal further submitted that unlike Mitakshara law, where the foundation of a coparcenary was laid on the birth of a son, under the Dayabhaga

school of law the foundation was laid on the death of the father. Explaining the proposition further, with further to Dayabhage school of law, he

submitted

(a) that so long as the father is alive there is no coparcenary in the strict sense of the word between him and his male issue. It is only on his death,

leaving two or more male issues, that a coparcenary is first formed. His male issue then inherit his property, separate as well as ancestral, as his

heirs but as between them they hold it is coparceners and the property inherited from the deceased is coparcenary property;

(b) on the death of any one of the coparceners, his heirs succeed to his share in the coparcenary property and they become members of the

coparcenary. Such heirs, in default of male issue, may be his widow or widows or his daughter or daughters. These two, though females, get into

the coparcenary, representing the share of their husband or father as the case may be. A coparcenary under the Dayabhaga law may consist of

males as well as females, but under the Mitakshara, law no female can be a coparcener with male coparceners;

[c] the formation of a coparcenary does not depend upon any act of parties. It is the creation9n of law. It is formed spondaneously on the death of

the ancestor. It may be dissolved immediately afterwards by partition, but until then the heirs hold the property as comparceners.

Explaining the distinction between a Mitakshara and a Dayabhga coparcenary he submitted that the essence of a coparcenary under the

Mistakshara law was unity of ownership. While the family continues, joint, no comparcener can say that he is the owner of the defined share. His

interest is a fluctuating interest capable of being enlarged by deaths and liable to be diminished by births in the family. It is only by a partition that he

become entitled to a defined share. On the other hand, the essence of a comparcenary under the Dayabhaga law is unity of possession. It is not

unity of ownership at all. every comparcener takes a defined share in the property and he is the owner of that share. That share is defined

immediately the inheritance opens. It does not fluctuate with births and deaths in the family.

Regarding presumption as to comparcenary property, he submitted that the presumption with regard to joint family and joint property which

applied to cases under the Mitakshara law would apply also to cases under the Dayabjaga law.

In making the above submissions Mr. Pal relied on articles 277, 279 and 286 of Mulls Hindu law and in fact the bodily reproduced passages from

the text book as part of his argument.

On behalf of the assessee, however it was submitted that the proposition that a coparcenary spontaneously comes in top being under the

Dayabhaga school of law, on the death of a father, amongst his heirs by operation of law, was not a correct proposition. The heir of a Dayabhaga

family jointly inherited the property and become tenants in common but they do not from an undivided Hindu family or a Hindu joint family unless

they so desire and form one in fact.

Now the application of the term ""coparcenary"" to the Dayabhaga school of law is somewhat misleading. In Gopal Chandra Sastris Treatise on

Hindu Law {7th edn.] this aspect has been emphasised upon in the following language :

When two or more persons are entitled to the same property in equal or unequal shares it is said to be their joint property. The expression joint-

tenants, tenants-in-common and coparceners are technical terms of English law used to designate different descriptions of owners of joint property,

with special incidents. The use of these terms to express cherirs under Hindu law by reason of analogy in some respect, is often misleading and

gives rise to confusion... "" [p. 337].

The English joint-tenancy and the Mitakshar joint-tenancy differ from each other in many respects. The former is created by a grant under a deed

of transfer inter vivos, i.e., by purchase and not by descent, while the latter owes its origin to inheritence only. Under the former each coetenant is

entitled to the whole, as well as to his undivided equal shared of the property, i.e., the whole, estate as well s his own equal proportion are vested

in each joint tenant; but under the latter, the whole estate, not any share of it, is vested in each member, who whilst undivided, cannot predicate of

the property, that he has any definite share, which again when ascertained by partition is no. necessarily equal : accordingly, an English joint-tenant

possesses an absolute power to dispose, by a transfer inter vivos but not by a will, of his own share, and so to put an end to his joint tenancy;

whilst a member of a Mitakshara joint family, having no definite share, cannot alenate his undivided coparcenary interest, and he cannot destroy the

joint tenancy except by separation which he is at liberty to effect, whenever he chooses"" (p. 338.)

The learned author then proceeded to define coparcener in the following language :

Coparceners are two or more persons who jointly inherit property, whereof they have unity of possession which, however, may be severed at any

time by partition. There is no survivorship, each taking an undivided share, which, on his or her death, goes to his or her heir. The coheirs and their

heirs are called coparceners or parceners so long as unity of possession continues.

After having observed in that way, the learned author explained the nature of a joint family under the Bengal school as hereinafter quoted :

It is after the death of the father, that the sons may, agreeably to the modern view of the ancestral property, really become members of a joint

family. According to the theory of the Bengal School they become tenants-in-common, and not joint tenants, in respect of the estate inherited by

then from continues joint, community of interest being the criterion of jointness in both the schools. The agreement forming the foundation of

reunion proves the true nature and character of joint family property under the Bengal School notwithstanding the title of the coheirs being in

severalty, namely, what is thine is mine, and what is mine is thine.

As regards what constitutes joint property, the enjoyment of the same by the members, the management of the trading managers powers and the

presumpton, the law appears generally to be the same in the Bengal School as under the Mitakashara. "" (p. 602)

Explaining the characteristics of a Mitakshara Joint family (Benaras School) Westbury J. observed in Appovier v. Ramasubba Aiyan as follows :

According to the true notion of an undivided family in Hindu law, no bindividual member of that family, whist it remains undivided, can predicate of

the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided family could

go to the place of the receipt of rent and claim to take from the collector or receiver of the rents, a certain definite share. The proceeds of the

undivided property must be brought according to the theory of an undivided family, to the common chest or purse and then dealt with according to

the modes of enjoyment by the members of an undivided family.

Mayne, in his Treatise on hindu law and Usage (10th edition), ex [plains the characteristics of a Dayabhaga joint family in the fallowing language :

Where property is held by a father as head of an undivided family, his issue have no legal claim upon him or the property, except for maintenance.

The father can dispose of the property as he please; the sons can neither control, nor call for an account of his management. It follows therefore,

that under the Dayabhaga law, a father and his sons do not form a joint family in the technical sense having coparcenary property. But as soon as it

has made a descent, the brothers or other coheirs hold their shares in a sort of quasi-severalty. "" (Paragraph 296, Chapter VIII, 377-60).

Jonendra Chandra Ghose, in his book Principles of Hindu Law (3rd edition, vol. 1), speaks of the difference between Mitakshara and Dayabhaga

joint family in the following language.

There is a very great difference in the legal positions of members of the Mitakshara and Dayabhaga joint family. The right of a Mitakshra

coparcener is like that of a joint-tenant whose interest until partition is underfine and passes by survivorship to the other coparcener, except when

he leaves male issue. The right of a Dayabhaga coparcener is that of a tenant-in-common.

The Hindus of Bengal now, generally, even when then they live in joint mess, keep their own earnings and their shares of incomes of the family

separate and it is fully understood among them that property purchased solely in the name of one member is his own property, expect under

exceptional circumstances. The constitution of Hindu families has undergone a very great change under the influence of modern westbern western

ideas and the courts should administer the law as applicable to the present circumstances. In a Dayabhaga family, separation in mess consututes

complete separation, because in respect of the ancestral property the shares of the coparceners are defined and their status is that of tenants-in-

common... Thus under the Dayabhaga after separation in mess, all properties acquired by a coparcener in his own name should be presumed to be

his separate property.

The bove passages, which were read not us either by the learned conceal of the parties or by the learned amicus curiac, do not helpo to establish

the proposition that on the death of a Dayabhaga father a joint family spontanceously comes into existence amongst his heirs.

In our opinion, Sir Dinshaw Mulla may be partly right in saying, in the note following article 277 of is book on Hindu law, that under the

Dayabhaga school of law, ""the formation of a coparcenary does not depend upon any act of the parties. It is a creation of law. It is formed

spontaneosuly on the death of the ancestor; it may be dissolved immediately afterwards by partition, but until ten the heirs hold the property as

coparceners"" - if he thereby meant that coparceners are persons who jointly inherit property, in which they have unity of possession severable on

partition. But there is no authority for the further proposition that an undivided Hindu family comes into existence, on the death of a Hindu

Dayabyaga father, without more amongest his heirs. The impact of legislation, particularly the enactment of the Hindu Womens Right to Property

Act, 1937, has radically changed old ideas of joint family. A Hindu Dayabhaga father may die leaving two married daughters belonging to different

families. To say that on the death of the father the two daughters form a joint family by operation of law, because they inherit joint property is to

say something opposed to the state of affairs prevailing in a Dayabhaga Hindu society and not dreamt of in the present social conditions. The old

position has further changed after the enactment of the Hindu Succession Act, 1956. We are unable to hold, therefore, m that on the death of a

Hindu Dayabhaga father, a joint family comes into existence amongst his heirs spontaneously by operation of law.

Mr. Pal railed on the following passage of Sethurs Translation of Dayabhaga, Chap. 1. paragraphs 14, 15, 26 and 27, which read as follows :

14. That is not correct; for it contradicts Manu and the rest; After the (death of the) father and the mother, the brothers being assembled must

died equally the paternal estate : for they have not power over it while their parents live.

15. This text is an answer to the question, why partition among sons in not authorised, while their parents are living; namely, because they have not

ownership at the time.

26. Hence the passage before cited, beginning with the words after the (death of the) father, being intended to declare property vested at that

period, recites partition, which, of course, then awaits the pleasure (of the successor). For it cannot be a precept, since the same result was already

obtained.

27. Nor can it be a restrictive injunction. For, as that is contrary to the text of Manu, Either let them thus live together; or let them dwell apart for

the sake of religious merit, and as it produces visible consequence only, it can neither be an injunction for an imediate partition, nor a limitation of

the time.

On the authority of these paragraphs he submitted that paragraph 27 quoted above contained an injunction for constitution of a joint family

amongest the heirs after the death of the father. We do not find any such injunction in the passage. Paragraph 27 advising ""let them live together

appears to be recommendartory in character and does not lay downs a proposition that a joint family comes into existence amongst the successors

by operation of law.

The position in law may thus be summarised. After the death of a Dabyabhaga father, his successors may live as a Hindu undivided family or be

separate. If they do not decide to live together as a Hindu undivided family, they merely won the inherited property bag joint property, that is to

say, as tenants-in-common but do but form a joint family. A joint family amongst brothers, under the Dayabhaga school of law, is a creation not of

law but of a desire to live jointly. It originates in fact and not by legal fiction.

In the instant case, there is no evidence that the successors of the deceased Prafulla Chandra Bhar intended to constitute a joint family. They did

not also spontaneously form a joint family by operation of law. Therefore, for taxation purposes, they are to be treated as indviduals.

This is the position also under the India Income Tax Act, 1922, In Biswa Ranjan Sarvadhikari v. Income Tax Office, Sinha J. (as he then was

observed :)

... Where property is owned by two or more persons government by the Dayabhaga school of Hindu law, and where their shares are definite and

ascdrtainable, then, although they are in joint possession, the tax will be assessed on the basis of the share of the income in the hands of the

assessee and not as of a Hindu undivided family.

The again, in the case of Commissioner of Income Tax v. Smt. Bani Rani Rundra G. K. Mitter J. even went a step further. In that case the son and

widow of a Hinduu inherited properties of the deceased under the Dayabhaga system of law, read with section 3(1) of the Hindu Womens Right to

Property Act 1937, and section 14 of the Hindu Succession Act, 1956, and each of them became entitled to a definite one-half share in to

property inherited. In these circumstances, it was held that the share of each of them in the income from the house properties should be included in

his or her individual total income for the purpose of assessment of Income Tax u/s 9(1) read with section 9(3) of the India Income Tax Act, 1922,

though may be members of a Hindu undivided family. We are of the opinion that the position is not different under the Wealth-tax Act.

Further, the assessment, in the instant case, was made u/s 21 of the Wealth-tax Act, because the properties, at the material time, were held by an

administrator under a letter of administration granted by a court of law. Section 21 of the Wealth-tax Act reads as follows :

(1) In the case of assets chargeable to tax under this Act which are held by a court of awards or an administrator-general or an official trustee or

any receiver or manager or any other person, by whatever name called, appointed under any order of a curette manage property on behalf of

another, or trustee appointed under a trust declared by a duly existed instrument in writing, whether testamentry or otherwise (including a trustee

under a valid deed of wakf), the wealth-tax shall be levied upon and recoverable from the court of wards adminiostrator-general, official trustee,

receiver, manager or trustee, as the case may be, in the like manner an d to the same extent as it would be leviable upon and recoverable from the

person on whose behalf the assets are held, and the provisions of this Act shall apply accordingly.

(2) Nothing contained in sub-sectio (1) shall prevent either the direct assessment of the person on whose behalf the assets above referred to are

held, or the recovery from such person of the tax payable in respect of such assets.

That is an additional reason why wealth-tax assessment shall not be made on the Hindu undivided family but on the person on whose benefits the

assets are held by the administrator.

The fact that Gouri Sankar Bhar, the adminisrator, appointed by the court described the status of the family as Hindu undivided family in the return

is of little consequence. That admission may be shown to be wrong and does not bind the other heirs. In the facts and circumstances of this case,

we are of the opinion that the idea of Gouri Sankar Bhar that the family constituted a Hindu undivided family was his own idea and was, to all

intents and purposes, a wrong idea.

In the view that we express, the question referred to this court must be answered in the affirmative and in favor of the assessee.

The Commissioner of Wealth-tax must pay costs of this reference to the assessee.

K. L. Roy J. - I agree entirely with the reasons given by and the conclusion arrived at by my Lord in the judgment just delivered and also with his

answer to the question referred to this court. However, in view of the importance of the question involved and in deference to the extensive

arguments addressed to us both by Mr. Pal and Mr. S. Mitra who appeared as amicus curiae. I wish to add a few words to express my own

reactions to the same.

The assessment in this case has been made on the administrator appointed by a court of the estate of Prafulla Chandra Bar, deceased, u/s 21 of

the Wealth-tax Act, which provides that the wealth-tax shall be levied upon and recovered from such administrator in the like manner and to the

same extent as would be livable upon and recovered from the person on whose behalf or in whose benefit or in whose benefit the assets are held.

The contention of Mr. Pal is that though under the Dayabhaga school of Hindu law on the death of the male owner, his heirs inherit the property left

by him in defined and ascertained shares, so long as there is no partition between such heirs the property remains joint family property. For this

proposition he relied on the the observation in article 277 of Mullas Hindu Law to the following effect

The formation of a coparcenary does not depend upon any act of the parties. It is a creation of the law. It is formed spontaneously on the death of

the ancestor. It may be dissolved immediately afterwards by partition, but until then the heirs hold the property as coparceners"".

Mr. Pal pointed out that u/s 3 of the Wealth-tax Act the charge of tax is on the net wealth of every individual or Hind undivided family.""Net wealth

u/s 2(m) is the amount by which the aggregate value of all the assets belonging to the assessee on the valution date is in excess of the aggregate

value of all the debts owed by the assessee on that date. He submitted that there was distinction between words ""belong to"" as used in that section

and the word ""owner"" as used in section 9 of the Indian Income Tax Act, 1922. His argument was that on the death of the owner, his heirs under

the Dayabhaga law, may inherit his estate as co-tenants a d thereby become owners in law of such an estate in definite shares. Nevertheless, the

estate belongs to the joint family. Accordingly, he submitted that the assessment had been property made on the administrator in the status of a

Hindu undivided family. The distinction sought to be drawn by Mr. Pal between property belonging to a person of which he is owner was too

subtle for me. The authorities relied on by Mr, Pal were decisions of the English court on the peculiar provisions of particular English statutes and

those authorities have no bearing on the meaning of the words ""belong to"" as used in the Wealth-tax Act. This is clear from the corresponding

passages given in Strounds Judicial Dictonary and in Roland Burrows Words and Phrases from which the cases above-mentioned had been

collected by Mr. Pal. In Murrays New English Dicionary, 1886 edition, one of the meanings attributed to the words ""belong to"" is :

to be the property or rightful possession of"".

The illustrations given in the said dictionary are as follows :

Rushen Abbey belong to the Cistercian order

Property belonging to another state etc.

It is obvious that plain dictionary meaning of the words ""belong to"" is ""to be owned by

If it is conceded, as it must be, in view of the two decision of this court in Biswa Sarvadhikari v. Income Tax Officer, F-W ard and Commissioner

of Income Tax v. Sm. Bani Rudra that on the death of the last male owner, under the Dayabhaga school of Hindu law his heirs became entitled to

the asset left by him in defined and ascertained shares, the assessment u/s 21 of the Wealth-tax Act could only have been made on the

administrator separately in respect of the individual shares of each heir.

Diligent research by both Mr. Pal and Mr. S. Mitra has failed to discover any direct authority either in the texts of Dayabhaga or in any judicial

decisions for the aforesaid propositions propounded by Sir Dinshah Mulla in his commentarieson Hindu law. While admitting my abysmal

ignorance of the Sanskrit text and authorities on the principles of Hindu law I can only record my reaction to the proposition that on the death of a

Dayabhaga male a joint family consisting of his heirs springs up spontaneously by operation of law. As a person born and brought up in a

Dayabhaga joint family, to me, the very conception that a joint family automatically comes into existence on the death of the male owner is starting.

Such a joint family could, in my opinion, come into existence only by an act of volition on the part of the heirs at; law such as an agreement to live

jointly in mess and worship with one of its members, usually the eldest male member, to act as the manager or karta. Until there is such an

agreement, it could not be said that the heirs constitute a Hindu joint family. I put the following problems by way of illustration to Mr. Pal, namely :

(i) A, a Dayabhaga father, has three adult sons, B, C, and D. A resides in Calcutta and has some [properties there. B resides with his family in

Bombay and carries on business there and is assessed to Income Tax as an individual in Bombay. Similarly C carries on business and resides with

his family in Daeras and is assessed to Income Tax as an individual there, while D works for gain at Delhi and resides with his family there and is

also assessed to Income Tax in that place. Suppose A dies, cold it be said that B, C and D constitute a joint family lion respect of to properties

inherited from A ?

(ii) On the death of A, the Dauabhaga father, his adult sons B, C and D inherit his estate. The youngest son, D, refuses to recognise either B or C

as the person entitled to manage the estate. Could it be said that a joint family constituting B, C and D comes into existence on As death ?

Mr. Pal was unable to give me satisfactory answer to either of the aforesaid problems I gave him. Mr Pal referred us to Jimutabahans Dayabhaga

as translated by Colebrooke, Chapter I, verses 7 and 8, which are as follows :

7. Nor can it be affirmed, that partition is the distribution to particular chattels, of a right vested in all the coheirs, through the sameness of their

relation, over all the goods, For relation, opposed by the coexistent claim of another relative produces a right (determinable by partition) to

portions only of the estate since it would be burdensome to inter the vesting and divesting of rights to the whole of the paternal estate, and it would

be useless, as there would not result a power of alienating at pleasure.

8. The answer is : Partition consists in manifesting (or in particularising) by the casting of lots or otherwise, a property which had arisen in lands or

chattels, but which extended only to a portion of them and which was previously unascertained being unfit for exclusive appropriation, because no

evidence of any ground of discrimination existed.

Those verses do not support Mr. Pals contention that a Hindu undivided family comes into existence between the coheirs on the death of the male

owner and such joint family could be dissolved only by physical partition. Strangely enough, I found support for the second problem I gave to Mr.

Pal in verse 37 (Chapter 1) of Dayabhaga which is as follows :

37. Not so : for the right of the eldest (to take charge of the whole) is pronounced depending on the will of the rest... By consent of all, even the

youngest brother, being capable, may support the rest. Primogeniture is not a positive rule. For Manu declares : Either let them thus live together or

let them live apart for the sake of religious merit : since religious duties are multiplied apart, separation is, therefore, lawful. By the terms together or

apart, and for the sake he shows it optional at their choice.

It would, therefore, appear that in the absence of an agreement between the heirs it could not be predicted as to who would be the karta and a

Hindu undivided family, like a Hindu deity, can only act through a human agency.

I am, therefore, unable to accept the proposition that on the death of the male owner, his heirs under the Dayabhaga law form a joint Hindu family

by operation of law and the property inherited is joint family property in their hands.