Sm. Sushila Devi Rampuria Vs Income Tax Officer and Another

Court: Calcutta High Court

Date of Decision: June 11, 1959

Acts Referred: Constitution of India, 1950 â€" Article 226
Income Tax Act, 1922 â€" Section 2(9), 3, 35, 59

Citation: AIR 1959 Cal 697 : 64 CWN 963 : (1960) 38 ITR 316

Hon'ble Judges: D.N. Sinha, J

Bench: Single Bench

Advocate: S. Mitra and Barun Chakravarty, for the Appellant;E.R. Meyer and B. Pal, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.N. Sinha, J.
The facts in this case are shortly as follows: One Hulas Chand Rampuria also known as Bhanwarlal Rampuria was, until his

death, the karta of a Hindu undivided family consisting of himself and his two minor sons. He was a partner of the firm of Hazarimull Hiralal and

held shares in two companies, namely, Rampuria Properties Ltd., and Rampuria Cotton Mills Ltd. The Hindu, undivided family, of which he was a

karta, was assessed in the name of Hulas Chand Rampuria H. U. F. upto the assessment year 1942-43. The said Bhanwarlal Rampuria died

sometime in the year 1947 leaving him surviving his widow Sushila Devi Rampuria and two minor sons. The assessments for the assessment years

1943-44 to 1947-48 were made in the name of "Sushila Debi Rampuria for self and as natural guardian of her minor children. Since the

assessment year 1948-49, the assessment had been made in the name of "Sushila Debi Rampuria representing H. U. F. known as Hulas Chand

Rampuria". All the returns were made on the footing of a Hindu undivided family. In respect of the assessments for the years 1948-49 to 1951-52,

similar assessments were made. The assessments u/s 34 of the Indian Income Tax Act (hereinafter referred to as the "Act") for the assessment

years 1946-47 and 1947-48 were also made in the name of "Sushila Devi Rampuria representing the said Hindu undivided family" on the basis of

returns filed by her and showing the status as that of a Hindu undivided family.

2. In respect of the assessment year 1951-52, the Income Tax Officer District (II), Calcutta issued a notice dated the 12th March, 1952 under

Sections 22(2) and 38 of the said Act. The notice was received by the petitioner on 18th March, 1952. Somehow or other nothing was done until

16th February, 1955 when the Income Tax Officer sent a reminder stating that in default of compliance with the said notice, the assessment would

be completed u/s 23(4) of the said Act. On the 28th March, 1955 the petitioner filed a return for the assessment year 1951-52. This return was

made by the petitioner describing herself as the legal representative of Bhanwar Lal Rampuria, deceased. On 7th February, 1956 the Income Tax

Officer issued a notice u/s 22(4) of the said Act. The notice was addressed to ""Sm. Sushila Devi Rampuria representing the H. U. F. M/S. Hulas

Chand Rampuria, 1948, Cotton Street, Calcutta"", asking for production of accounts and documents etc. On the 10th February, 11956 the

petitioner asked for time for a fortnight for production of the books. The petition was made by ""Sm. Sushila Devi Rampuria representing the H. U.

F. of 5B, Lord Sinha Road, Calcutta"". An order of assessment was made on 31st March. 1958. A copy of this order is Ex. ""E"" to the petition.

This assessment order is for the assessment year 1951-52. The name of the asses-see is ""Sm. Sushila Devi Rampuria representing the H. U. F.

Bhanwar Lal Rampuria, C/o Messrs. Hazarimull Rampuria, 148, Cotton Street, Calcutta"". The status of the assessee has been described as ""H. U.

F."" On 18th April, 1956 the petitioner made an application u/s 35 of the said Act for rectification of the assessment order stating that certain

dividends were included twice, In this petition, the petitioner described herself as ""Sm. Sushila Devi Rampuria representing the H. U. F. left by

Bhanwa"r Lal Rampuria (deceased) of 5B, Lord Sinha Road, Calcutta."" In fact, the assessment order was rectified. On April 19, 1956 the

petitioner filed an appeal against the assessment order before the Appellate Assistant Commissioner. No ground was taken to the effect that the

petitioner, could not represent the Hindu undivided family or that the assessment was made in the wrong name. On 10th May 1957 the petitioner

was served with a notice u/s 7 of the Bengal Public Demands Recovery Act. On 6th June, 1957 the petitioner filed an objection u/s 9. On 21st

August, 1957 the petitioner"s objection was rejected. On 2lst September, 1957 the petitioner appealed against the order of rejection, to the

Commissioner, Presidency Division. By an order dated 26th September, 1957 the Commissioner, Presidency Division, dismissed the appeal. On

30th May, 1958 the assessment was revised u/s 35 of the Indian Income Tax. Act. The revised assessment is Ex. ""I"" to the petition. On the 4th

October, 1958 the petitioner was served with a warning notice by the certificate Officer that unless the amount of the certificate was paid, distress

warrant will be issued. The petitioner thereupon objected and has now come up to this Court. The point made by Mr. Mitra appearing on behalf of

the petitioner is that the assessment order for 1950-51 is entirely wrong, because Sm. Sushila Devi Rampuria, a Hindu lady could not possibly

represent the Hindu undivided family of Bhanwar Lal Rampuria. The first criticism of this belated plea is that of inordinate delay. From the dates

mentioned above, it will appear that throughout the period from the assessment year 1943-44, the petitioner Sm. Sushila Devi Rampuria, has been

representing the Hindu undivided family which, after the death of her husband Hulaschand alias Bhanwar Lal, consisted of herself and her two

minor children. For all these years, right upto the assessment year 1951-52 she filed returns in that fashion, either for self and as natural guardian of

her minor sons, as representing the Hindu undivided family, or simply as representing the H. U. F., Bhanwar Lal Rampuria. She filed returns, made

application u/s 35 of the I. T. Act, preferred appeals and was assessed also in that fashion and at no time put forward the objection that she did

not represent the H. U. F. or that the proceedings were being taken in the wrong name. Mr. Mitra appearing on behalf of the petitioner says that

he fully realises this. His argument is that the lady-was wrongly advised, and assuming that she never took the point before, she cannot be

precluded from taking the point now, inasmuch as, the point is purely one of law. Either the lady can represent the Hindu undivided family or she

cannot If she cannot, then simply because no objection was made an assessment cannot be made under the I. T. Act which is not permitted by the

provisions of that Act. In short, he argues, that the assessment of income tax must be made within the four corners of the Act, which is a complete

Code in itself, and if the assessment made is not warranted by the provisions of the Act. It must be held to be void, objection or no objection. In

my opinion, this is an oversimplification of the preliminary objection. It is quite true that the assessment under the I. T. Act can only be made

according to the provisions contained therein. But, when a person comes to a Court of equity, then the question of delay and acquiescence are

pertinent. It is not that the assessment is good if it is violative of the provisions of the Act. But the Court may refuse to exercise its jurisdiction in

favour of the applicant and grant her any relief in an application under article 226 of the Constitution. However, for the purpose of this Application

it is better to deal with the legal points raised, and to decide the position in law,

3. Under Sub-section (9) of Section 2 of the said Act, ""person"" includes a Hindu undivided family. Section 3 of the said Act, which is the charging

section, speaks of Income Tax being charged in respect of the total income of the previous year of, amongst others, every individual or Hindu

undivided family. In the prescribed form of return of income tax, being form ''A'', there are appropriate parts to be filled up in the case of returns

made by or in the case of, Hindu undivided families. At the bottom of the return it is necessary to make a declaration by the assessee. There are

notes appended to the form, stating how declarations shall be signed. Note 2 states that the declaration shall be signed, in the case of a Hindu

undivided family, by the ""manager or karta."" I might mention here that the rules made u/s 59 of the Act and published in the official Gazette have

effect, as if enacted in the Act, that is to say, form a part of it. It, therefore, appears that the point is in a small compass and the question is whether

a Hindu female can file a return or be assessed as a manager representing a Hindu undivided family for purpose of assessment of Income tax, Mr.

Mitra argues that in law, Or at least the law as it was at the relevant time a Hindu female was not a coparcener in a Hindu undivided family and

could not act as the Karta or manager thereof. Hence, it was not possible for a Hindu female to represent a Hindu joint family, either as a manager

or in her personal capacity or as natural guardian of her minor sons. The first case cited is V.M.N. Radha Ammal Vs. The Commissioner of

Income Tax, . In that case, one V. M. N. Mudaliar carried on business inter alia in hand-loom cloth and piecegoods. In respect of his business, he

was assessed as the karta of an undivided Hindu family, upto the assessment year 1941-42. In 1942, he died leaving six minor sons and a widow.

During the assessment years 1942-43, and 1943-44, the income was assessed on the basis of the income of an undivided Hindu family

represented by the widow Radha Ammal. During the accounting year 1944-45, the widow entered into a partnership in respect of the handloom

business with one Arumugha Mudaliar. This deed of partnership was presented for registration before the Income Tax authorities u/s 26-A of the

Act. The registration was refused by the income tax officer and the point was referred to the High Court u/s 66(1) of the said Act, as to whether

this rejection could be supported in law. As the six sons were minors, the mother as the natural guardian could not of course enter into a

partnership with a stranger on behalf of the minors. It was alleged however that the widow had entered into the partnership as the karta of the

Hindu undivided family. It was claimed that by reason of the Hindu Women''s Rights to Property Act (XVIII (18) of 1937) a widow of a deceased

coparcener acquired the same interest as her husband, and she was entitled to act as the karta of the Hindu undivided family. It was held by the

Division Bench that female members of a Hindu undivided family can not be co-parceners, though they may be members of a joint family. It was

held that under the Hindu Law, a female could not become karta or manager, and therefore the registration of the deed of partnership was rightly

rejected. The learned Judges differed with a Bench decision of the Nagpur High Court, AIR 1949 128 (Nagpur) . The facts of that case were as

follows: One Radhawallabh died in 1943. He had been carrying on a business in partnership with his three brothers. Radhawallabh left him

surviving his widow Kesar Bai and two minor sons, who were all members of a Hindu joint family. After the death of her husband the widow

entered into a fresh agreement of partnership with the three surviving brothers. The deed of partnership was submitted for registration under the

said Act and there was a reference u/s 66(1) on the question as to whether on the facts of the case the widow was competent to enter into a

contract of partnership in her representative capacity as karta of an undivided Hindu family consisting of herself and her two minor sons. A Division

Bench decided that she could. The learned Judges stated that under the Mitakshara Law it was true that no female could be a co-parcener with a

male co-parcener, presumably because she did not possess the right to take by survivorship. It was held however that this right or the status of a

co-parcener was not a sine qua non of competency to become a manager of a Hindu Joint family. The learned Judges notice that so far as the

Nagpur High Court was concerned, all the judicial authorities were of the same opinion. Reference was made to Kesheo Bharati v. Jaganath, AIR

1926 Nag 8I (FB), where it was held that any adult member of a joint family, male or female, was entitled to become, manager of a joint Hindu

family. In AIR 1947 178 (Nagpur) it was held that a mother could be the manager of a Hindu joint family.

4. It will be observed that in these two cases there was a sharp difference of opinion. In the Nagpur case, it was held that the exclusion of females

from the right to act as a karta or manager of a Hindu joint family was archaic and need not be followed, whereas in the Madras case it was held

that the Hindu Law on the subject must be followed strictly until there was legislation, and that it was not permissible to import our own ideas of

what the law should be. Reference has been made before me to an earlier decision of the Madras High Court, Jijoyiamba Bayi Saiba v. Kamakshi

Bayi Saiba. 3 Mad H. C. R. 424. In that case, we find that the senior widow was given the right to manage and control property of the Raja of

Tanjore who left him surviving 13 wives but no children. Coming to the Orissa High Court we find that in a Division Bench case, Muguni Padhano

v. Lokananidhi Lingaraj (S) AIR 1956 Orissa 1 the view of the Madras High Court was followed. It was held that it was opposed to the

fundamental principles of Hindu Law that a person who is not a co-parcener though a member of a joint family, for example the mother, should be

capable of being a karta of a joint Hindu family. As a matter of fact, in this case the sharp conflict between the Madras and Nagpur views was

noticed, and the learned Judges decided to follow the Madras view. In that case, Sarathi Padhano died leaving a widow and a son and two

daughters. The son went to Burma and the mother, in fact managed the family affairs for 25 years, maintaining the two daughters and celebrating

their marriages. For these purposes she alienated the only piece of joint family property. It was held that the mother could not act as a manager and

the alienation was not binding on the son. The learned Judges however stated that the instant case before them was in respect of a son who had

attained majority at the time of his father''s death. They were of the opinion that the decision might have been different if the mother had only a

minor son, of whom she was the natural guardian. In Commissioner of Income Tax Vs. Sarwankumar, minor, under the guardianship of his father

Manohar Lal Verma, it was held that there can be a Hindu undivided family consisting of females only. It was however conceded that a female

cannot be a co-parcener.

5. It will be observed that in all these cases the question was whether a female could be a ''coparcener'' in a Hindu undivided family or whether she

could be a karta or manager thereof in accordance with the notions and tenets of the Hindu Law. The question before me in this application how-

ever, is not whether upon the death of a co-parcener a Hindu undivided family leaving a widow and minor children, the widow can act as the karta

or manager of the Hindu undivided family, but whether she could represent a Hindu undivided family as a manager thereof, for the purposes of the

assessment of the Hindu undivided family to income tax It would be recollected that even in the V.M.N. Radha Ammal Vs. The Commissioner of

Income Tax, the undivided Hindu family was assessed for the years 1942-43 and 1943-44 as represented by the widow Radha Ammal. This was

noticed by the learned Judges, but it was not held that this was irregular. In the Orissa case, it was expressly stated that the matter might be

different if the female concerned was a natural guardian of her minor children. In a Privy Council case, AIR 1937 36 (Privy Council) , a question

arose as to what was the meaning of the words ""Hindu undivided family"", for purposes of the Income Tax Act. It was held that if the income

belonged jointly to the assesses, his wife and daughter then it would be the income of the Hindu joint family, and the phrase "Hindu undivided

family"" in the said Act was a wider phrase and should not be treated as equivalent to a ""Hindu co-parcenary"". It was further held that in a Hindu

undivided family as recognised by the Indian Income Tax Act, a female can be a member. The judicial committee expressly stated that they did not

agree with the notion that a Hindu joint family necessarily consisted of male members only. The result of these decisions may be summed up as

follows: According to the Privy Council, the notion of a ""Hindu undivided family"" and that of a ""Hindu co-parcenary"" should not be mixed up

together for the purposes of the Indian Income Tax Act. Under the said Act, it is the Hindu undivided family which forms a unit of assessment.

According to the Madras and Orissa view, a female, not being a co-parcener, cannot act as a karta or manager of a Hindu joint family. According

to the Nagpur view, she can. According to the Allahabad view, there can be a Hindu joint family consisting of females only. In my opinion there is

really no conflict between these views so far as this case is concerned. To start with, it cannot be denied that a Hindu female cannot be a co-

parcener under the Hindu Law. But, for the purpose of the Indian Income Tax Act, we are not concerned with the Hindu co-parcenary, as has

been clearly pointed out by the Judicial Committee. What we are concerned with is a Hindu undivided family. A female can be a member of a

Hindu undivided family, which may even consist entirely of females. Where, however, the male members are all minors, and of whom the natural

guardian is their mother, I find, nothing in the Indian Income Tax Act to prevent her from representing a Hindu undivided family for the purposes of

assessment under the said Act. In such a case, we should not confuse the term ""manager"" as used for purposes of the Act with the term ""karta"" as

used in Hindu Law. The word, ""karta"" is a technical term of the Hindu Law. Only a male co-parcener can be a karta. But, where in a Hindu

undivided family there exists no karta, or where the male members are all minors, and there is no one who can act as karta, or where there are no

males at all, there seems to be no legal bar to a female acting as a manager representing a Hindu undivided family for purposes of assessment of

Income Tax. As I have pointed out in the Madras decision itself, the fact was that for several years the widow mother Radha Ammal represented

the Hindu undivided family consisting of herself and her minor sons for purposes of assessment under the said Act. All that the learned Judges said

was that she could not enter into a partnership with outsiders as a ''karta'' of a Hindu undivided family. This involved the technical notion of a

karta"", because only such a person could enter into contracts of partnership with outsiders, such as would be binding on minor members of the

joint family. As I have said, the unit of assessment under the said Act is the Hindu'' undivided family of which a female can be a member. When it

comes to the assessment of income tax of such a unit, which consists of the mother and her minor sons, it is plain that the mother alone would be

the person who could represent the minors, as their natural guardian, and I see no objection to her representing the Hindu undivided family as a

manager. As I have stated above, this does not make her technically a ""karta"" of the joint family or even a coparcener.

6. That being the position, it is scarcely necessary to deal with the preliminary point of delay or acquiescence, but I shall deal with the point briefly,

Mr. Mitra is right when he says that the Indian Income Tax Act is a Code in itself and if it is found that the assessment has been made in a manner

not warranted by the provisions of the Act, then the assessment cannot stand. But, in an application under Article 226, that is not the sole

consideration. The point to be considered is whether the Court, dealing with such an application, being a court of equity, should intervene or not.

Where there has been delay or acquiescence, the Court may refuse to intervene, irrespective of the fact as to whether the assessment was valid or

not. If the assessment is invalid, such an action on the part of the Court does not make it valid. But an equity Court is not bound to intervene if

there has been delay or acquiescence, but will leave the parties to their ordinary legal remedies if any. In this case, the delay and acquiescence has

been remarkable. For a large number of years, the petitioner has been representing a Hindu undivided family consisting of herself and her two

minor sons for the purpose of assessment of income tax. In that capacity, she not only filed returns but did all kinds of things like preferring

appeals, making application u/s 35 and various other acts mentioned above. She even filed a disclosure statement. It is after all these years that this

plea of incapacity on her part has been taken before me for the first time. In the appeals in respect of the very order of assessment under question,

no such point was taken. It is also firmly established that the question of jurisdiction should have been taken at the earliest stage.

7. For the reasons aforesaid, I am of the opinion that no reason has been established for interference by this Court, and that this application should

be dismissed. The Rule should be discharged. Interim orders, if any, are vacated. There will be no order as to costs.