Chattanatha Karayalar

Vs

Ramachandra Iyer and Another

Civil Appeal No. 136 of 1955

(T. L. Venkatarama Ayyar, Vivian Bose, B. P. Sinha JJ)

19.09.1955

JUDGMENT

VENKATARAMA AYYAR J. -

This is an appeal by special leave against the order of the Election Tribunal, Quilon declaring the election of the appellant to the Legislative Assembly of the State of Travancore-Cochin from the Shencottah Constituency void on the ground that he was disqualified to stand for election under section 7(d) read with section 9(2) of Act No. XLIII of 1951.

Under section 7(d), a person is disqualified for being chosen as a member of the Legislative Assembly of a State, if he is interested in any contract for the supply of goods or for the execution of any works for the Government of that State. Section 9(2) declares that if any such contract has been entered into by or on behalf of a Hindu undivided family, every member thereof shall be subject to the disqualification mentioned in section 7(d) but that if the contract has been entered into by a member of an undivided family carrying on a separate business in the course of such business, other members of the family having no share or interest in that business shall not be disqualified under Section 7(d).

The contract in the present case was for felling trees in a Government forest and transporting them for delivery at the places specified therein. There is now no dispute that this contract is one that falls within section 7(d) of the Act. The point in controversy is simply whether the contract with the Government was entered into on behalf of the joint family, of which the appellant is a member. The agreement stands in the name of one Kuppuswami Karayalar, and the allegations in the petition are that he is a mere name-lender for one Krishnaswami Karayalar, who is the manager of a joint family consisting of himself and his sons, the appellant being one of them, and that he entered into the contract in question on behalf of and for the benefit of the joint family. The case of the appellant, on the other hand, is that Kuppuswami whose name appears in the contract was the person solely entitled to the benefits thereof, that he was not a name-lender for Krishnaswami Karayalar, and that further neither he nor the joint family had any interest in the contract. Certain other pleas were also put forward by him, but they are not now material.

The following issues were framed on the above contentions :

> "(2) Is the said joint family the owner of the right and benefits of the contract for the felling and removal of timber from Coupe No. 4, Nedumangad Taluq, entered into with the Forest Department, Travancore-Cochin State ? Has the joint family any interest in the said contract ?

(3) Is Mr. Kuppuswami Karayalar whose name appears as the contractor only a name-lender for the joint Hindu family of which the respondent is a member ?"

On issue 3, the Tribunal found that Krishnaswami Karayalar was the real contracting party, and that Kuppuswami was a benamidar for him, and on issue 2, that the contract was entered into on behalf of the joint family, of which the appellant was a member. On these findings, it held that the appellant was disqualified under section 7(d) read with section 9(2), and declared his election void. The appellant questions the correctness of this order firstly on the ground that the finding that Kuppuswami is a benamidar for Krishnaswami Karayalar is not warranted by the evidence, and secondly on the ground that the finding that Krishnaswami entered into the contract on behalf of the joint family is based on a mistake of law, and is unsustainable.

On the first question, M. Kumaramangalam for the appellant admits that there is evidence in support of the conclusion that Kuppuswami was a benamidar for Krishnaswami, but contends that it is meagre and worthless. The question whether a person is a benamidar or not, is purely one of fact, and a finding thereon cannot be interfered with in special appeal, if there is evidence on which it could be based. We must, therefore, accept the finding of the Tribunal that it was Krishnaswami, the father of the appellant, who was the real contracting party to the agreement with the Government.

The next question is whether Krishnaswami entered into the contract in his own personal capacity or as manager of the joint family. The Tribunal found as a fact that the business started by Krishnaswami Karayalar was a new venture, and instead of proceeding next to consider on the evidence whether in entering into the contract he acted for himself or for the joint family, it entered into a discussion whether under the Hindu law there was a presumption that a business started by a coparcener was joint family business. After observing that there was no such presumption "in the case of an ordinary manager", it held that "the law is different when the manager happens to be also the father". It then referred to certain decisions in which it had been held that the sons were liable for the debts incurred by the father for a new business started by him, and held "on the above authorities that the joint family of the respondent is the owner of the right and benefit of the present contract".

The appellant contends that the statement of law by the Tribunal that there is a presumption that a new business started by the father is joint family business is erroneous, and that its finding that the joint family of which the appellant was a member had an interest in the contract of Krishnaswami could not be supported, as it was based solely on the view which it took of the law. This criticism is, in our opinion, well founded. Under the Hindu Law, there is no presumption that a business standing in the name of any member is a joint family one even when that member is the manager of the family, and it makes no difference in this respect that the manager is the father of the coparceners. It is no doubt true that with reference to a trade newly started there is this difference between the position of a father and a manager, that while the debts contracted therefor by the former would be binding on the sons on the theory of pious obligation, those incurred by a manager would not be binding on the members, unless at least there was necessity for the starting of the trade, as to which see Ram Nath v. Chiranji Lal ([1934] I.L.R. 57 All. 605), Chotey Lal v. Dulip Narain ([1938] I.L.R. 17 Patna 386) and Hayat Ali v. Nem Chand (A.I.R. 1945 Lah. 169). But it is one thing to say that the sons are liable for the debts contracted by the father in the trade newly started by him, and quite another thing to treat the trade itself as a joint family concern. We are therefore unable to accept the finding of the Tribunal that the contract of Krishnaswami Karayalar should, as a matter of law, be held to be a joint family business of himself and his sons.

This conclusion, however, is not sufficient to dispose of the matter. The case of the respondent that Krishnaswami entered into the contract with the Government of Travancore-Cochin on behalf of the joint family rests not merely on a presumption of law but on evidence as to facts and circumstances which, if accepted, would be sufficient to sustain a finding in his favour. In the view it took of the law on the question, the Tribunal did not discuss the evidence bearing on this point or record a finding thereon. It is therefore necessary that there should be a remittal of the case for a consideration of this question on the evidence.

The appellant contends that there is only the evidence of the respondent in support of the plea that the contract was entered into by Krishnaswami on behalf of the joint family, and that this Court could itself record a finding thereon. But it is argued by the respondent that there are in the judgment of the Tribunal several observations which would support the conclusion that the contract was entered into on behalf of the joint family. Thus, it is pointed out that in para 5 of the judgment the Tribunal observes that Krishnaswami Karayalar started this new business with a view to discharge the family debts. It further observes in para 6 that the business required an initial investment of about Rs. 25,000 to Rs. 30,000, and that while there is evidence that about Rs. 7,000 had been borrowed by Krishnaswami Karayalar, there is no evidence how the balance was made up. The contention of the respondent is that this must have proceeded from the joint family funds, and that this is implicit in the finding of the Tribunal. It is also mentioned in the judgment of the Tribunal that Krishnaswami was anxious to support his son, the present appellant, and that many of the witnesses whom the respondent was obliged to examine, were really anxious to help the appellant. (Vide para 12). We do not, however, desire to express any opinion on these contentions, as we propose to leave them to the decision of the Tribunal.

We accordingly set aside the order of the Tribunal, and direct that the Election Commission do reconstitute the Tribunal to hear and decide the question whether Krishnaswami Karayalar entered into the contract with the Government of Travancore-Cochin on behalf of the joint family or for his own personal benefit, on a consideration of the evidence on record. It is made clear that no further evidence will be allowed. The parties will bear their own costs in this Court.

Appeal allowed.

Case remitted for hearing.

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