

Seth Mathuradas

Vs

Commissioner of Income-Tax, Madhya Pradesh and Bhopal

C. A. No. 139 of 1956

(J.L. Kapur, M. Hidayatullah, J.C. Shah JJ)

22.11.1960

JUDGMENT

KAPUR J. –

These are two cross appeals which arise out of two orders and judgments of the High Court of Madhya Pradesh at Nagpur. The appellant in Civil Appeal No. 139 of 1956 is the assessee and that in Civil Appeal No. 207 of 1959 is the Commissioner of Income-tax.

The facts of the case are these. Civil Appeal No. 139 of 1956 relates to assessment years 1944-45, 1945-46, 1946-47 and 1947-48 and Civil Appeal No. 207 of 1959 relates to the assessment years 1948-49 and 1949-50. The accounting years in both the appeals were Samvat years. The Appellant in C. A. No. 139 of 1956 was the karta of a Hindu undivided family which consisted of the appellant, his wife and three sons. The family owned endorsed various movable and immoveable properties and business and were being assessed as a Hindu undivided family. The appellant as the karta of the family brought about a distribute of the Hindu undivided family. There was a partition on October 16, 1944, and the deed of partition was executed on December 30, 1944, and was register on January 2, 1945. The appellant claimed that the portion was given full effect to and, therefore, the members of the disrupted family applied under section 25A and section 25 (4) of the Income-tax Act claiming exemption and reduction of tax liability fo

"Whether there is in this case any legal evidence to support the inference of the Tribunal that the partition in question was not genuine and meant to be acted upon ?"

"The partition in question" which was set up was one dated October 16, 1944. The case was stated but the reference was decided against the appellant. Against that order the appellant has come to this court on a certificate of the High Court. In our opinion no question of law arises in this appeal. It was held by the Tribunal, on the material before it, that the partition was not acted upon. In our opinion, the High Court, on this finding, rightly held against the appellant. The appeal is therefore dismissed with costs.

Civil Appeal No. 207 of 1959 is equally without substance and must be dismissed. As has been said above, that appeal relates to the assessment years 1948-49 and 1949-50. On May 6, 1950, the respondents, Mathuradas, filed a civil suits praying that the partition as evidenced by the deed dated December 30, 1944, be declared null and void and a fresh partition be made between the parties. The Union of India was sought to be made a party to the suit but on its objection the court refused this prayer. The court held the partition evidenced by the deed of partition to be genuine, fair and

binding on all the parties and that the joint family had ceased to exist as from December 30, 1944. Once again the respondent, Mathuradas, applied under section 25A of the Income-tax Act but this application was also dismissed. On appeal to the Appellant Tribunal, it was decided in favour of Mathuradas, respondents, excepting in regard to a house at Bikaner. The Commissioner of Income-tax applied for a reference under section 66 (

"Whether there was any legal evidence before the Tribunal for the finding the partition was effected in 1944 and it was genuine ?"

It is against this judgment and order that the Commissioner has come in appeal to this court. Considering the additional facts which were placed before the Tribunal and on which it had given a finding in favour of the respondent, Mathuradas, the High Court held that there was material in favour of the partition set up. It was argued before us that it was really the same partition and there was nothing fresh to support the genuineness of the partition and that the partition which had been held not to be genuine cannot now be held ratified. But the partition set up in this case was of December 30, 1944, whereas the partition set up in the earlier case was of October 16, 1944. As the High Court has pointed out on the additional facts which were proved before the Tribunal including the statements on oath of the sons of the respondent and the other relevant material it cannot be said that there were no materials for the Appellant Tribunal for finding in favour of the respondent and in favour of the partition being

Appeal dismissed.

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