Commissioner of Wealth-Tax, West Bengal III

Vs

Smt. Champa Kumari Singh and Others

Civil Appeals Nos. 1090 of 1971 and 1686 of 1968

(K. S. Hegde, A. N. Grover, A. N. Ray JJ)

19.01.1972

JUDGMENT

GROVER J. -

1. This is an appeal by special leave from the judgment of the Calcutta High Court arising out of a reference under the Wealth- tax Act, 1957, in which the question involved is one of importance, namely, whether a Jain undivided family is included in the expression "Hindu undivided family" within section 3 of the Act.

The facts are few and may be stated. For the assessment year 1957-58, the valuation date being December 31, 1956. The Wealth-tax Officer assessed the family assets of the assessee in the status of a Hindu undivided family. On appeal to the Appellate Assistant Commissioner the contentions raised, inter alia, were that : (1) upon the description of the assessee in the notice of demand the assessment should be deemed to have been made in the status of association of persons which was not a unit on which tax could be levied under the Act; (ii) even if the assessee was to be treated as a Hindu undivided family, the imposition of wealth-tax on such family was ultra vires the Constitution.

These contentions failed before the Appellate Assistant Commissioner. The Appellate Tribunal, to whom the matter was taken in appeal, held that the assessee followed the Jain religion and since the unit chargeable to wealth-tax under section 3 of the Act was either individual or Hindu undivided family or company none of the units covered the case of the assessee which was a Jain family. According to the Tribunal Jains were not Hindus and, therefore, the expression "Hindu undivided family" in section 3 did not cover the case of a Jain family. The Tribunal set aside the assessment on this ground alone. The Commissioner of Wealth-tax filed an application under section 27(1) of the Act praying that the question of law which arose out of the order of the Tribunal be referred to the High Court. At the time of the hearing of that application it was suggested on behalf of the assessee that further questions arising out of the order of the question suggested by the Commissioner of Wealth-tax arose out of the order, the Tribunal referred the following questions of law for the opinion of the High Court :

> "(1) Whether the assessee, a Jain undivided family, was not a Hindu undivided family within the meaning of section 3 of the Wealth-tax Act, 1957, and as such the Tribunal was right in setting aside the assessment made on the assessee ?
>
> (2) Whether levy of wealth-tax on Hindu undivided family or joint family governed under Mitakshara school of Hindu law was beyond the legislative competence of

Parliament and ultra vires the Constitution of India ?

(3) whether the Wealth-tax Act in so far as it purports to levy wealth-tax on Hindu undivided families is void and inoperative as it offends article 14 of the Constitution of India ?"

The High Court held that the Jains, not beings Hindus in the generally accepted sense of the term, a Jain family and a Hindu undivided family although the incidence of a Jain family and Hindu family "may be the same or largely the same". According to the High Court, in order to form a Hindu undivided family, its members must be Hindus; the assessee family, being Jains, were not Hindus and so its members could not form a Hindu undivided family although it was "capable of forming a unit of very much of the same type and governed by the law applying to a Hindu undivided family". The answer to the first question, therefore, was returned in the affirmative and in favour of the assessee. The other two question were not pressed before the High Court, presumably in view of the decision in Banarsi Dass v. Wealth- tax Officer, Special Circle, Meerut.

According to section 2(c) of the Act, assessee means a person by whom wealth-tax or any other sum of money is payable under the Act and includes :

"(1) every person in respect of whom any providing under this Act has been taken for the determination of wealth-tax payable by him or by any other person or the amount of refund due to him or such other person;

(ii) every person who is deemed to be an assessee under this Act...."

Section 3 is in the following terms :

"3. Charge of wealth-tax. - Subject to the other provisions contained in this Act, there shall be charged for every assessment yet commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax), in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family; and company at the rate or rates specified in the schedule."

The only other provision in the Act in which the expression "Hindu undivided family" occurs in section 20. It deals with assessment after partition of a Hindu undivided family. Under section 3 of the Act it is the Hindu undivided family which is one of the assessable entities. It should be distinguished from a Hindu coparcenary which is a much narrower body than the joint family. A Hindu joint family consists of all persons lineal descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary includes only those who acquire by birth an interest in the joint coparcenary property, being the sons, grandsons and great-grandsons of the holder of the joint property. Thus, there can be a joint Hindu family consisting of a single male member and widows of deceased coparceners. It must be remembered that the words "Hindu undivided family" are used in the income-tax statutes with reference not to one school of Hindu law only but to all schools. The sole previous decision in which an identical decision in which an identical question came up for consideration under the income-tax law is that of the Nagpur Judicial Commissioner's Court in Nathu Sao v. Commissioner of Income-tax. In that case the assessee was a member of the Lad Vaish community and was a Jain. He claimed to be governed by the Hindu law and contended that his widowed mother and widowed aunt who lived with him constituted a Hindu undivided joint family. It was held that ordinarily Hindu Law applied to Jains in the absence of

proof of custom or usage to the contrary and that the expression "Hindu undivided family" did not mean a Hind coparcenary, but was a wider expression which would take in the widowed mother and the widowed aunt of the assessee in that case. No contrary view seems to have been expressed in any other case subsequently and it appears that it is for the first time that the Calcutta High Court in the judgment under appeal has upheld the contention that a Jain undivided family cannot fall within the expression "Hindu undivided family". It will not be out of place to mention that indisputably ever since income-tax laws have been in force no distinction has ever been made between a Jain undivided family and Hindu undivided family and a Jain family has always been assessed as a Hindu undivided family. Even in the forms prescribed for making returns of income-tax no such differentiation or distinction has ever been made.

The main reasoning which prevailed with the High Court is that although Hindu law applies to Jain except in so far as such law is varied by custom, Jains do not becomes Hindu in the same way as Khojas and Cutchi Mormons of Bombay and Sonnet Borahs of Gujarat, etc., cannot be inheritance and succession. Moreover Hinduism does not include Hindu converts to Christianity and Islam and also dissenters from Hinduism who formed themselves into distinct communities or sects with peculiar religious usages so divergent from the principles of the Shastras that they could not be regarded as Hindus. Reliance was placed on the decision of the Mysore High Court in P. F. Pinto v. Commissioner of Wealth-tax. In that case the ancestor of the assessee were originally Hindus. They later on become converts to Christianity. It was found that, although for the purposes of succession to property the Hindu law was still applicable to the family of the assessed, he could be assessed only as an individual for wealth-tax purposes and could not be assessed in the status of a Hindu undivided family. The Mysore High Court was inclined to the view that the expression "Hindu undivided family" in section 3 of the Act was limited to Mitakshara families or families of person professing Hindu religion governed by Mitakshara law and thus it could not included a Christian undivided family although governed by Hindu law. The Calcutta High Court in the judgment under appeal, however, did not consider that the Mysore High Court was right in holding that section 3 of the Act was limited only to Mitakshara families. It may be pointed out that so far as income- tax law is concerned the expression "Hindu undivided family" has been held to have reference to all school of Hindu law and not to one school only. (See Kalyanji Vithal Das v. Commissioner of Income-tax).

The real question for determination is whether the word "Hindu" preceding the words "undivided family" signifies that the undivided family should be of those : (i) who profess Hindu religion; or (ii) to whom Hindu law applies; or (iii) who though not profession Hindu religion have come to be regarded as Hindu undivided family by judicial decisions and legislative practice. It may be mentioned that for a long time the courts and particularly the Privy Council seem to have taken the view that Jains are of Hindu origin; they are Hindu dissenters and although generally adhering to the ordinary Hindu law they do not recognise any divine authority of the Vedas nor do they practice a number of ceremonies observed by the Hindus. But the modern trend of authority is against the view that a Jains are Hindu dissenters. As a result of comparative research in Hinduism, Jainism and Buddhism, it is being emphatically claimed that the theory that Jains ar Hindu dissenters is based on misreading of the ancient authorities relating to these religions (See C. R. Jain, "Jain Law", pages 3 to 23 and 219 to 258). One of the early decisions in which Jains were stated to be of Hindu origin being Hindu dissenters is that of Westropes C.J. in Bhagwandas Tejmal v. Rajmal. The learned Chief justice based his view on high authority including the researches of Mr. Mountstuart Elphinstone, Late Col. Mackenzie (9th volume of the Asiatic Researches, including the essay of Mr. Colebrooke on the Sect of Jainas), the work of Abbe Dubois on the Manners, etc., of the people of India and the elaborate account of the Jain sect in the first volume of Prof. H. H. Wilson's work. He also referred to certain decisions of the Sudden Divani Adaulat in Calcutta and the High Court of

Calcutta; in particular to the opinion of Peacock C.J. in Lala Mohabeer Pershad v. Musammut Kundar Koover. The following passage from the judgment of Westropp C.J. in noteworthy :

> "The term Hindu or Gentlu, when used in Regulations Act, Statutes, and Charters in which Hinds or Genius have been declared entitled to the benefit of their own law of succession and of contract, has been largely and liberty construed. See the remarks in Lopes v. Lopes, where Sir Edward Hyde East's evidence in 1830 before the House of Lords' Committee is mentioned, in which he stated that Sikhs were treated as a sect of Hindus or Genius of which they were a dissenting branch. The authorities, already quoted, show that Jains are recorded as a sect of Hindus."

Out of the decisions of the Privy Council, were may mention Sheokuarbai v. Jeoraj in which their Lordships relied on the statement in Mayne's Hindu Law and Usage that Jains are of Hindu origin; they are Hindu dissenters and although "generally adhering to ordinary Hindu law, that is, the law of the three superior castes, they recognise no divine authority in the Vadas and do not practice the Shraddha or ceremonies for the dead".

The above view has been challenged by Jain historians and writers and it has been maintained that the Jains are quite distinct from Hindus and have a separate code of law which unfortunately was not brought to the notice of the courts. Kumaraswami Sastri, Officiating Chief Justice, delivering the judgment of the Bench in Bobbaladi Gateppa v. Bobbaladi Eramma, elaborately discussed the contrary view and observed that if the matter were arises integral he would be inclined to hold that modern research had shown that Jains were not Hindu dissenters but that Jainism had an origin and history long anterior to Smritis and commentaries which were recognised authorities of Hindu law and usage.

Mr. C. R. Jain in his work "Jain Law" written in 1926 has discussed the findings of various orientalists subsequent to those mentioned in the judgment of Westropp C.J. and has out forward the thesis that Hinduism and Jainism were parallel creeds though they shared the same form of social order an mode of living. Jain law was quite independent of Hindu law. According to him the courts had tried on each occasion to ascertain the Jain law but unfortunately for various reasons Jains concealed their Shastras and objected to their production in courts. He has emphasised that Jain law which is found in the available books should still be applied and the error which has crept in the matter of Jains being governed by Hindu law should be rectified. Since 1926, there have been several enactments apart from the codification of certain major branches of Hindu law which in express terms have been made applicable to Jains. The course suggested by C. R. Jain cannot possibly be followed particularly in the presence of statutory enactments.

In Pannalal v. Sitabai, Hidayatullah J. (as he then was), delivering the judgment of the division bench observed that it was too late in the day to contend that "Jains" are not included in the terms "Hindus" for the purposes of law. He referred to Mayne's Hindus Law as also the leading cases on the point apart from West and Buhler's Hindu Law (4th edition) Gopal Chandra Sarkar's Hindu Law (7th edition) and Hari Singh Gour's Hindu Code (4th edition). All these are acknowledged authorities and the conclusion which was derived not only from the statements contained in their works on Hindu law but also from decided cases was that the Jains were to be regarded as Hindus for the Hindus for the purposes of law though they seem to dissent from some of the principles of orthodox Hinduism. In the Nagpur case the question which was being considered ways whether the Hindu Women Rights to Property Act, 1937 was meant to apply to Jains as well or to Hindus proper. It was in that connection that the extent to which Jains were governed by Hindu law or were

to be treated as Hindus for purposes of that law come up for discussion. The following passage may be reproduced with advantage :

> "The legislature must be taken to be aware of the pronouncements of the privy council as well as the leading decisions of the Indian High Courts where a liberal interpretation was given to the term 'Hindu'. We do not think that the legislature used the term Hindu without advertence to these dicta and, in our judgment, the legislature must be deemed to have used the term 'Hindu' in that larger sense which has been explained by Mayne at page 5 of his treatise in the passage quoted by us elsewhere, and which has been the foundation of decisions on the subject in the courts of India."

It may be mentioned that the statement from Mayne's Hindu Law referred to above is the same which was relied upon by the Privy Council in Sheokuarbai v. Jeoraj.

We may next notice certain decisions in which the word "Hindu" as used in various statutes came to be interpreted by the courts. In Kamavati v. Digbijai Singh, section 331 of the Indian Succession Act, 1865, had to be interpreted. According to that section the provisions of that Act were not to apply to in estate testamentary succession to the property of any Hindu. It was held that the person who had ceased to be a Hindu in religion and had become a Christian could not elect to be bound by the Hindu law in the matter of succession after the passing of the Indian Succession Act and that a Hindu convert to Christianity was solely governed by that Act. In other words, according to the privy council a person who had ceased to be a Hindu by religion was not a Hindu within the meaning of section 331 of the aforesaid act. It was held in Bachebi v. Makhan Lal that the term "Hindu" in section 331 of the Indian Succession Act, 1865, included a Jain and, consequently, in matters of succession, Jains were not governed by that Act. It was pointed out that the ordinary Hindu law of inheritance was to be applied to Jains in the absence of proof or usage varying that law. The Privy Council in Bhagwan Koer v. J. C. Bose expressed the view that a Sikh was a "Hindu" within the meaning of that term as used to in section 2 of the probate and administration Act, 1881. It was pointed out that the courts had always acted upon the premise that Sikhs were Hindus and that Hindu law applied to them in the same way as it applied to Jains in the absence of custom varying that law. It was observed.

> "It appears to their lordships to be clear that in section 331 the term 'Hindu' is used in the same, wide sense as in earlier enactments, and includes Sikhs. If it be not so, then Sikhs were, and are, in matters of inheritance, governed by the Succession Act, an Act based upon, and in the main embodying the English law and it could not be seriously suggested that such was the intention of the legislature."

In Ambabai Bhai Chand v. Keshav Bandhochand Gujar the question ways whether Jains were governed by Hindu law of inheritance (Amendment) Act, 1929, which applied to all persons governed by Mitakshara as modified by the Mayukha. It was argued in that case that the Indian succession (Amendment) Act of 1929 speaks of Jains as well as Hindus and sections 4 and 57 of the Indian Succession Act, 1925 also did the same. The court pointed out that section 331 of the Indian Succession Act, 1865, did not make any separate mention of Jains and even then it had been held that the term "Hindu" included Jains. The Hindu Wills Act of 1870, which applied to the territories under the Lt. Governor of Bengal and the cities of Bombay and Madras, no doubt mentioned Jains as well as Hindus being by governed by certain section of the Succession Act of 1865 and the Indian Succession Act, 1925, was a consolidating Act which repealed the previous Act of 1865 as well as the Hindu Wills Act of 1870. It was, therefore, probably though necessary ex major cautela to

separately mention the Jains in the consolidating measure. However, in all the other enactments affecting the Hindu law there was no separate mention of Jains alone with the Hindus. The Jains were, therefore, governed by the Hindu Law of inheritance (Amendment) Act, 1929. The mention of Jains separately in article 25 of the constitution was noticed in Pannalal v. Sitabai and it was observed that the framers of the constitution felt, having regard to the differences in the two faiths, that an express mention might be made of all faiths ex abundant cautela and to put the matter beyond all controversy, and that faith is one thing and law is another and the constitution could not be taken to have undone the long series of decisions of the subject. Before the Amendment and codification of major branches of Hindu law by the four statutes, viz., the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, the Hindu Adoption and Maintenance Act, 1956, the undisputed position was that the Jains were governed by the Hindu law modified by custom and a Jain joint family was a Hindu joint family with all the incidents attached to such a family under the Hindu law. The legislative practice also was to generally treat Jains as included in the term "Hindu" in various statutory enactments. Wherever Jains were mentioned in addition it was by way of abundant caution. The new statutes did not change the situation and it is not possible how the High Court in the judgment under appeal pressed them into service in support of its view. The fallacy underlying the reasoning of the high court is that the artificial field of application of the law in those statutes shows that Jainism is not treated even as a form or a development of Hinduism. That is an erroneous approach. We are not concerned with the question whether Jains are a sect of Hindus of Hindu dissenters. Even if the religions are different, what is common is that all those who are to be governed by the provisions of these enactments are included in the term "Hindu". They are to be governed by the same rules relating to marriage, succession, minority, guardianship, adoption and maintenance as Hindus. The statutes have thus accorded legislative recognition to the fact that even though Jains may not be Hindus by religion they are to be governed by the same laws as the Hindus. In this view of the matter the expression "Hindu undivided family" will certainly include the "Jain undivided family". The latter class of family is not known to law. The Jains are governed by alone the incidents relating to the Hindu joint family. Hindu undivided family is a legal expression which has been employed in taxation laws. It has a definite connotation and embodies the meaning described to the expression "Hindu joint family".

For the above reasons the appeal is allowed and the questions referred is answered in favour of the revenue and against the assessee. There will be no order as to costs in this court. The appeal by certificate (C.A. N. 1686/68) being defective for want of reasons is hereby dismissed.

C. A. No. 1090 of 1971 allowed.

C. A. No. 1686 of 1968 dismissed.

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