Commissioner of Wealth Tax, West Bengal

Vs

M/s. Bishwanath Chatterjee and Others

Civil Appeal No. 1101 of 1969

(CJI A.N. Ray, M.H. Beg, R.S. Sarkar, P.N. Singhal, Jaswant Singh JJ)

08.04.1976.

JUDGMENT

SHINGHAL, J. -

1. This appeal by certificate has come before us as the question of law arising for decision is said to be of great importance. The facts giving rise to the appeal are quite simple and may be shortly stated.

2. One Bireswar Chatterjee, who was admittedly governed by the Dayabhaga school of Hindu law, was assessed to income-tax as an individual. He died intestate on January 7, 1957, leaving his widow, sons and daughters. The Wealth-tax Officer rejected their plea that on the death of Bireswar Chatterjee they held definite and determined shares in his properties and were liable to separate assessment, and assessed them as a Hindu undivided family for the assessment year 1958-59. On appeal, the Appellate Assistant Commissioner held that since the assessee was governed by the Dayabhaga school of Hindu law, the properties could not belong to the Hindu undivided family and were to be taxed "in the hands of the cosharers separately". The department took an appeal to the Income-tax Appellate Tribunal, 'B' Bench, Calcutta. There was difference of opinion between the Members of the Tribunal, and in accordance with the opinion of the majority of the Members it was ordered that notwithstanding that there was no unity of ownership amongst members governed by the Dayabhaga school of Hindu law in respect of the family property and each member thereof had indefinite shares in it, such property, until partitioned, was assessable to wealth-tax in the hands of the Hindu undivided family.

The tribunal however referred the following questions of law to the Calcutta High Court for decision :

> Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that properties possessed jointly by the members governed by the Dayabhaga school of Hindu law were assessable to wealth-tax jointly in the status of a Hindu undivided family ?

The High Court accepted the contention that the question assumed that the property was owned jointly by the members of Hindu undivided family governed by the Dayabhaga School of Hind law, and reframed it as follows :

> Whether on the facts and in the circumstances of the case, the tribunal was right in holding that the properties possessed by the heirs of a Hindu male governed by the

> Dayabhaga School of Hindu law were assessable to wealth-tax jointly in the status of a Hindu undivided family ?

It took the view that the matter was covered by its earlier decisions including Commissioner of Wealth-tax, West Bengal v. Gouri Shankar Bhar ((1968) 68 ITR 345 (Cal)) where it had been held that on the death intestate of a Dayabhaga male, and remain as co-owners with definite and ascertained shares in the properties left by the deceased unless they voluntarily decide to live as members of a joint family. The High Court also took notice of the fact that a suit for partition had been filed and a preliminary decree had been obtained on July 4, 1959, and answered the reframed question in the negative. As has been stated, the High Court has certified this to be a fit case for appeal to this Court.

3. Mr. S. T. Desai, appearing for the Commissioner of Wealth-tax, has challenged the view taken by the High Court and has argued that under Dayabhaga school of Hindu law the property left by the father is taken by the sons jointly by descent, as coparceners, as their joint family comes into existence by operation of law. He has accordingly argued that the father's property is liable to be taxed under Section 3 of the Wealth-tax Act, hereinafter referred to as the Act, as a unit until it is partitioned amongst its members by metes and bounds. Reference has in this connection been made to certain commentaries and judgments and we shall refer to them as and when necessary.

4. Section 3 of the Act is the charging section and the correctness or otherwise of the view taken by the High Court depends on its meaning and content. The section provides for the charge of wealth-tax in these terms :

> 3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year 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. :
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> The liability to wealth-tax, therefore, arises in respect of the "net wealth" of the assessee, which expression has been defined as follows in Section 2(m) :
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> (m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than, ...

5. The expression "belong" has been defined as follows in the Oxford English Dictionary :

> To be the property or rightful possession of.

So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealth-tax arises out of ownership of the asset, and not otherwise. Mere possession, or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of "net wealth" for it would not then be an asset "belonging" to the assessee.

6. The question is whether the estate or property of Bireswar Chatterjee could be said to belong

jointly to his heirs, after his death ?

7. It is not in controversy, and is in fact admitted, that the property in question belonged to Bireswar Chatterjee who was its sole owner in his lifetime and was assessed to income-tax as an individual. His family consisted of his widow, sons and daughters and was governed by the Dayabhaga School of Hindu law. Bireswar Chatterjee's property was, therefore, the heritage, or the wealth, which vested in his heirs on his death. According to Jimuta Vahana, his wife or sons or daughters had no ownership in his property during his lifetime for "sons have no ownership while the father is alive and free from defect". (Hindu Law by Colebrooke, page 9). Ownership of wealth is, however, vested in the heirs "by the death of their father" (page 54, supra) when they become co-heirs and can claim partition. It is on this basis that "dayabhaga" (partition of heritage) has been expounded by Jimuta Vahana. According to his, "since any one parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible" (page 16, supra). The heritage does not therefore become the joint property of the heirs, or the joint family, on the demise of the last owner, but becomes the fractional property of the heirs in well defined shares. This concept of fractional ownership has been stated as follows by Krishna Kamal Bhattacharya in his "Law relating to the Joint Hindu Family" (Tagore Law Lectures) with reference to the doctrine of negation of the son's right by birth (page 168) :

> As a corollary of the doctrine set forth above, negativing the son's right by birth, is another peculiar doctrine of the Bengal School, that of what is called the 'fractional ownership' of the heirs, contrasted with the doctrine of 'aggregate ownership' expounded by all the other schools.

That is why 'partition' in Dayabhaga is defined as an act of "particularising ownership", and is not the act of fixing diverse ownerships on particular parts of an aggregate of properties as in Mitakshara. The learned author has clarified the position in unmistakable terms as follows (pages 172-73) :

> From what has been said above, it is evident that there is no unity of ownership in Bengal joint family, although there may be something like a unity of possession.

This is why Mitakshara is designated as the school of "aggregate ownership", while Dayabhaga is known as the school of "fractional ownership". As has been stated in Gopalchandra Sarkar Sastri's "Hindu Law" (eighth edition, page 465), while the joint family system prevails in Bengal, there cannot be a real joint family consisting of father an sons during the father's lifetime inasmuch as joint property which is the essence of the conception of joint family, would be wanting to make them joint,

This is why, according to the Bengal school, the sons become tenants-in-common and not joint-tenants in respect of the estate inherited by them from their father.

8. The position of joint family under the Dayabhaga law has been stated as follows in Mayne's Treatise on Hindu Law and Usage (eleventh edition, page 364) :

> 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 co-heirs hold their shares in quasi-severalty. Each coparcener has full powers of disposal over his share which is defined and not

> fluctuating with is defined and not fluctuating with births and deaths as in the case of a Mitakshara family and his interest, while still undivided, will on his death pass on to his own heirs male or female or even to his legatees.

That was stated to be the law in Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick (6 MIA 526, 553).

9. The position has been dealt with in Mulla's "Principles of Hindu Law" (fourteenth edition, at page 348), as follows :

> The essence of a coparcenary under the Mitakshara law is unity of ownership. On the other hand, the essence of a coparcenary under the Dayabhaga law is unity of possession. It is not unity of ownership at all. The ownership of the coparcenary property is not in the whole body of coparceners. Every coparcener takes a defined share in the property, and he is the owner of that share. That share is defined immediately the inheritance falls in. It does not fluctuate with births and deaths in the family. Even before partition any coparcener can say that he is entitled to a particular share, one-third or one-forth. Thus, if A dies leaving three sons, B, C and D, each son will take one-third, and each one will be the owner of his one-third share. The sons are coparceners in this sense that possession of the property inherited from A is joint. It is the unity of possession that makes them coparceners. So long as there is unity of possession, no coparcener can say that a particular third of the property belongs to him; that he can say only after a partition. Partition then, according to the Dayabhaga law, consists in splitting up joint possession and assigning specific portions of the property to the several coparceners. According to the Mitakshara law, it consists in splitting up joint ownership and in defining the share of each coparcener.

10. In fact we find that a case somewhat similar to the one before us arose when one Prafulla Chandra Bhar, a Hindu governed by the Bayabhaga School, died intestate. His mother, widow, three sons and one daughter survived him. Since the death took place before the Hindu Succession Act, 1956 came into operation, he was succeeded by his widow and three sons, each inheriting one-fourth share in the estate. Gouri Shankar Bhar, one of the sons, took out latters of administration and filed a wealth-tax return in his capacity as administrator describing the status of the assessee as a Hindu undivided family. The Wealth-tax Officer also treated the status as such, and made the assessment. Gouri Shankar, however, filed an appeal and contended that the family being governed by the Dayabhaga school, the shares of the coparceners in the property of the deceased were definite and ascertained and the assessment should not have been made in their status as a Hindu undivided family and each member should have been assessed separately upon the value of his share in the inherited property. The Appellate Assistant Commissioner overruled the contention and took the view that even though the shares of the coparceners where 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. On further appeal, the Tribunal held that as the coparcener under the Dayabhaga law had a definite share in the property left by the deceased and the legally the owner thereof, he had a defined share and that since the wealth-tax was levied on the basis of ownership, it was proper that the assessment should have been made on the individual coparceners on their respective shares and assessment of the total wealth in the hands of the undivided family would be illegal. The matter was referred to the High Court at the instance of the Commissioner of Wealth-tax. The High Court of Calcutta in Gouri Shankar Bhar's case made a reference, inter alia, to the decision in Biswa Ranjan Sarvadhikary v. Income-tax Officer, F-Ward,

District II (2), Calcutta ((1963 47 ITR 927 (Cal) and upheld the view that where property is owned by two or more persons governed by the Dayabhaga school and their shares are definite and ascertainable, 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. It was held that the position was not different under the Wealth-tax Act. The matter was brought to this court on appeal and it was conceded by the Solicitor-General appearing for the Commissioner of Wealth-tax that as the property was the individual property of the deceased, it devolved on his heirs in severalty. It was held that as each of them took a definite and separate share in the property, each of them was liable, in law, to pay wealth-tax as an individual. While upholding the decision of the High Court it was however observed by this court that it was not necessary to decide, in that case, whether a Dayabhaga family could be considered as a Hindu undivided family within the meaning of Section 3 of the Act. That decision is Commissioner of Wealth-tax v. Gauri Shankar Bhar ((192) 84 ITR 699 (SC).

11. In the case before us, it is not in dispute that the property in question was the individual property of Bireswar Chatterjee and that it devolved on his heirs according to the provisions of the Hindu Succession Act, 1956. It will be recalled that a suit for partition was filed on June 21, 1957, and a preliminary decree was passed on July 4, 1959. For reasons already stated the coparcenary had unity of possession but not unity of ownership on the property. Each coparcener, therefore, took a defined share in the "belonged" to the coparcener. It was his "net wealth" within the meaning of Section 2(m) of the Act and was liable to wealth-tax as such under Section 3. The High Court was, therefore, right in answering the reframed question in the negative, and as we find no force in the argument Mr. Desai, the appeal fails and is dismissed with costs.

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