

Mohan Lal Daulat Ram

Vs

Commissioner of Income-tax, Bombay

Civil Appeal No. 1761 of 1975 with C.M.P. No. 5703 of 1987

(S. Ranganathan, N.M. Kasliwal, S.C. Agarwal JJ)

29.11.1990

JUDGMENT

1. This is an appeal from a decision of the Bombay High Court in a reference made to it u/ S. 66(1) of the Indian Income-tax Act, 1922 in relation to the assessment year 1959-60 in respect of which the relevant previous year as the Samvat year 2014. A few facts may be stated just to clarify the real issue that has arisen in the case. Mohan Lal Daulat Ram and his son Sevanti Lal were partners under a deed dated 12-11-1953 under which the partners shared profits equally, but the goodwill was to belong solely to Mohan Lal. It is important here to mention that Mohan Lal Daulat Ram and Sevanti Lal were partners in the firm in their individual capacity. Their respective shares of income from the firm was assessed in their hands as their individual profits.
2. Mohan Lal Daulat Ram died on 17-12-1955. Thereupon a fresh deed of partnership was drawn on 26-12-1955 which was to take effect from 18-12-1955. Under that deed the partners of the firm were Sevantilal and his mother Bai Chandanbai. It was, however, recited in the deed that Sevantilal "has taken Bai Chandanbai, widow of Mohan Lal Daulat Ram, as a partner (representing the family of the deceased Mr. Mohan Lal Daulat Ram)".
3. The question before the High Court was whether this was a valid partnership and the question referred to the High Court was as to whether the partnership "which was allegedly brought into existence by the deed of 26-12-1955 wherein the other partner was Bai Chandanbai, the widow of Mohan Lal Daulat Ram, as representing the family of the deceased Mohan Lal Daulat Ram, could be said to be a valid partnership brought into existence or not".
4. The recital in the partnership deed appears to have created a lot of misapprehension in the minds of the parties. Both parties, the Tribunal and the High Court have proceeded on the footing that, on the death of Mohan Lal Daulat Ram, his interest in the partnership survived to the other members of the family consisting of Bai Chandanbai (widow of Mohan Lal Daulat Ram) and Sevantilal. In this view of the matter it was held by the High Court that Bai Chandanbai, the widow of Mohan Lal Daulat Ram, was not competent to act as a Karta of the family and was not entitled to enter into the partnership as a coparcener, since there are judicial decisions to the facts that under the Hindu law a female member cannot become the Karta of the Joint Hindu Family.
5. We think that the answer given by the High Court of the reference has been coloured by this misapprehension. As we pointed out at the very outset, there is no dispute that Mohan Lal Daulat Ram was a partner in his individual capacity in the firm. On his death, his interest in the partnership

devolved on his widow Bai Chandanbai and his son SevantiIal. After the death of Mohan Lal Daulat Ram, his widow Bai Chandanbi and son Sevantilal both inherited in equal shares the property of deceased and they were fully competent to enter into a partnership in regard to the business.

6. We, therefore, set aside the order passed by the High Court and hold that the Tribunal was right in granting registration to the assessee-firm, though not for the reasons mentioned by it.

7. Shri B. B. Ahuja, learned counsel for the respondent, vehemently contended that, all through, the case has proceeded on the footing that, on the death of Mohan Lal Daulat Ram, his interest in the firm became property of the Joint Hindu Family of Mohan Lal Daulat Ram. This is no doubt true. But, on the admitted facts as set out in the statement of case, this is not the correct position. The real position we have set out follows on the facts stated and found. We are therefore of opinion that the Tribunal's final conclusion should be upheld.

8. We, therefore, allow the appeal and restore the decision of the Tribunal. There will, however, be no order as to costs.

Appeal allowed.

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