

# CALCUTTA HIGH COURT

Champa Kumari Singhi

Vs

Additional Member

(Banerjee J.)

07.12.1961

## JUDGMENT

### **Banerjee J.**

1. One Birendra Singh Singhi, an Oswal Jain, governed by the Mitakshara School of Hindu law, died on December 12, 1950, leaving him surviving his widow Champa Kumari Singhi, two minor sons, Ashoke Kumar and Chandra Kumar, and a minor daughter of the name of Rana Kumari. Champa Kumari is the petitioner in this rule. For the year of assessment 1954-55, the Income-tax Officer, Companies District I, assessed "Champa Kumari Singhi and others" in their capacity as a Hindu undivided family to a tax of Rs. 85,366-5-0 and issued a notice of demand under section 29 of the Indian Income-tax Act. The said notice bears no date and was addressed to "Sm. Champa Kumari Singhi and others". Some payments towards the demand were apparently made but a good deal was left unpaid. On March 28, 1958, the said Income-tax Officer proceeded under section 46(2) of the Income-tax Act and forwarded a certificate to the Collector of 24-Parganas specifying that a sum of Rs. 80,382-06 nP. was the arrears due from the assessee. This started a certificate case and in the certificate of public demand, the name of the certificate debtor was shown as "Champa Kumari Singhi and others". The same was the description of the certificate debtors as given in the notice under section 7 of the Public Demands Recover Act. The petitioner objected to the certificate, inter alia, contending that the certificate was bad because the certificate debtors had not been correctly described and that the expression "Sm. Champa Kumari Singhi and others" did not denote a person. She, therefore, prayed for the cancellation or the setting aside of the certificate. The objection succeeded before the Certificate Officer who held that the certificate was invalid because of the vagueness and indefiniteness of the description of the certificate debtors. The certificate holder, Union of India, preferred an appeal against the order before the Commissioner of Presidency Division but the appeal was summarily dismissed. Not discouraged by the summary dismissal of the appeal, the Union of India moved an application for revision before the Board of Revenue, West Bengal. The

Additional Member of the Board allowed the application and set aside the orders both of the Commissioner and the Certificate Officer. I set out herein below the material portion from his order :

"The petition is allowed, the orders of the learned Commissioner, Presidency Division, and of the Certificate Officer, Additional District Magistrate, 24 Parganas, are set aside. The certificate is restored as against Shrimati Champa Kumari Singhi."

The propriety of the order made by the Board is being challenged in this rule. It should be noticed at the outset that, in this rule, there is no relief claimed against the assessment of income-tax on "Champa Kumari Singhi and others" in their capacity as Hindu undivided family. There is of course a ground taken in the petition to the effect that the assessment was not made in accordance with the Indian Income-tax Act and the notice of demand was not valid. What is meant by that ground admittedly is that Champa Kumari was not a coparcener in the Hindu undivided family and could not act as the karta or manager and it was not possible for her to represent the undivided family either as a manager or in her personal capacity or as natural guardian of her minor sons. This argument was also made on behalf of the assessee in the case of Sushila Devi Rampuria v. Income-tax Officer and was repelled by Sinha J. with the following observations :

"To start with, it cannot be denied that a Hindu female cannot be a coparcener under the Hindu law. But for the purpose of the Indian Income-tax Act, we are not concerned with the Hindu coparcenery, as has been clearly pointed out by the Judicial Committee. What we are concerned with is a Hindu undivided family. A female can be a member of a Hindu undivided family, which may even consist entirely of females. Where, however, the male members are all minors, and of whom the natural guardian is their mother, I find nothing in the Indian Income-tax Act to prevent her from representing a Hindu undivided family for the purposes of assessment under the said Act. In such a case, we should not confuse the term manager as used for purposes of the Act with the term karta as used in Hindu law. The word Karta is a technical term of the Hindu law.... But, where in a Hindu undivided family there exists no karta, or where the male members are all males at all, there seems to be no legal bar to a female acting as manager representing a Hindu undivided family for purposes of assessment of income-tax."

It was, however, sought to be argued that this case stood on a better footing than Sushila Devi Rampurias case because in that case the description of the assessee was "Sm. Sushila Devi Rampuria representing the Hindu undivided family" whereas in the instant case the names of the assesseees were described as "Champa Kumari Singhi and others" and their status was given as Hindu undivided family, thereby showing that Champa Kumari was not treated as the manager representing a Hindu undivided family but an assessee herself. I do not think that makes any difference. Under section 3 of the Hindu Womens Rights to Property Act, 1937, Champa

Kumari, the petitioner, got an undivided interest in the estate by her deceased husband, and as such became a member of the undivided family. Herself, an assessee, she could also represent the undivided family for the purposes of assessment of income-tax (there being nothing to show that anybody else was the karta) and that, in my opinion, she actually did. Having submitted to that sort of assessment, it is too late for her to take a ground that the assessment being illegal the notice of demand was bad. I turn now to the certificate itself. In the first column of the certificate, which requires statement of the name and address of the certificate holder, the name is given as the Government of the Union of India. In the second column, which requires specification of the public demand, is written a sum of Rs. 80,382.06 nP., with particulars as to how the sum is composed. In the third column, which requires statement of the name and address of the certificate debtor, is written "Sm. Champa Kumari Singhi and others, 41/1, Gariahata Road, Calcutta." In the fourth column headed "further particulars of the public demand for which the certificate is signed" is written "I.T.O., Comp. Dt. I, Calcutta." The petitioner in her objection under section 9 of the Public Demands Recovery Act had taken several objections against the validity of the certificate but in this rule only one of the objections taken was emphasised on her behalf, namely, that names of the certificate debtors in column three of the certificate were wrongly stated, in that the expression "Champa Kumari Singhi and others" could not be the names of the debtors. The certificate as such was characterised to be illegal and void. It is true that the certificate filed under the Public Demands Recovery Act must be a self-contained document and must show on the face of it who the certificate debtor is or the certificate debtors are. From that point of view the certificate is not what it should be because on the face of the certificate the words "and others" do not convey any meaning and do not identify any person or persons. I have therefore to ignore the words "and others" on the certificate. But still the question remains whether the certificate should be considered to be a valid certificate against Champa Kumari Singhi alone. The question in the form it arises is covered by a decision of a division bench of this court in *Union of India v. Jiwanmull Bhutoria* in which Bachawat J. (Renupada Mukherjee J. agreeing with him) observed as follows :

"The question still remains whether the certificate should be considered to be a valid certificate as against Jiwanmull Bhutoria alone. We have come to the conclusion that the words and others should be rejected as surplusage and that the certificate should be regarded as a certificate against Jiwanmull Bhutoria. On the face of the certificate it is shown plainly that the certificate debtor is Jiwanmull Bhutoria of Johuribazar, Burdwan. Though the certificate cannot be construed and read as a certificate against Jiwanmull Bhutoria as karta of an undivided Hindu family composed of self and others, the certificate can and should be read as a certificate against Jiwanmull Bhutoria. The income-tax demand was against the undivided family consisting of Jiwanmull Bhutoria and others, members of the family, of which Jiwanmull Bhutoria was the karta. Plainly, Jiwanmull Bhutoria is personally responsible for payment of the income-tax as assessed against

the Hindu undivided family of which he is the karta. The public demand is plainly due from Jiwanmull Bhutoria and the certificate is properly filed as against him. The sole question in this case is whether the certificate is a proper certificate within the meaning of the Bengal Public Demands Recovery Act, 1913, and whether the certificate is so defective that it can be pronounced to be wholly invalid and null and void. We have come to the conclusion that the certificate cannot be pronounced to be invalid as against Jiwanmull Bhutoria. I respectfully agree with the observations quoted above. In the instant case also, the assessment was against an undivided family consisting of the petitioner and her minor sons, whom she represented, though not as karta but as the manager of the joint estate. The petitioner is, therefore, in any event, responsible for payment of the tax assessed. Although I ignore the expression "and others" in the certificate, there is no reason why the certificate proceedings should not be allowed to proceed against the petitioner alone, who is indisputably a certificate debtor herself. I, therefore, find no error in the order made by the Board of Revenue. This rule is accordingly discharged. I, however, do not make any order as to costs.

Rule discharged.