

BOMBAY HIGH COURT

Shah Prabhudas Gulabchand

Vs

Commissioner of Income-Tax

(K.K Desai, C.J. N Mody ,J.)

03.02.1970

JUDGMENT

K.K. Desai, J.

1. This reference under section 66(1) of the Indian Income-tax Act, 1922, is the result of two separate applications made respectively by Messrs. Shah Prabhudas Gulabchand, hereinafter referred to as "the firm", being one assessee in the reference, and Chandrakant Prabhudas, being the individual assessee in the reference. The questions relate to the assessment year 1959-60, the corresponding accounting period being Samvat year 2014. The two questions arising for decision are as follows :

"(1) Whether, on the facts and circumstances of this case, the applicant is entitled to renewal of registration for the year 1959-60 ?

(2) Whether, on the facts and circumstances of this case, the assessment made on the karta of the Hindu undivided family of the income of the business carried on in the name of Shah Prabhudas Gulabchand is justified in law ?"

2. The facts appear in the statement of the case. The facts which require to be noticed are as follows :About six months prior to October 22, 1943, one Shah Prabhudas Gulabchand died intestate leaving him surviving as his only heirs and next of kin his widow, Bhikibai, and four minor sons, one of them being the assessee, Chandrakant Prabhudas. Prior to his death, Prabhudas Gulabchand carried on business in toilet, medicines, perfumery, etc., in the firm name of Shah Prabhudas Gulabchand. Upon his death, the business came by inheritance to the four minor sons of Prabhudas. This business was carried on, having regard to the minority of the four sons, by the widow Bhikibai for six months by herself. Thereafter, from Kartak Sud 1 Samvat year 2000, she carried on the very same business in partnership with one Shah Khushaldas Gangadas who was the mehtaji and the servant of the deceased Prabhudas whilst he carried on

the above business on the terms and conditions recorded in a deed of partnership dated October 22, 1943, which is annexure "A" to the statement. Under the deed of partnership, Khushaldas was a working partner with a share of 6 annas. Bhikibai owned the remaining share of 10 annas. At the date when this partnership was formed, Bhikibai brought into the partnership as the previous owner thereof in all Rs. 50,612 which are shown in the capital account of Bhikibai in the books of that partnership for Samvat year 2001 by the following two credit entries :

Rs.

Havala of goods stock	25,600
Cash	25,012

In that year she received interest and the capital account of Bhikibai thus increased to Rs. 53,350. The loss debited to her was Rs. 3,110. Capital account in the next year was opened with the credit balance of Rs. 50.2 40.

3. With the capital thus contributed in the account of Bhikibai the business of the partnership was carried on from October 22, 1943, till December 6, 1953, for 10 years. It appears that about this date the assessee, Chandrakant Prabhudas, attained majority. Partnership with Khushaldas was ended by Bhikibai and the very same business was carried on as from December 7, 1953, by Bhikibai and Chandrakant in the firm name of Shah Prabhudas Gulabchand on the terms and conditions recorded in the deed of partnership dated December 23, 1953, which is annexure "C" to the statement. In this partnership Bhikibai continued to have share of 10 annas in profits and losses whilst Chandrakant was given share of 6 annas. One of the recitals in the deed of partnership runs as follows :

"..... WHEREAS CHANDRAKANT PRABHUDAS the abovenamed second party of this agreement was introduced as a partner by the first party (Bhikibai) on and from Magsar Sud 1st Samvat year 2010"

4. The first partnership firm that carried on business from October, 1943, to December, 1953, and this second partnership between Bhikibai and Chandrakant were granted registration under section 26A of the Act and the firm was being assessed as a registered partnership up to the assessment year 1958-59. In connection with the assessment for 1959-60, an application for renewal of registration of the second partnership under section 26A was made but was rejected by the Income-tax Officer by his order dated March 16, 1960. That order was in respect of the applicant-firm of Messrs. Shah Prabhudas Gulabchand. By a separate order of the same date, the Income-tax Officer assessed the second applicant, Chandrakant Prabhudas, in respect of the

business of Messrs. Shah Prabhudas Gulabchand on the footing that this business was of the Hindu undivided family constituted of the heirs left by deceased Prabhudas. The main reason for the rejection of the application for registration under section 26A and for assessing the second applicant, Chandrakant, in the above manner was that in fact from the date of the death of Prabhudas the business of the firm of Prabhudas Gulabchand which had come by inheritance to the above undivided family had been carried on by Bhikibai for the benefit of the family. The first partnership was formed only because mehtaji Khushaldas was helpful as a working partner. The second partnership was in fact not a genuine partnership but a partnership made between the undivided family mentioned above and one of its coparceners, the second assessee, Chandrakant. In the appeals separately filed by each of the assessee-applicant the Appellate Assistant Commissioner by his separate orders made on February 6, 1961, reversed the findings made by the Income-tax Officer. The order of assessment made against Chandrakant was set aside. Directions were given for granting registration to the above firm under section 26A. Those orders made by the Appellate Assistant Commissioner were set aside by the Appellate Tribunal by separate orders made on May 8, 1962. The above questions are formulated to contest the findings made by the Appellate Tribunal.

5. Mr. Mehta for the two assessees contends that the finding of the Tribunal that the contract of partnership between Bhikibai and Chandrakant, the second assessee, was a contract by one person with himself is liable to be reversed. The contention is that in law there was no impediment of any kind for bringing about partnership relations between Bhikibai on the one hand and Chandrakant on the other. There was nothing in the law of the Hindu joint family which prevented one of the coparceners making a contract with a karta of the joint family in connection with the already existing joint family business. This, according, to him, was the law pronounced by the Judicial Committee of the Privy Council in the case of *Lachhman Das v. Commissioner of Income-tax*. That law was cited with approval by the Supreme Court in the case of *Firm Bhagat Ram Mohanlal v. Commissioner of Excess Profits Tax*. On the basis of the pronouncements made by the Judicial Committee and the Supreme Court, the High Court of Mysore had in fact in the case of *I. P. Munavalli v. Commissioner of Income-tax* held that a karta of the joint family could make a partnership contract with the coparcener on the footing of his contribution of being a working partner. He, therefore, submitted that merely because the partnership business of the assessee-firm was from December 7, 1953, carried on by Bhikibai and Chandrakant as partners, the Tribunal was not justified in holding that that was a contract by and between the same party and such a contract was impossible of coming into existence and on that footing refusing to grant registration of the assessee-firm under section 26A of the Act and accepting the finding of the Income-tax Officer that Chandrakant was liable to be assessed in respect of the income of the above firm as Hindu undivided family.

6. Now, in connection with these contentions made by Mr. Mehta, before referring to the facts on which there can be no dispute, it is convenient to look at the authorities on which he has relied. In the case of *Lachhman Das v. Commissioner of Income-tax*, the Judicial Committee noticed as an important fact that an individual coparcener while remaining joint could possess, enjoy and utilise in any way he liked the property which was individual property not acquired with the aid of or with any detriment to the joint family property. The partnership before their Lordships was constituted of the Hindu undivided family consisting of Lachhman Das and his seven sons, and Daulat Ram, being one of the seven sons. This Daulat Ram had separate property and was the owner of at least a sum of Rs. 48,000 in his own separate right. The Hindu undivided family of Lachhman Das made the partnership with Daulat Ram and carried on the business of Indian Woollen Textile Mills. The question before their Lordships was whether there could be a valid partnership between Lachhman Das representing the Hindu undivided family on the one hand and Daulat Ram as member of the undivided joint family in the individual capacity on the other. That question was answered in the affirmative, but in connection with that answer, particular stress was laid on the fact of Daulat Ram having with himself self-acquired separate property and he having invested a specific sum of Rs. 48,000 for running the partnership business of the Indian Woollen Textile Mills. In connection with the question before them, the observation of their Lordships was :

"In this view of the Hindu law, it is clear that if a stranger can enter into partnership, with reference to his own property, with a joint Hindu family through its karta, there is no sound reason in their Lordships' view to withhold such opportunity from a coparcener in respect of his separate and individual property."

7. The ratio of the decision of the Privy Council is analysed in the Supreme Court decision which we will presently refer to by reference to the above-quoted passage where, in respect of a coparcener who could be taken into partnership the factor emphasised is that the coparcener must be one who has his separate and individual property which he contributes towards the business of the partnership.

8. In the case of *Firm Bhagat Ram Mohanlal v. Commissioner of Excess Profits Tax* at page 526, the Supreme Court observed :

".... it is difficult to visualise the situation which the appellant contends for, of a Hindu joint family entering into a partnership with strangers through its karta and the junior members of the family also becoming at the same time its partners in their personal capacity. In *Lachhman Das v. Commissioner of Income-tax*, it was held by the Judicial Committee that the karta of a joint Hindu family could enter into partnership with an individual member of the coparcenary quoad his separate property But in the present

case, the basis of the partnership agreement of 1940 is that the family was joint and that Mohanlal was its karta and that he entered into the partnership as karta on behalf of the joint family. It is difficult to reconcile this position with that of Chhotelal and Bansilal (who were coparceners) being also partners in the firm in their individual capacity, which can only be in respect of their separate or divided property. If members of a coparcenary are to be regarded as having become partners in a firm with strangers, they would also become under the partnership law partners inter se, and it would cut at the very root of the notion of a joint undivided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners."

9. Now, in our view, in the above quoted passage, the Supreme Court has, in connection with the ratio of the decision of the Judicial Committee in the case of Lachhman Das v. Commissioner of Income-tax, held that it is only a karta of a joint Hindu family who could enter into partnership with one of the coparceners for further carrying on of joint family business. This coparcener who could be accepted as a partner by a karta becomes a partner "quoad his separate property". In other words, a coparcener who has no separate and self-acquired property of his own cannot be accepted as a partner by a karta of the undivided family for carrying on the joint family business, because contribution of separate undivided estate towards carrying on of the partnership business is a necessary ingredient for bringing into existence of such a partnership.

10. Now, in the case of I. P. Munavalli v. Commissioner of Income-tax the High Court of Mysore appears to have read the decisions of the Judicial Committee and the Supreme Court referred to above to mean that a partnership could come into existence between a karta of a undivided Hindu family and one of the coparceners if such coparcener merely agrees to become a working partner of the firm. With great respect, we are unable to take that view of the above decisions.

11. Having regard to what we have, in the above discussion, held to be the ratio of the Judicial Committee, it is necessary to now look at the facts of the present partnership between Bhikibai and Chandrakant. Admittedly, the business of the firm of Shah Prabhudas Gulabchand was prior to his death carried on by Prabhudas. On his death, the capital, the goodwill and the stock trade of this business came to be inherited by the four minor sons of Prabhudas. Bhikibai, apparently, as the mother and natural guardian of these four minor sons continued to carry on the business of the firm as a continuing business with the capital and stock-in-trade in existence for six months by herself. Thereafter, with the capital of the business which was then in existence, Bhikibai and Khushaldas, the Mehtaji, who was working in the firm's business, carried on the business in partnership with each other from Kartak Sud 1st S.Y. 2000 on the terms of the partnership agreement dated October 22, 1943. The capital that was brought in and with which the business was carried on has been already described by us whilst reciting the facts. The capital brought in

was wholly belonging to the business of the deceased Prabhudas carried on by Bhikibai and consisted of the cash of Rs. 25,012 and stocks worth Rs. 25,600. Under the partnership agreement in connection with this capital, interest was to be charged and paid. Apparently, the losses and/or profits made by Bhikibai as partner were all debited and/or credited in the capital account and continued to be maintained in the books of the firm. Khushaldas was not given any rights in the assets of the firm. In fact, when the business of this first partnership was terminated, upon accounts being made, it was ascertained that Khushaldas had withdrawn large amounts from the partnership and the debt payable by him was agreed to be reduced and settled at Rs. 18,000. It was agreed to receive that debt of Rs. 18,000 at a future date from Khushaldas. So far as the four minors were concerned, this debt resulting from the overdrawings made by Khushaldas was loss caused to their estate by reason of the business of the firm being carried on by Bhikibai in partnership with Khushaldas.

12. When the business of the firm was agreed to be carried on and was carried on between Bhikhibai and Chandrakant as from December 7, 1953, (Marksa Sud 1st S.Y. 2010), the capital account of Bhikhibai in the running business had credit balance of Rs. 84,654. Chandrakant, admittedly, had no capital of any kind, had not separated from the joint family and was not owner of any divided and/or separate property. Chandrakant never contributed any sum towards capital and/or towards the carrying on of the business of the present partnership. The profits and/or losses suffered by Bhikibai were credited and/or debited in the capital account of Bhikibai which was, as already mentioned, continuously maintained in the above manner on the footing that it belonged to the four minors whose business was upon inheritance carried on by Bhikibai in the manner described above. One fact which remains to be recorded is that it appears from the contents of the order made by the Appellate Assistant Commissioner that in 1957-58, Bhikibai had sold certain ornaments and the sale proceeds amounting to Rs. 8,223 were also credited in the capital account mentioned above. It is not investigated and, therefore, difficult to state whether the ornaments were of the separate ownership of Bhikhibai and/or belonged to the estate of Prabhudas, and, accordingly, whether this sum of Rs. 8,223 which formed part of the capital account belonged to Bhikibai personally or was of the same nature as the other amounts standing to the credit of the capital account. The facts mentioned above go to show that the business of the firm of Shah Prabhudas Gulabchand had been carried on by Bhikibai from the date of the death of Prabhudas till the commencement of the present partnership and whilst the present partnership continued with the assets and capital which wholly belonged to the four minors who constituted a Hindu undivided family. In the partnership business which was carried on from 1953 onwards by Bhikibai and Chandrakant nothing was contributed by Chandrakant except, possibly, the duties he discharged as a working partner. The question is whether, under those circumstances, it was permissible for Bhikibai who had been carrying on the firm's business as representing the interest of the sons of Prabhudas and/or the Hindu undivided family of the sons of Prabhudas to make a

partnership with Chandrakant merely because he agreed to become a working partner. In the context of these facts, it is impossible to proceed to decide the questions arising before as on the footing that Chandrakant was acting as karta of the undivided family in the matter of the partnership agreement that was made between Bhikibai and him. Mr. Mehta contends that Chandrakant as a karta could always make a partnership agreement with Bhikibai because her rights in the joint family of her four sons and herself were merely for maintenance and residence in the family house. There was no obstruction, therefore, in Chandrakant accepting Bhikibai as a partner. She should be, in connection with the deed of partnership, held to be a stranger. We are unable to proceed to decide the question of the partnership agreement before us on the basis suggested as above by Mr. Mehta having regard to the facts which we have already discussed above. It is quite clear that in making the partnership agreement Bhikibai was not bringing any capital other than the capital of Rs. 84,000 and odd which was the capital of the four minors acquired in part as estate left by Prabhudas and, thereafter, developed by carrying on the business till the present partnership was formed. It is quite clear that Bhikibai made the partnership because she represented the estate of Prabhudas. There is no reason at all to imagine that Bhikibai wanted to become a partner in her individual right as is suggested by Mr. Mehta. As already discussed, Chandrakant was not becoming a partner with Bhikibai as a karta of any undivided family. As is rightly recited in the deed of partnership, it was Bhikibai who introduced Chandrakant as if he was a stranger to the family in the partnership merely because Chandrakant agreed to become a working partner. The ratio of the decisions of the Judicial Committee and the Supreme Court is that a coparcener can never become a partner in the business carried on by a karta of an undivided family, unless he is separate and is owner of separate property and makes contribution thereof. In this case, Chandrakant had never any separate property or estate and never contributed any separate property towards the development of the partnership business. There is, therefore, no reason to set aside the finding of the Appellate Tribunal that this is a partnership which was made between two coparceners for carrying on business of the undivided family and that such a partnership could never be a valid partnership in law. Such a partnership is foreign to the well established principles governing an undivided Hindu family,

13. In the result, our answers to the questions are :

Question No. 1 in the negative.

Question No. 2 in the affirmative.

14. The two assesseees will pay costs.

