NAGPUR HIGH COURT

Commissioner of Income-tax

Vs

Laxmi Narayan Raghunathdas

(Shevde, J.)

25.02.1948

JUDGMENT

Shevde, J.

1. This is a reference under Section 66(1), Income Tax Act, made by the Income Tax Appellate Tribunal, Bombay, at the instance of the Commissioner of Income Tax, U.P. and C.P. and Berar, Lucknow.

2. The question referred is as under:

> Whether on the facts of the case Mt. Kesar Bai was competent to enter into a contract of partnership in her representative capacity as karta of the undivided family consisting of herself and her two minor sons ?

3. The undisputed facts of the case may be briefly set out as follows: Mt. Kesar Bai is the widow of Radhawallabh, who died on 9-3-1943 and who had carried on a business in partnership with his three brothers, Gangaram, Premnarayan and Rangilal till his death. Their firm had been constituted by a deed of partnership and used to be annually registered for income tax purposes. Radhawallabh left him surviving, besides his widow Kesar Bai, two minor sons, Shrinivas and Laxminiwas, who are members of a joint Hindu family. Soon after the demise of Radhawallabh, his widow and the three surviving brothers entered into a fresh agreement of partnership whereby they agreed to carry on the business as partners with equal shares. The deed of partner. ship expressly describes her as a partner in her capacity as manager of the family of the heirs of the decossed Radawallabh as an equal partner in place of her husband. When the deed was offered for registration in connexion with the firm's assessment for 1913-44, the Income Tax Officer refused to register it as, in his opinion, Kesar Bai being incompetent to act as manager of her joint family, no genuine firm could be constituted by the deed of partnership. The Appellate Assistant Commissioner took a different view and accepted the partnership as valid, as in his opinion, there was no legal prohibition against the mother being the de facto manager. He,

therefore, set aside the order of the Income Tax Officer and directed registration. On appeal to the Tribunal by the Income Tax Officer, the order of the Assistant Commissioner was upheld. Thereupon the Commissioner of Income Tax applied to the Tribunal to state a case for our opinion and the question referred has been stated above.

4. It has been contended by the learned Counsel for the applicant that a woman is incompetent to act as karta of a joint family, under Hindu law, as she is not a coparcener. It is conceded that she is a member of the joint family, but inasmuch as she does not take interest by birth and ha3 no right to take by survivorship, she is admittedly not a coparcener and hence she can never be recognised as karta. The contention, in other words, comes to this, that the managership of a joint Hindu family is something like a close preserve for males and no female can ever intrude into it, even though no adult male has been left in the family. The contention is, in our opinion, too widely stated and, so far as we know, there is no authority under Hindu law to support it,

5. Mr. V.R. Sen, advocate for the applicant, has drawn our attention to a decision of the Madras High Court in the case of *Seetha Bai and Anr. v. Narsimha Shet and Ors*[1]. and has placed his reliance mainly on certain observations of Kuppuswami Ayyar J. at p. 570. They are as under:

> In the ease before us the coparcenary consists of only the two minor sons and there is therefore no one who could be in juridical possession of the property as karta. The two widows are not members of the coparcenary. They may be members of the family. Under the Act the nature of their right is a widow's estate. The only right which they have, analogous to that of a coparcener, is the right to demand a partition. None of the widows could claim to be a manager of the joint Hindu family of which the two minors were members.
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> (The underlining (here italicised) is ours). It is pertinent to note that these observations were made by the learned Judge in connexion with the appointment of a guardian of the minors' estate under the Guardians and Wards Act, and it was held that where the joint family consisted only of minors, a guardian could be appointed in respect of the joint family properties of the minor members. It is obvious that the question whether a female is competent or incompetent to be a karta of the joint family was not directly in issue in the Madras case. It is well-known that the primary consideration for the appointment of a guardian, under the Guardians and Wards Act is the welfare of the minor-(vide Section 7, Guardians and Wards Act), and the District Judge is justified in finding that in the particular circumstances of the case a guardian should be appointed for the minors (as was done in the Madras case), irrespective of the competency or incompetency of the mother to act as karta of the family. The observations, to which our attention has been pointedly drawn, appear to be based upon a priori reasoning. No authority has been cited to support them. The statement of law that none of the widows could claim to be a manager of the joint Hindu family of which the two minors were members, appears to us an ex cathedra pronouncement and we respectfully differ from it.

6. It is true that according to the old archaic views a woman was supposed to remain under the perpetual tutelage of some male member of the family throughout her life and that she did not deserve freedom. There are some Sanskrit texts which undoubtedly lay down this position, whereas there are other texts which glorify the

[1] A.I.R. (32) 1945 Mad. 306

status of a woman and skate that a widow is the surviving half of the husband. It cannot, however, be denied that the authority of the old Smritis and their commentaries has been rudely shaken by the requirements of the modern age and that the old principles of textual Hindu law have been fundamentally modified or altered in many respects by judicial decisions and various legislative Acts. Hindu society has tremendously progressed in tune with the spirit of modern times and our concepts regarding the status of woman have radically changed not only in the domain of law but also in the body politic. It is, therefore, improper and unjustifiable to say that a woman is inherently incompetent to be the manager of a joint family because there are some obsolete and antediluvian texts which contain disparaging remarks about woman, in total disregard of the needs of modern society and the vast changes in Hindu law.

7. There is nothing to prevent a female from being the manager of a religious endowment though she cannot perform any spiritual functions. Vide *Janoki Debi v. Gopal Acharjia Goswami*[2] *Srimati Janoki Debi v. Sri Gopal Acharjia* [3]and *Keshavbhai v. Bhagirthi Bai*[4] If a female can act as the manager of a religious endowment in which she has no personal interest, there is apparently :no reason why she cannot act as the manager of. a joint family estate in which she has admittedly a, personal interest.

8. It is beyond question that the status of a Hindu woman has been materially changed by the Hindu Women's Eights to Property Act. If a coparcener gets interest in the joint family property by birth, she gets interest by marriage. She has as much right to enforce a partition of her share as a coparcener has and, except for the right of survivorship, her position is practically analogous to that of the coparcener. No doubt the interest that she gets is a widow's estate, but in the matter of management of that estate she has the same rights and is subject to the same disabilities as the managing coparcener of a joint Hindu family. In this respect their positions are in parimaterial according to the principles laid down by the judicial Committee in the well known case of *Hunooman Pershad Panday v. Mt. Babooee Munraj Koonweree*[5]

9. According to the Dayabhaga law, the foundation of a coparcenary is first laid on the death of the father. The property of the deceased, separate as well as ancestral, is inherited by his male heirs as coparcenary property and is held by them as coparceners. On the death of any one of the coparceners, his heirs succeed to his share in the coparcenary property and they become members of the coparcenary. Such heirs, in default of male issue, may be his widow or widows or his daughter or daughters. These too, though females, get into the coparcenary, representing the share of their husband or father as the case may be. A coparcenary under the Dayabhaga law may thus consist of males as well as females. (Vide Mulla's Principles of Hindu Law, 10th Edn.,

Para. 277, page 338). It is, therefore, obvious that under the Dayabhaga law a widow becomes a coparcener with male coparcener and she can consequently become the karta of the coparcenary or the joint family, although she or any other coparcener does not possess the right of survivorship, particularly if she is the only member sui juris left in the family.

[2]9 Cal. 766

[3]10 IA 32 9 Cal. 766 P.C

[4]3 Bom. HCAC 75

[5]6 M.I.A. 393

10. It is true that under the Mitakshara law, no female can be a coparcener with male coparceners, presumably because she does not possess the right to take by survivorship, but we do not think that either this right or the status of a coparcener is a sine qua non of competency to become the manager of a joint Hindu family of which she is admittedly a member.

11. So far as this province is concerned, the matter has been settled by judicial authorities. It has been laid down by a Pull Bench of the late Judicial Commissioner's Court in the case of *Keshao Bharati v. Jagannath*[6] that any adult member of the family, male or female, is entitled of right to be the manager of a joint Hindu family. This decision was relied upon by Puranik J. in the case of *Pandurang Dahke v. Pandurang Gorle* [7]and it has been held by the learned Judge that mother can be the manager of a Hindu family. This view has also been laid down by a Division Bench of this Court in *Sadasheo v. Thakur Halaksingh*[8] In Para. 8 of the judgment the learned Judges have observed as under:

> He left a widow and three minor sons. In the absence of any adult male member in the family the mother was the manager of the family and acted as such. It is in that capacity that she incurred debts for the benefit of the family....Inasmuch as the mother Sukhrani was the manager of the family consisting of herself and her minor sons she was entitled to raise money for family purposes and for the benefit of the estate whenever required.

12. We feel, therefore, no hesitation in stating that Mst. Kesar Bai is the karta of the joint family consisting of herself and her two minor sons, and we answer the question in the affirmative. In this view of the case we direct the applicant to pay all the costs of the reference.

[6] AIR (13) 1926 Nag. 81 (FB)

[7] AIR (34) 1947 Nag. 178,

[8] F.A. No. 66 of 1940, D/ 15.10-1945