Municipal Committee Tarn Taran
v.
The State of Punjab and others

Pandit, J.

are the minimum wages that were fixed by the Government. The petitioner-Committee had not paid them those wages and, as a matter of fact, had given them less. The Tribunal had directed the Committee to pay them only the difference between the minimum wages fixed by the Government and those which had actually been paid to them by the Committee. It is undisputed that the determination of the question regarding the financial capacity of the employer has not to be taken into consideration, when only minimum wages have to be given to the employees (see in this connection the Supreme Court decision in *Express Newspapers (Private) Limited and others* v. *The Union of India and others* (6). This contention also is, thus, without any force.

As regards the last contention, learned counsel for the workmen concedes that the award does not specify the names of the Moharrirs, who had to be paid for the weekly rests and the amounts to which they were entitled. It is undisputed that the award of a Tribunal, which is treated like a decree of a Civil Court, has to be precise in all particulars, so that no difficulty is experienced by the parties thereto and the persons, who have to execute the same. Learned counsel for the respondents, therefore, suggests that the award may be sent back to the learned Tribunal for clarification in this respect under Article 227 of the Constitution. Learned counsel for the petitioner has also no objection to this course being adopted.

In view of what has been said above, I would accept this writ petition to this extent only that the impugned award be remitted to the learned Industrial Tribunal for making the necessary clarification, as mentioned above. The petition in other respects, however, fails. There would be no order as to costs.

Dua, J.

INDER DEV DUA, J.—I agree.

B.R.T.

ESTATE DUTY REFERENCE

Before Inder Dev Dua and Prem Chand Pandit, JJ.

PURSHOTAMDASS AND OTHERS,—*Appellants.*

versus

THE CONTROLLER OF ESTATE DUTY DELHI,—*Respondent.*

Estate Duty Reference No. 1 of 1964.

1965

November, 2nd

Estate Duty Act (XXXIV of 1953)—S. 7—Joint family disrupted—Sons taking their share and separating after writing a release-deed in favour of their father and mother—Mother not separating but continuing to live with her husband—Father, after disruption

(6) A.I.R. 1958 S.C. 578.

of joint family, continued to do business as individual—Interest of father in business assets passing on his death—Whether entire business or one-half of it.

Held, that before the release deed was executed by the sons, Kanhya Lal constituted a joint Hindu family along with his three sons and his wife and the entire property belonged to this joint Hindu family. When the release-deed was executed, there was disruption of this joint Hindu family and the three sons separated therefrom after getting Rs. 10,000 each and they had no connection with the remaining property thereafter. Shrimati Kushal Devi was also entitled to receive Rs. 10,000 like her sons, and get separated from the family. Admittedly, she was not a co-parcner in the joint Hindu family and as such herself could not claim partition. But when the partition took place between her husband and her sons, she was entitled to receive a share equal to that of a son and hold and enjoy the same separately even from her husband. She, however, did not like to do that and preferred to remain with her husband. This share was being given to her in lieu of her maintenance. She, however, chose to give up this right and instead remained joint with her husband, who was then bound to maintain her and, as a matter of fact, he did maintain her till his death in April, 1956. The result was that Kanhya Lal became the sole owner of the entire property and could dispose it of. It is not correct to say that after the release-deed was executed, Shrimati Kushal Devi became either a co-owner or a tenant-in-common with her husband or that the subsequent acquisitions made by Kanhya Lal were with the joint funds belonging to him and his wife. Under these circumstances, it cannot be said that at the time of the death of Kanhya Lal, his wife, Shrimati Kushal Devi, was the owner of one-half of the estate left by him. If Kanhya Lal and his wife had been joint owners, then after the execution of the release-deed, Kanhya Lal should not have been assessed to income-tax in the status of an "individual", as, admittedly, he was so assessed till his death and no objection of any kind was filed by his wife. It has not been proved by the petitioners that in the returns filed by Kanhya Lal, he had shown his wife as a separate owner of the property and her income was also shown separately. There is nothing on the record to show that any agreement of partnership was executed between the husband and wife after the release-deed and what was their share of the profits and losses in the business. No accounts have been produced to the effect that their income from the business was being shown separately. Consequently, the Authorities under the Act were right in holding that Kanhya Lal was competent to dispose of the entire property left by him at the time of his death.

Reference under Section 64(1) *of the Estate Duty Act,* 1953 *as amended in* 1958 in the matter of the Estate of Shri Kanhya Lal, *deceased.*

B. R. TULI, SENIOR ADVOCATE, WITH SUSHIL MALHOTRA, AND S. K. TULI, ADVOCATES, for the Petitioners.

D. N. AWASTHY, WITH H. R. MAHAJAN, ADVOCATES, for the Respondent.

ORDER

PANDIT, J.—One Kanhya Lal, along with his three sons originally constituted a Hindu undivided family. Till the assessment year 1945-46, this family was being assessed to income-tax as such and was carrying on the money-lending and cloth business in the name of Kahan Chand-Kanhya Lal and Kanhya Lal Mehra. They possessed properties both movable and immovable. On 7th August, 1944, Kanhya Lal (the *karta* of this family), with the consent of his sons and wife Shrimati Kushal Devi, executed a *farkhati nama* (release deed) under which the three sons, after getting Rs. 10,000 each, gave up their entire rights in the said joint family property and separated from the family. After that Kanhya Lal continued carrying on the money-lending as well as the cloth business, while the sons started their separate businesses. On the basis of the release-deed, it was claimed before the Income-tax Authorities under section 25-A of the Income-tax Act, 1922, that a partition had taken place amongst the members of the family and on 19th December, 1945, the Income-tax Officer passed an order under this section to that effect. Thereafter, Kanhya Lal was assessed to income-tax in the status of an individual till his death which occurred on 10th April, 1956. On his death, proceedings with regard to the imposition and recovery of the estate duty under the Estate Duty Act, 1953 (hereinafter referred to as the Act) started and his sons and the widow, who were the accountable persons, contended before the Assistant Controller of Estate Duty, Amritsar, that the capital in the business of the deceased did not belong solely to him, but represented the joint property of the deceased and his wife, Shrimati Kushal Devi. Their case was that at the time of the execution of the release-deed, which resulted in the disruption of the family, the sons had received their shares in the joint family property, but the remaining property was jointly owned by the deceased and his wife. This state of affairs continued till Kanhya Lal died. At the time of the partition, Shrimati Kushal Devi had rights in the joint family property equal to that of a son. She did not get her share separated, but preferred to remain joint with her husband. It was, consequently, urged that only one-half share in the capital could be termed as constituting the estate of the deceased. They also stated that when the release-deed was executed, only the movable belonging to the joint family were divided, while the

Pandit, J.

Purshotamdass and others
v.
The Controller of Estate Duty Delhi

Pandit, J.

immovable property was kept joint. As a result, Kanhya Lal had only one-fifth share in the house property, which belonged to the Hindu undivided family consisting of the deceased, his wife and the three sons. By his order, dated 5th March, 1959 the Assistant Controller held that the release-deed effected a complete partition of the joint Hindu family; that this partition was admitted to be so by the deceased and his sons, with the result that an order under section 25-A of the Income-tax Act, 1922, had been passed; that the three sons went out of the family after taking Rs. 10,000 each and thereafter they had no connection with the family or its property; that the immovable property fell to the share of the deceased along with his wife; that after the partition Kanhya Lal was being assessed to income-tax as an "individual" and he took care to see that he was assessed in that status that at the time of the execution of the release-deed, Shrimati Kushal Devi had a right to receive a sum of Rs. 10,000 if she had decided to separate, but she had surrendered her share voluntarily and remained joint with her husband; and that after 7th August, 1944 there was no joint Hindu family as such, because there was no other person, who could claim partition and the deceased was the sole co-parcener of the erstwhile Hindu family with the result that the entire estate belonged to him. On these findings, the Assistant Controller completed the estate duty assessment taking the status of the deceased as an "individual". The value of his estate was fixed at Rs. 3,17,146 net and the estate duty payable thereon was assessed at Rs. 23,821.90 paise.

Aggrieved by this decision, the sons and the widow of the deceased filed an appeal before the Central Board of Revenue (hereinafter referred to as the Board) under section 63 of the Act. Their principal objection was against the determination of the status of the deceased as an "individual". It was claimed that he had only a half-share in the property left by him and it was only this half which was liable to the payment of the estate duty. According to them, even after the execution of the release-deed, the deceased and his wife continued to constitute a joint family, the wife having a half share in its assets. The Board,—*vide* their order, dated 28th August, 1960, dismissed the appeal and confirmed all the findings of the Assistant Controller. They held that since the deceased had no other male issue till the time of his

death, he had full power of disposal over his property, even if it was joint family property. According to the Board, on the death of a sole co-parcener, like the deceased, the entire property passed as property in the disposing power of the deceased and section 7 of the Act did not come into the picture at all.

Thereafter, the sons and the widow of the deceased made an application under section 64(1) of the Act before the Board for referring to this Court the questions of law arising out of their order. The Board, however, came to the conclusion that only the following question of law arose and referred the same for the opinion of this Court:—

> "Whether on the facts and in the circumstances of the case, the Board was correct in holding that the entire property included in the estate of the deceased passed on his death as property which the deceased at the time of his death was competent to dispose of?"

That is how the matter has come before us.

Learned counsel for the petitioners submitted that both the Assistant Controller and the Board had made an error of law in holding that Kanhya Lal deceased was the owner of the entire property and he was competent to dispose of the same at the time of his death. According to him, when the release-deed was executed, Shrimati Kushal Devi was entitled to receive Rs. 10,000 as her share in the joint family property like her sons, but instead of receiving the same, she allowed this money to be used by her husband with whom she remained joint. Thereafter, both of them became co-owners or tenants-in-common. The subsequent acquisitions made by Kanhya Lal were with the joint funds belonging to him and his wife. At the time of the death of Kanhya Lal, therefore, his wife was the owner of one-half in the entire property, which the deceased was not empowered to dispose of. Under these circumstances, the estate duty could have been charged only on the remaining half of the property which exclusively belonged to the deceased. In support of his contention, the learned counsel placed reliance on the four decisons, namely, *Nanuram Aiden Maheshri and*

Purshotamdass and others
v.
The Controller of Estate Duty Delhi

Pandit, J.

others v. *Radhabai and others* (1), *R.B.S.S. Munnalal and others* v. *S. S. Rajkumar and others* (2), *Sheodhar Parshad Singh* v. *Jagdhar Parsad Singh and others* (3), *and Hira Singh* v. *Mt. Manglan and another* (4). In any case, he submitted that the Board should have deducted Rs. 10,000 together with interest thereon, which was, admittedly, the share of Shrimati Kushal Devi in the joint family property when valuing the estate left by Kanhya Lal deceased.

It is admitted that before the release-deed was executed on 7th August, 1944, Kanhya Lal constituted a joint Hindu family along with his three sons and his wife and the entire property belonged to this joint Hindu family. When the release-deed was executed, there was disruption of this joint Hindu family and the three sons separated therefrom after getting Rs. 10,000 each and they had no connection with the remaining property thereafter. Shrimati Kushal Devi was also entitled to receive Rs. 10,000, like her sons, and get separated from the family. Admittedly, she was not a co-parcener in the joint Hindu family and as such herself could not claim partition. But when the partition took place between her husband and her sons, she was entitled to receive a share equal to that of a son and hold and enjoy the same separately even from her husband (*vide* Para 315 of Mulla' Hindu Law, 12th Edition). She, however, did not like to do that and preferred to remain with her husband. This share was being given to her in lieu of her maintenance. She, however, chose to give up this right and instead remained joint with her husband, who was then bound to maintain her and, as a matter of fact, he did maintain her till his death in April, 1956. The result was that Kanhya Lal became the sole owner of the entire property and could dispose it of. It is not correct to say that after the release-deed was executed Shrimati Kushal Devi became either a co-owner or a tenant-in-common with her husband or that the subsequent acquisitions made by Kanhya Lal were with the joint funds belonging to him and his wife. Under these circumstances, it cannot be said that at the time of the death of Kanhya Lal, his wife, Shrimati Kushal Devi, was the owner of one-half

(1) A.I.R. 1940 Nag. 241.
(2) A.I.R. 1962 S.C. 1493.
(3) A.I.R. 1964 Patna 316.
(4) A.I.R. 1928 Lahore 122.

of the estate left by him. If Kanhya Lal and his wife had been joint owners, then after the execution of the release-deed, Kanhya Lal should not have been assessed to income-tax in the status of an "individual", as, admittedly, he was so assessed till his death and no objection of any kind was filed by his wife. It has not been proved by the petitioners that in the returns filed by Kanhya Lal, he had shown his wife as a separate owner of the property and her income was also shown separately. There is nothing on the record to show that any agreement of partnership was executed between the husband and wife after the release-deed and what was their share of the profits and losses in the business. No accounts have been produced to the effect that their income from the business was being shown separately. Consequently, the Authorities under the Act were right in holding that Kanhya Lal was competent to dispose of the entire property left by him at the time of his death.

Coming to the authorities cited by the learned counsel for the petitioners, in *Nanuram Aiden Maheshri's case*, one Kisan Shende had two wives. He had a son by each wife. A partition took place between him, his wives and his sons and the property was divided into five shares. Each of the sons took his one-third share and enjoyed it separately. The wives also received one-fifth share each in lieu of maintenance, but they continued to live with their husbands. Their shares, however, were not separated by metes and bounds from their husband's share. The husband died some time later. Before his death, however, he had disposed of some of the property, a portion of which had fallen to the share of his wives. After the death of their husband, the widows brought a suit for joint possession of the property thus alienated against the alienees. Their contention was that they were holding the property as tenants-in-common with the husband and he could not dispose of their share without their consent. Their contention was upheld and the suit was decreed. It was found that after the partition, the husband and the wives were holding the property as tenants-in-common, as there was no co-parcenary property remaining with them. In these circumstances, Grille J. held that the alienations made by the husband were not made by him as a Manager and the property, which had fallen to the share of the husband and the wives, was held by them as tenants-in-common. He further observed that it was an

Purshotamdass and others
v.
The Controller of Estate Duty Delhi

Pandit, J.

elementary principle that no tenant-in-common could deal with the rights of his co-tenant in the matter of alienations without that co-tenant's express authority. He also held that in the case of partition amongst the father, his sons and their mothers, where the sons separated their shares by metes and bounds, the mothers were entitled to their shares as soon as the aforesaid division by metes and bounds took place and the fact that they did not divide their shares by metes and bounds *inter se* or from the share of their husband was immaterial. This decision can be of no assistance to the petitioners, because therein the wives had actually received their share in the joint property at the time of partition, although there was no division by metes and bounds and, according to the learned Judge, therefore, they all separated although the wives continued to live with their husband. In the instant case, however, Smt. Kushal Devi did not take Rs. 10,000, which was her share in the joint property and she did not separate from her husband, but continued residing with him, who went on maintaining her till his death.

In *R.B.S.S. Munnalal and other's case,* it was held by the Supreme Court.—

> "The share of a Jain widow, declared by preliminary decree passed in a suit for partition of joint family property before the commencement of the Act, is a share 'possessed' by her within the meaning of section 14 of the Act, which applies also to Jains and if the widow dies before actual division of the estate, the interest declared in her favour devolves upon her son to the exclusion of her grandson.
>
> By section 14(1) of the Act, the interest of a Hindu female, which under the Sastric Hindu law would have been regarded as a limited interest, is converted into an absolute interest. The Explanation to section 14(1) also gives to the expression 'property' the widest connotation, so as to include the share declared by a preliminary decree for partition in favour of a Hindu female. The rule that till actual division of the share by partition of the joint family estate, a Hindu female cannot be recognised as owner cannot

apply after the enactment of the Hindu Succession Act which supersedes the rules of Hindu law in all matters expressly provided for in the Act."

This proposition of law does not advance the case of the petitioners in any way, inasmuch as Shrimati Kushal Devi did not take her share in the joint family property at the time when the release-deed was executed.

In *Sheodhar Parsad Singh's case,* all that was held by a learned Single Judge of that Court was that though a wife herself could not demand a partition, if a partition took place between her husband and his sons, she was entitled to receive a share equal to that of a son and hold and enjoy that share separately even from her husband. In case partition took place before the commencement of the Hindu Succession Act, the wife held the share as a property inherited by a woman, but after the commencement of the Act, she became an absolute owner of her share. Where the husband, after such partition, made a gift, the same operated in respect of his exclusive share in the property. This decision again can be of no help to the petitioners. Smt. Kushal Devi was, of course, entitled to receive a share equal to that of her sons and hold and enjoy that share separately even from her husband. But in the present case, she never availed of this right, but instead gave it up and remained joint with her husband and preferred to be maintained by him.

In *Hira Singh's case,* it was held as under :

"Where a *farigkhati* executed by a member of joint Hindu family states in clear terms that the defined shares in the whole joint family property have been allotted to the co-parceners and also gives them the liberty either to live together or to separate their own shares, the effect of the deed is to cause a separation in estate and interest between all the coparceners, the clause giving the parties the option of being joint or separate is not inconsistent with a separation in estate. The remaining members, though living together, are in reality holding their shares in the eye of the law separately."

Purshotamdass and others
v.
The Controller of Estate Duty Delhi

Pandit, J.

This authority is clearly distinguishable on facts and, as such, has no application to the instant case.

As regards the contention that the Board should have deducted Rs. 10,000 together with interest thereon, which was the share of Smt. Kushal Devi, from the value of the property left by Kanhya Lal, there is no merit in the same. In the first place, this question has not been referred to this Court. Secondly, it was not even mentioned in the application made by the petitioners under section 64(1) of the Act. Thirdly, as already held by me above, Smt. Kushal Devi had given up her right to receive Rs. 10,000 at the time of partition and decided to remain joint with her husband and chose to be maintained by him.

In view of what I have said above, I would answer the question referred to us in the affirmative. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court.

Dua, J.

INDER DEV DUA, J.—I agree.

B. R. T.

REVISIONAL CRIMINAL

Before Shamsher Bahadur, J.

BHAGWAN SINGH,—*Petitioner.*

versus

MST. GURNAM KAUR AND ANOTHER,—*Respondents.*

Criminal Revision No. 116 of 1964.

Code of Criminal Procedure (V of 1898)—S. 488—Petition for maintenance dismissed for default—Whether can be restored by the Court.

1965

November, 3rd

Held, that there is no provision in the Code of Criminal Procedure which empowers the Magistrate to restore for hearing an application which has been dismissed in default by him. In the absence of any such provision in the Code itself, the power of restoration cannot be spelled out from the general provisions.

Case reported under Section 438 of the Criminal Procedure Code, by Shri Surinder Singh, Ist Additional Sessions Judge, Ludhiana, with his letter No. 178/R12 dated 1st September, 1964, for revision of the second order of Shri Joginder Pal Singh Puri,