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by the subordinate transport authorities in a manner which is far from commendable or even satisfactory. This has enabled the petitioner to raise some hyper-technical grounds in these proceedings questioning its consideration by the final revisional authority under the Motor Vehicles Act. Such bare technicalities do not, in my view, merit any serious consideration by this Court as they are designed and calculated to shut out determination by the highest departmental authority, of the proprietory of the orders passed by the inferior tribunals. On the facts and circumstances of the instant case there does not appear to be any failure of justice and interference under Article 226 of the Constitution is, in my opinion, not called for.

For the reasons given above, this writ petition fails and is hereby dismissed with costs.

B.R.T.

INCOME-TAX REFERENCE.

Before A. N. Bhandari, C. J., and Bishan Narain, J.

BHAGWANT SINGH,—*Petitioner.*

versus

COMMISSIONER OF INCOME-TAX,—*Respondent.*

Income-tax Reference Case No. 9 of 1956.

1959

May, 28th

Income-tax Act (XI of 1922)—Karta of a joint Hindu family investing funds of the family in a firm to become partner therein—Salary drawn as such partner—Whether his personal income or the income of joint Hindu family—Partnership—Nature and ingredients of—Partners—Position of, vis-a-vis each other—Indian Partnership Act (IX

of 1932)—Section 13—Agreement to receive salary by partner—Effect of.

Held, that where a member of a joint Hindu family invested a part of the joint family funds in a firm to become a partner therein and earned salary as a partner of that firm, the salary earned by him became the income of the joint family and not his personal income as the investment of family funds in the partnership business and the salary earned therefrom were related to each other as cause and effect. The right to draw salary was made possible by the use of joint family funds which enabled him to become a partner and to claim remuneration for the services rendered by him. In other words, his right to draw salary flowed directly from the joint family funds. Any assistance from the joint estate, however, indirect and inconsiderable, is a detriment to the estate.

Held, that a partnership is an agreement between two or more persons to place their capital, labour and skill, or some or all of them for the purpose of carrying on a joint business for their common benefit and dividing its profits in certain proportions. The privilege of profit sharing imposes on each partner the obligation to advance the interests of the partnership business, to apply his time and attention to the management of its affairs, and to devote his knowledge, skill and ability to the success of the enterprise.

Held, that in the absence of a stipulation to the contrary, a partner is entitled to nothing extra for any inequality of services rendered by him as compared with those rendered by his co-partners. Unequal services are presumed to have been rendered without expectation of reward. But though the Courts will not endeavour to assess the relative value of the services performed by the several partners, there is nothing to prevent the partners themselves from entering into an agreement as to what compensation, if any, should be paid to each partner for the services rendered by him or from adjusting the respective equities as between themselves. The general rule denying any remuneration to a partner for services rendered by him to the partnership does not prevail when there is an agreement for such compensation.

Held, that a stipulation that an active partner shall receive a fixed salary is by no means uncommon in partnership agreements. When a partnership agreement recites that one of the partners will receive a salary for the services rendered by him to the partnership business, the contract is regarded as a contract of partnership and is not designated as a contract of service. An agreement to share both profits and losses in addition to a salary points to the existence of a partnership and an agreement to share profits only in addition to a salary indicates the relationship of master and servant or principal and agent.

Reference under Section 66(1) of the Indian Income-Tax Act XI of 1922 by the Income-Tax Appellate Tribunal, Delhi.

A. N. KIRPAL AND J. L. BHATIA, for Petitioner.

K. N. RAJGOPAL SASTRI AND G. R. CHOPRA, for Respondent.

JUDGMENT

BHANDARI, C.J.—This is a reference under section 66 of the Indian Income-Tax Act.

Bhandari, C. J.

Sir Sobha Singh and his four sons, S. Bhagwant Singh, S. Khushwant Singh, Major Gurbakhsh Singh and S. Daljit Singh, were members of a Hindu undivided family up to the 31st March, 1947, when by mutual consent they became divided in status *inter se* and agreed to divide their joint family properties. As the total assets of the Hindu undivided family valued at Rs. 45,36,756 and as the debts outstanding against the said Hindu undivided family aggregated to Rs. 17,32,391-11-6 and as the net value after deducting the total liabilities from the total assets was Rs. 28,04,364 it was agreed that Sir Sobha Singh shall be separate owner of property of the value of Rs. 5,64,364 and that each of his four sons shall be se parate owner of property of the value of Rs. 5,60,000 . The

property which fell to the share of S. Bhagwant Singh was as follows:—

		Rs.
(1) Half-share in Regal Building valued at	...	8,00,000
(2) Kothi No. 7. Prithviraj Road, New Delhi, value at	...	1,40,000
Total	...	9,40,000
Less debts to be paid by him falling to his share amounting to	...	3,80,000
Net value falling to his share	...	5,60,000

A formal deed of partition relating to the movable and immovable properties, securities, assets and liabilities was executed on the 9th June, 1947.

In November, 1947, S. Bhagwant Singh sold the property known as No. 7, Prithviraj Road, New Delhi, for a sum of Rs. 6,00,000, and invested a part of the proceeds thereof (over Rs. 1,50,000) as his capital contribution in a new partnership concern known as Sir Sobha Singh and Company (Builders), Nagpur, which was constituted on the 11th December, 1947. He was to have a 6 annas share in the partnership business and was to be paid a sum of Rs. 1,500 per mensem as his remuneration.

On the 31st August, 1951, S. Bhagwant Singh filed two returns, one in the capacity of an individual declaring his share of income from the firm Sir Sobha Singh and Company, Nagpur, at Rs. 31,348, and another in the status of Hindu undivided family on an income of Rs. 23,455-7-0. On the 25th February, 1953, he filed a revised return for the Hindu undivided family status on an income of Rs. 39,470. He stated that when he was

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separated from the bigger Hindu undivided family on the 31st March, 1947, he was given the family property known as 7. Prithviraj Road, as his exclusive share in lieu of the services rendered by him and that as such this property did not form part of the property which had fallen to his share on partition. He stated that income from this property was his personal income and consequently that his share of income from the Nagpur firm from the investment from his personal capital should be treated as his personal income and separate from his Hindu undivided family income. He accordingly claimed the income of his share from the firm at Nagpur as his individual income and objected to this income being clubbed with his Hindu undivided family income. The Income-Tax Officer was unable to accept this contention, for he was of the opinion that S. Bhagwant Singh did not get the property in question for the services rendered by him but got it as his share in the Hindu undivided family property like his other brothers and consequently that it could not be treated as his personal acquisition. The two returns were, therefore, treated as a single return and the status of the assessee was taken as that of Hindu undivided family. The order of the Income-Tax Officer was upheld by the Appellate Assistant Commissioner. On further appeal the Appellate Tribunal came to the conclusion that for the purpose of entering into the partnership at Nagpur, S. Bhagwant Singh had utilised family funds, that his income from the partnership business could not be regarded as other than joint family income, and that the salary of Rs. 1,500 per mensem which he received from the firm and which was doubtless earned with the aid of family funds could not be treated as his self-acquired property. At the request of S. Bhagwant Singh the

Tribunal has referred the following questions to this Court, namely :—

(1) Whether on the facts and in the circumstances OF THE CASE the further sum of Rs. 1,40,000 given to S. Bhagwant Singh by his father on the partition of the family property belonged to S. Bhagwant Singh in his individual capacity ?

(2) Whether on the facts and in the circumstances of this case the share of S. Bhagwant Singh in the profits of the firm styled as Sir Sobha Singh and Company (Builders), Nagpur, belonged to S. Bhagwant Singh in his individual capacity ?

(3) Whether on the facts and in the circumstances of this case the salary of Rs. 1,500 per mensem received by S. Bhagwant Singh from the firm styled as Sir Sobha Singh and Company (Builders), Nagpur, was the income of S. Bhagwant Singh in his individual capacity ?

The Commissioner of Income-Tax suggested that Question No. 1 may be reframed as follows :—

"Whether on the facts and in the circumstances of the case the House No. 7, Prithiraj Road, then valued Rs. 1,40,000 and alleged to have been given to S. Bhagwant Singh by his father as an extra share on the partition of the family property, belonged to S. Bhagwant Singh in his individual capacity?

The Tribunal did not consider it necessary to reframe Question No. 1 on the lines indicated by the Commissioner of Income-Tax.

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The circumstances in which the property known as 7, Prithviraj Road (valued at Rs. 1,40,000 in the partition deed), is alleged to have been given to S. Bhagwant Singh, may now be stated. These circumstances appear in a letter, dated the 30th April, 1953, which was addressed by Sir Sobha Singh to the Income-Tax Officer during the course of the assessment proceedings. The letter is in the following terms :—

"Subject Claim of S. Bhagwant Singh that the property known as 7, Prithviraj Road, was given to him in lieu of services rendered by him to the family.

Dear Sir,

In connection with the above, I have pleasure to confirm that after the division of the family assets was agreed upon between the family members, S. Bhagwant Singh my eldest son, represented to me that he should be given an extra share for the contribution made by him to the common pool by working with me for a period of nearly twenty years. I accepted his claim and thereupon decided that he should be given the property known as 7, Prithviraj Road, in lieu of services rendered by him. To give effect to this decision I credited him with the sum of Rs. 1,40,000 in the books of Messrs Sujan Singh-Sobha Singh and debited to the account of Messrs Sujan Singh-Sobha Singh. Unfortunately, the necessary correction, in the partition deed consequent upon the change made by me on the representation of S. Bhagwant Singh

was not made. The deed, therefore, was registered in the original form but the entry made by me in the books of Messers Sujan Singh-Sobha Singh was given effect to by me and by S. Bhagwant Singh during the last several years. I, therefore, affirm that the claim made by S. Bhagwant Singh is true and correct and is not an after-thought. It is needless to add that I was the *karta* of the family till 31st March, 1947, after which date came the division of assets between myself and my four sons."

This communication makes it quite clear that S. Bhagwant Singh was given the property known as 7, Prithviraj Road, in lieu of the services rendered by him and that a sum of Rs. 1,40,000 was credited to his account in the books of Messrs Sujan Singh-Sobha Singh.

The first question of law, therefore, which arises for decision is whether on the facts and in the circumstances of this case the House No. 7, Prithviraj Road, then valued Rs. 1,40,000 and alleged to have been given to S. Bhagwant Singh by his father as an extra share on partition of the family, belonged to S. Bhagwant Singh in his individual capacity. I shall proceed to answer this question.

A number of circumstances militate against the assertion that Sir Sobha Singh transferred the Prithviraj Road house to S. Bhagwant Singh in his individual capacity either for services rendered to the family or for some other reasons. In the first place, the family of which Sir Sobha Singh was the *karta* disrupted on or before the 31st March, 1947, and the entire property belonging to the joint

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family was distributed among the several coparceners. If Sir Sobha Singh ceased to be *Karta* of the joint Hindu family by reason of this partition and if the property of the joint family came to vest in the several coparceners on the 31st March, 1947, he had no power after that date to transfer the Prithviraj Road house to S. Bhagwant Singh without the consent of the sons of S. Bhagwant Singh and without payment of any compensation to the family which was deprived of property of the value of Rs. 6,00,000. Secondly, Sir Sobha Singh had no power to transfer this property to S. Bhagwant Singh by way of gift, for under the Hindu law a father has no power of making a gift, of immovable property except for pious purposes. Even gifts of ancestral movable property can be made within reasonable limits. Thirdly, it is significant that although the house was actually sold for a sum of Rs. 6,00,000, Sir Sobha Singh gave a credit only of Rs. 1,40,000 to S. Bhagwant Singh, indicating thereby that the gift, if any, was not of the house but of a sum of Rs. 1,40,000. Fourthly, it will be noticed that the deed of partition which was executed on the 9th June, 1947, contains no mention of the gift of this property to S. Bhagwant Singh. These obvious difficulties compelled S. Bhagwant Singh to take up somewhat different and inconsistent pleas before different tribunals. His case before the Income-Tax Officer and later before the Appellate Tribunal was that the Kothi was given to him as a personal gift. He was unable, however, to maintain this stand, and Mr. Kirpal who represented him in this Court was constrained to admit that what was gifted to his client was not a Kothi but a sum of Rs. 1,40,000. He endeavoured to bolster up the stand by putting up an argument which is as ingenious as it is far-fetched. Instead of making a straight-forward admission that when Sir Sobha Singh gifted a sum

of Rs. 1,40,000 to him, S. Bhagwant Singh became a creditor of the firm Sujan Singh-Sobha Singh in this sum, Mr. Kirpal put forward a somewhat longwinded submission. He contended that as soon as the gift of Rs. 1,40,000 was made to S. Bhagwant Singh the debts due by the joint family headed by S. Bhagwant Singh were reduced by a corresponding figure, that S. Bhagwant Singh became a creditor of the said family to the extent of Rs. 1,40,000, that he recovered this sum by the sale of the Prithviraj Road house, that he invested this sum in the partnership business at Nagpur and consequently that this sum of Rs. 1,40,000 belonged to him in his individual capacity. This contention appears to me to be wholly untenable for the reason already given, namely, that when Sir Sobha Singh made a gift of this large sum of money to S. Bhagwant Singh the latter became a creditor of the firm Sujan Singh-Sobha Singh. He did not acquire any right or interest in the property known as 7, Prithviraj Road, New Delhi, which had come to vest in the joint family headed by S. Bhagwant Singh by virtue of the partition agreement and the subsequent deed of partition. The question whether this house belonged to S. Bhagwant Singh in his individual capacity must, therefore, be answered in the negative.

The second question is whether on the facts and in the circumstances of this case the share of S. Bhagwant Singh in the profits of the firm styled as Sir Sobha Singh and Company (Builders), Nagpur, belong to S. Bhagwant Singh in his individual capacity ? This question must also be answered in favour of the Department. It is common ground that S. Bhagwant Singh sold the Prithviraj Road house for a sum of Rs. 6,00,000 and invested a sum of Rs. 1,50,000 from the proceeds of

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this house in the partnership concern at Nagpur. If the money which was invested in the firm at Nagpur was the property of the joint family headed by S. Bhagwant Singh, it is obvious that the share of S. Bhagwant Singh in the profits of the firm could not belong to S. Bhagwant Singh in his individual capacity. It is settled law that the income of a member of a joint family is joint family property if it has been earned at the expense of the joint family property.

This brings me to the consideration of the third question propounded by the Tribunal, namely whether the salary of Rs. 1,500 per mensem received by S. Bhagwant Singh from the firm styled as Sir Sobha Singh and Company (Builders), Nagpur, was the income of S. Bhagwant Singh in his individual Capacity.

Mr. Shastri who appears for the Department contends that the remuneration receiver by S. Bhagwant Singh on account of his salary must be held to be remuneration of the joint family for two reasons. First because the sum of Rs. 1,50,000 which was invested by S. Bhagwant Singh and which enabled him to become a partner of the concern belonged to the joint family, and secondly because the salary of Rs. 1,500 per mensem to which S. Bhagwant Singh was entitled under the agreement of partnership was drawn by him in his capacity as *Katra* of the joint family. He contends that while it is customary for a partnership to adopt a name in which the joint business is conducted, the adoption of firm's name by the partners is not necessary, for a partnership is not a separate legal entity and is not distinct from the members composing it. In the eye of law a partnership consists of the members composing it, the property of the partnership is their property

and debts and liabilities of the partnership are their debts and liabilities. It is accordingly contended on the basis of certain observations in Lindley's Law of Partnership (p. 154) that "a partner may be the debtor or the creditor of his copartners but he cannot be either debtor or creditor of the firm of which he is himself a member, nor can he be employed by his firm, for a man cannot be his own employer". As a partner cannot draw a salary from himself, it is argued, the salary drawn by S. Bhagwant Singh must be deemed to be a part of the profits which fell to the share of the joint family headed by S. Bhagwant Singh. Those profits having been earned at the expense of the joint family must be deemed to be the income of the said family.

This argument appears to be somewhat attractive but it cannot bear a moment's scrutiny. A partnership is an agreement between two or more persons to place their capital, labour and skill, or some or all of them for the purpose of carrying on a joint business for their common benefit and dividing its profits in certain proportions. The privilege of profit sharing imposes on each partner the obligation to advance the interest of the partnership business, to apply his time and attention to the management of its affairs, and to devote his knowledge, skill and ability to the success of the enterprise. He must perform the obligations assumed by him to the extent of his ability for the benefit of the whole without regard to the services of his copartners and without any remuneration for his services other than the share of the profits to which he is entitled under the terms of his contract. In the absence of a stipulation to the contrary, a partner is entitled to nothing extra for any inequality of services rendered by him as compared with those rendered by his copartners. Unequal services are presumed to have been rendered

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without expectation of reward. This conclusion flows from the principle that as each partner is clothed with all the powers of the firm, each is burdened with all the duties of it. While managing the affairs of the partnership business the partner is also attending to his own interest therein as well as to the interest of his partners. Indeed, the very nature of the contract of partnership precludes a Court from embarking upon an investigation whether one of the partners performed duties more onerous than those performed by another, whether one was more skilful or more industrious than another, and whether the labours of one partner were of a more valuable or profitable character than those of another. In *Caldwell* v. *Leiber* (1), Vice -Chancellor Willard made certain observations which are as weighty as they are clear. He said :—

> "Where there is no special agreement to that effect, partners are not entitled to charge each other for their services in the management of the concern ; and the law never undertakes to settle between them their various and unequal services in the transaction of their private affairs. . . . . The attempt would be altogether impraticable. One man may possess advantages over his partner in one respect, which may be made up to the later in the possession of some quality in which the former is deficient. One may have an established reputation in the neighbourhood in which he lives for honesty and fair dealing ; he may be surrounded by numerous and powerful friends ; he may enjoy in an eminent

(1) 7 Paige 483

degree the confidence of his fellow citizens ; he may possess wisdom and sagacity in directing the general management of his affairs. Another, though destitute of some of these advantages, may nevertheless be a valuable partner for his activity in business, his knowledge and skill as an accountant, or his tact as a salesman. These things are all taken into the account by the parties when they form a connection. They deal with each other, in making the bargain, at arm's length, and each trusts to his own wisdom to secure as many of the advantages resulting from the copartnership as he can. A bill in equity could not be sustained by a partner, at the close of the concern, to compel a copartner to make up deficiencies arising from his want of business talent. I apprehend nothing short of a breach of good faith, amounting to fraud, will justify the interference of the Court in estimating the value of a partner's services to the firm."

But though the Courts will not endeavour to assess the relative value of the services performed by the several partners, there is nothing to prevent the partners themselves from entering into an agreement as to what compensation, if any, should be paid to each partner for the services rendered by him or from adjusting the respective equities as between themselves. It follows as a consequence that the general rule denying any remuneration to a partner for services rendered by him to the partnership does not prevail when there is an agreement for such compensation. This agreement may be express or may be fairly implied from the acts of the partners or from the

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course of business between them, or from the circumstances under which extra services are rendered by a partner for which compensation is claimed. If, therefore, a partnership agreement expressly provides that a partner is entitled to receive a specified monthly salary or if such partnership agreement is silent, but an agreement that he shall be paid for his services can be fully and justly implied from the course of business between the partners, he is enabled to recover. The legal position has been summarised in the following passages which appear at page 480 of Lindley's treatise on Partnership. The learned author observes :—

> "Under the ordinary circumstances the contract of partnership excludes any implied contract for payment of services rendered for the firm by any of its members. Consequently in the absence of an agreement to that effect, one partner cannot charge his copartners with any sum for compensation, whether in the shape of salary, commission or otherwise, on account of his own trouble in conducting the partnership business. . . . . And even where the amount of services rendered by the partners is exceedingly unequal, still, if ther is no agreement that their services shall be remunerated, no charge in respect of them can be allowed in taking the partnership accounts."

The principle propounded above has received statutory recognition in India, for section 13 of the Partnership Act makes it quite clear that if the contract so provides, a partner may receive compensation for taking part in the conduct of the partnership business. Indeed a stipulation that an active

partner shall receive a fixed salary is by no means uncommon in partnership agreements. When a partnership agreement recites that one of the partners will receive a salary for the services rendered by him to the partnership business the contract is regarded as a contract of partnership and is not designated as a contract of service. An agreement to share both profits and losses in addition to a salary points to the existence of a partnership and an agreement to share profits only in addition to a salary indicates the relationship of master and servant or principal and agent.

Now, what was the nature of the salary earned by S. Bhagwant Singh in consideration of the services rendered by him to the partnership at Nagpur ? Was it his separate property, as claimed by Mr. Kirpal, or was it the property of the joint family as contended by Mr. Shastri? The Hindu law declares that the income of a member of a joint family is his separte property if it is obtained by his own exertions and without the aid of joint family property. The income of S. Bhagwant Singh was clearly obtained by his own exertions, for clause 6 of the partnership agreement is in the following terms:—

> "6. Party No. 3, Mr. D. R. Bhambari, and Party No. 4, S. Bhagwant Singh, will be the working partners of the partnership. They will devote all their time and attention to the partnership business and will conduct the same honestly, loyally and dilegently. They will be paid a remnueration of Rs. 1,500 per mensem each from the day they now arrive in Nagpur with free residence and conveyance. All these expenses will be chargeable as partnership expenses."

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Mr. Kirpal contends that having regard to the ability and experience of S. Bhagwant Singh, the salary of Rs. 1,500 was not fixed at too high or too unreasonable a figure. It was not to be paid to him whether he rendered any services or not. It was to be paid only if he devoted all his time and attention to the partnership and only for the period that he actually resided at Nagpur. It was not a device to evade payment of income-tax. It was earned in consideration of his personal qualifications and in consideration of the services rendered by him to the partnership. He contends further that no joint family property was spent in earning this salary, that the joint family continued to obtain its legitimate share from the income of the partnership, and that there was no detriment to the joint family property. In somewhat similar circumstances, it is argued, the Courts have held that the remuneration paid to a member of a joint family was his personal income and not the income of the joint family. [*Sirdar Bahadur Indra Singh* v. *Commissioner of Income-Tax, Bihar and Orissa* (1) ; *Jitumal Chamanlal* v. *Commissioner of Income-Tax, Punjab* (2) ; *Commissioner of Income-tax, Bihar and Orissa* v. *Jainarain Jagannath* (3); *Commissioner of Income-Tax, Bihar and Orissa* v. *Darsanram and others* (4); *Commissioner of Income-Tax, Madras* v. *S. N. N. Sankaralinga Iyer* (5); *Knightsdale Estates* v. *Commissioner of Income-tax, Madras* (6), *and Kalu Babu Lalchand* v. *Commissioner of Income-Tax West Bengal* (7).] It is accordingly submitted that the income of Rs. 1,500 per mensem claimed by S. Bhagwant Singh was earned by him by his own exertions and without

(1) 11 I.T.R. 16
(2) 12 I.T.R. 296
(3) 13 I.T.R. 410
(4) 13 I.T.R. 419
(5) 18 I.T.R. 194
(6) 28 I.T.R. 650
(7) 29 I.T.R. 281

the aid of joint family funds and that this income should be regarded as having been obtained by him in his individual capacity.

I must confess with great regret that this argument does not appeal to me. It loses sight af the fundamental principle of Hindu law that all property acquired by a member of a coparcenary with the aid of joint family property becomes joint property of the family. The answer to the question, therefore, whether a certain acquisition is or is not joint family property turns on the answer to the question whether it was made without detriment to the joint estate or in other words, whether it was acquired without any aid from or detriment to the family fund. The Courts are inclined to the view that any assistance from the joint estate, however, indirect and considerable, is a detriment to the estate. Indeed, they have gone to the length of stating that there is no valid distinction between the direct use of the joint family fund and the use which qualifies the member to make the gains on his own efforts [*Gokul Chand* v. *Hukam Chand* (1), and *Commissioner of Income-tax* v. *Kalu Babu Lal Chand* (2)].

It has been established on the record of this case that S. Bhagwant Singh was a member of a joint Hindu family, that he invested a part of the joint family funds in this partnership, that it was in consequence of this investment that he became a partner in this enterprise, and that it was in consequence of his being a partner that he became entitled to draw his salary.. The investment of family funds in the partnership business and the salary earned by S. Bhagwant Singh are related to each other as cause and effect. The right to

(1) 48 Indian Appeals 162
(2) Civil Appeal No. 431 decided on 15 May, 1959

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draw a salary was made possible by the use of joint family funds which enabled him to become a partner and to claim remuneration for the services rendered by him. In other words, his right to draw salary flowed directly from the joint family funds. This is another way of saying that the income on account of salary was acquired with the aid of joint family property.

For these reasons, I would answer all the three questions propounded by the tribunal in the negative. The Department will be entitled to the costs of this Court and counsels fee which I assess at Rs. 250.

Bishan Narain, J.

BISHAN NARAIN. J.—I agree.

B.R.T.

REVISIONAL CRIMINAL

Before R. P. Khosla, J.

DARBARA SINGH,—*Petitioner.*

versus

KARNAIL KAUR,—*Respondent.*

Criminal Revision No. 1327 of 1958.

1959

May, 29th

Code of Criminal Procedure (V of 1898)—Section 488—Jurisdiction to grant maintenance—When arises—Proviso to Section 488(3)—Second marriage by husband—Whether entitles the first wife to claim maintenance without proof of "neglect" or "refusal" on the part of the husband—"Another wife"—Meaning of—Second wife—Whether entitled to the benefit of the Proviso—Proviso—Whether retrospective.

Held, that the jurisdiction to grant maintenance under Section 488 of the Code of Criminal Procedure, 1898, arises only if the applicant wife in the first instance proves (1) that the husband has sufficient means, and (2) that despite that he has neglected or refused to maintain her.