

Sat Pal Bansal v. Commissioner of Income Tax (S. P. Goyal, J.)

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(4) On consideration of the two decisions of the Supreme Court and the other cases discussed above, we hold that *Jiwan Dass Roshan Lal's case* (supra) was not correctly decided and that the owner of the truck cannot be absolved of his vicarious liability simply because the driver, his employee, carried the deceased as passenger in the truck in contravention of the provisions of rule 4.60 of the Punjab Motor Vehicles Rules, 1940. This reference is answered accordingly and the case sent back to the learned single Judge for disposal on merits.

G. C. Mital, J.—I agree.

S. S. Sodhi, J.—I too concur.

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H.S.B.

FULL BENCH

Before P. C. Jain, C.J., S.P. Goyal and S. S. Kang, JJ.

SAT PAL BANSAL,—Applicant

versus

COMMISSIONER OF INCOME TAX,—Respondent

Income Tax Reference 131 of 1979

August 13, 1986

*Income Tax Act (XLIII of 1961)—Section 171—Assessee a Hindu Undivided Family consisting of a husband as Karta and wife—Assessee claiming benefit of partial partition under Section 171 qua family business capital—Wife or sole surviving co-parcener—Whether entitled to claim partition—Benefit of partition—Whether available to the assessee.*

*Held*, that the female members of the Hindu Undivided Family, according to the Hindu Law, have no share in the joint family property and their interest is confined to maintenance only. A wife cannot herself demand a partition of HUF property, but if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. The share which is allotted to the wife or the mother is in lieu of her right of maintenance and the

allotment of such a share does not show that she had any right or interest in the HUF property. Moreover, before one can visualise or think of a partition of the property it has to be owned by more than one person. Obviously the sole owner cannot divide the property. The grant of any share in the property by the sole surviving male member of the HUF to the wife or to the mother would be only in the nature of settlement of the property upon them in lieu of their right of maintenance and cannot by any stretch of reasoning be said to be a partition of the property amongst them. As such it has to be held that a sole surviving co-parcener is not entitled to claim any benefit under the provisions of Section 171 of the Income Tax Act, 1961, on the basis of the so-called partition of the co-parcenary property affected between him and his wife. (Paras 2 and 3)

Commissioner of Income Tax vs. Narain Dass Wadhwa. •

(1980) 123 I.T.R. 281.

(Over-ruled).

*Income Tax Reference under Section 256(1) of the Income-Tax Act 1961, made by the Income-tax Appellate Tribunal (Chandigarh Bench) Chandigarh, referring the following question of law for seeking the opinion of this Hon'ble Court, arising out of Tribunal order dated 15th September, 1978 in I.T.A. No. 488 of 1975-76 and R.A. No. 111 of 1978-79 for assessment year 1973-74.*

*"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the karta being the sole surviving co-parcener could not affect partition of the family property between himself and his wife?"*

*(This case was referred to Larger Bench by Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice D. V. Sehgal on 14th November, 1985 for decision of an important question of law involved in the case. The Larger Bench consisting of Hon'ble the Chief Justice Mr. Prem Chand Jain, Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice Sukhdev Singh Kang decided the question of law involved on 13th August, 1986).*

B. S. Gupta, Advocate with P. S. Saini, Advocate, for the Petitioner.

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the Respondents.

#### JUDGMENT

S. P. Goyal, J.—

(1) The question referred to this Court in this case is as to whether the Tribunal was justified in holding that the karta being the

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sole surviving coparcener could not effect partition of the family property between himself and his wife. As there was a conflict on this question between the two Division Bench decisions of this court in *Kundan Lal v. Commissioner of Income-tax-cum-Wealth-tax, Patiala*, (1) and *Commissioner of Income-Tax Amritsar-I v. Narain Dass Wadhwa*, (2) the case was referred to the Full Bench.

(2) The assessee is a Hindu Undivided Family (for short, called H.U.F.) consisting of Sat Pal Bansal and his wife, Smt. Banti Bansal. During the course of the assessment proceedings relating to the year 1973-74, a claim was made before the Income-Tax Officer that a partial partition had been effected *qua* the family business capital at the instance of the wife of the karta and each of them was credited with Rs. 30,374.78. The Assessing Authority rejected the claim on a number of grounds including the one that the wife could not claim partition nor it could be effected by the karta, he being the sole surviving male member of the HUF. Having failed before the Assistant Appellate Commissioner, the assessee went in further appeal before the Tribunal who affirmed the order of the authorities below holding that neither the wife could demand partition under the Hindu law nor the husband who was the sole surviving coparcener of the HUF could divide the family property between himself and his wife at her instance.

(3) The answer to the question referred to us obviously depends upon the nature of the rights of the wife in the property of the HUF. It is not disputed that the female members of the HUF, according to the Hindu Law, have no share in the joint family property and their interest is confined to maintenance only. As stated in para 315 of the Hindu Law by Mulla, a wife cannot herself demand a partition of the HUF property, but if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. The share which is allotted to the wife or the mother, as held by the Full Bench of the Gujarat High Court in *Commissioner of Gift-Tax, Gujarat-I v. Mrs. Taramati Hariprasad Vasa*, (3) is in lieu of her right of maintenance and the allotment of such a share does not show that she had any right or interest in the HUF property. Before one can visualise or think of a partition, the property

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(1) (1981)129 I.T.R. 755.

(2) (1980)123 I.T.R. 281.

(3) (1969) 74 I.T.R. 211.

has to be owned by more than one person. Obviously the sole owner cannot divide the property. The grant of any share in the property by the sole surviving male member of the HUF to the wife or to the mother would be only in the nature of settlement of the property upon them in lieu of their right of maintenance and cannot by any stretch of reasoning be said to be a partition of the property amongst them. We are therefore, of the considered view that no partition partial or otherwise would be possible in the case of HUF property consisting only of one male member or the sole coparcener. Similar view was taken by Gujarat High Court in *Commissioner of Income-tax Gujarat-I v. Shantikumar Jagabhai* (4) and the Madras High Court in *T. J. K. Raman (HUF) v. Commissioner of Income-tax* (5), which we fully endorse.

(4) Now, we may consider the two decisions of this Court referred to above. In *Kundan Lal's case* (supra) HUF originally consisted of the father, three sons, the wife and a daughter. The three sons separated from the family on different dates and got their share out of the HUF properties. After their separation the HUF consisted of the husband, his wife and their unmarried daughter. Although the wife was entitled to a share on each of the occasions, when the three sons separated but none was allotted to her. Later on, a partial partition was effected by Kundan Lal between himself and his wife which was the subject matter of dispute. The Bench upheld the partial partition on the ground that when the partition took place between the father and the sons, the wife was entitled to a share and she never having acquiesced or relinquished her right, could legitimately claim her share in the HUF property. As is evident from these facts, the HUF, when the partition took place for the first time, consisted of more than one coparcener or male member. When the partition amongst them took place the wife was entitled to a share equal to the son. No share having been allotted, she was entitled under the law to claim her share and the partial partition made to recognise that right was, therefore, rightly sustained. Even none of the two learned counsel for the parties disputed the correctness of this decision.

(5) In *Narain Dass Wadhwa's case* (supra) when the partial partition was effected, the HUF consisted of 'K', his mother and two sisters. The Bench upheld the said partition on the ground

(4) (1976)105 I.T.R. 795.

(5) (1983)140 I.T.R. 876.

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that the karta of HUF did not cease to be a coparcener, and as a coparcener, he had the right to claim partition and effect the same amongst himself and his family members. The fallacy in the reasoning is so obvious that it does not need any elaborate discussion to be refuted. As discussed above, the sole owner cannot effect partition of the property. The mother and the two sisters were not co-owners in the HUF property and they having only right of maintenance therefore, no partition could be effected by the karta of the HUF between himself and the said family members. The further observation of the Bench that even if the division of the capital may be taken as family arrangement that would also amount to a partition, cannot be sustained. The allotment of any amount to the family members out of HUF funds would at best be a settlement in lieu of the recognition of their right of maintenance which cannot by any stretch of reasoning be described as arrangement in the nature of partition of HUF properties. This case, therefore, was not correctly decided and is hereby overruled.

(6) The learned counsel for the assessee then referred to the following observations of this Court in (*Ram Narain Paliwal v. The Commissioner of Income-Tax*), (6):

“It would hardly matter whether mother was entitled to claim partition or not, and even if Ram Narain was the sole male-coparcener, he could effect partition. The Income-Tax law and particularly section 171 of the Act does not envisage that if members of H.U.F. are mother and son, such H.U.F. is debarred in law in effecting complete or partial partition of H.U.F. assets”.

In that case when the partial partition was effected HUF consisted of Ram Narain, his mother, the wife, four minor sons and one daughter. There being thus more than one coparcener or male member of the HUF, partial partition could validly be effected by the karta. The observations noted above, therefore, are in the nature of *obiter dicta*. Otherwise in view of our conclusions stated above, the observation made by the Bench to the extent that the karta would not be debarred from effecting partition even if he is the sole surviving coparcener or male member has to be overruled.

(7) The learned counsel for the assessee also relied on a Supreme Court judgment in *Apporva Shantilal Shah v. Commissioner of Income-tax Gujarat-I* (7) and a judgment of the Allahabad High Court in *Commissioner of Income-tax v. Gobind Narain* (8) but we need not discuss these decisions in detail because both of them are distinguishable on facts. In each of these decisions, the HUF consisted of more than one coparcener or male member and as such any observation made herein has no bearing on the present case.

(8) In the result, the decision in *Narain Dass Wadhwa's case* (supra) is overruled and the question referred to us is answered in the affirmative, that is, against the assessee and in favour of the Revenue. No costs.

H.S.B.

FULL BENCH

Before K. S. Tiwana, S. S. Dewan and Pritpal Singh, JJ.

STATE OF HARYANA,—Appellant

versus

YAD RAM,—Respondent

Criminal Appeal No. 383-SB of 1984

October 14, 1986

*Prevention of Food Adulteration Act, (XXXVII of 1954)—Sections 7, 16(1)(a) and 16(1)(a)(ii)—Accused found guilty under Section 16(1)(a)(ii) of the Act—Section 16(1)(a) providing for minimum sentence of six months for such offences—Proviso thereof providing for not less than three months sentence for adequate and special reasons—Court—Whether entitled to award a sentence of less than six months under Section 16(1)(a) in a case not covered by the proviso—Principles governing applicability of the proviso—Stated.*

*Held*, that from a reading of the history of the amendments made from time to time in the Prevention of Food Adulteration Act the legislative intent becomes manifest that the legislature has every

(7) (1983) 141 ITR 558.

(8) (1975) 101 ITR 602.