

PETITIONER:
COMMR. OF WEALTH TAX, MADRAS & ORS.

Vs.

RESPONDENT:
LATE R. SRIDHARAN BY L.Rs.

DATE OF JUDGMENT 29/04/1976

BENCH:

ACT:
Special Marriage Act, 1954, , Sec. 21- Marriage between Hindu assessee and Christian female-Whether issue is a Hindu governed by Hindu Law.

HEADNOTE:

The late R. Sridharan married Rosa Maria Steinbichler, a christian Austrian of descent, under the Special Marriage Act, 1954 and a son Nicolas Sundaram was born out of the wedlock. In the assessment proceedings i respect of income tax, wealth tax and expenditure tax, Sridharan claimed to be assessed in the status of a member of Hindu Undivided Family consisting of himself and his son, contending that the property held by him was ancestral and Nicolas Sundaram was a Hindu. The officers dealing with these taxes rejected the contention and assessed him as an individual on the ground that succession to the property of a person married under the Special Marriage Act, 1954, is governed by the Indian Succession Act, 1925 and not by ordinary Hindu Law and Nicolas Sundaram could not become a member of Hindu Undivided Family with his father. these orders were affirmed by the Appellate Assistant Commission i the Appellate Tribunal in appeals by Sridharan against the assessments.. On further applications made by Sridharan, the Income Tax Appellate Tribunal referred the matter to the High Court which decided in favour of Sridharan but granted a certificate of fitness. Meanwhile, Sridharan died, and his widow filed wealth tax returns, claiming the status of a member of Hindu Undivided Family. The Revenue authorities followed their earlier decisions, and ultimately the matter was referred to the High Court which decided in favour of respondent Mrs. Sridharan, but granted Leave to appeal to this Court.

Dismissing the appeals, the Court,

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HELD: (1) Under the codifying, Acts. the orthodox concept of the term "Hindu" has undergone a radical change and it has been given an extended meaning. The Acts not only apply to Hindus but also to a large number of other persons. Any child legitimate or illegitimate, one of whose parents is a Hindu by religion and who is brought up as a Hindu, is a Hindu. [478D-E]

(2) Section 21 of the Special Marriage Act has no bearing on the present case. The section does not in any way impair or alter the joint family structure between n assessee and his son. Nor does it affect the discretion vested in a Hindu assessee to treat his properties as joint family properties by taking into his fold his Hindu sons so as to continue joint family properties [479 A-C]

Shastri Yagnapurushdasji & Ors. v. Muldas Bhundardas

Vaishya and Anr. AIR 1966 S.C. 1119; Bhagwan Koer v. J. C. Bose & Ors. (1904) ILR 31 Cal. 11; Lingappa v. Esudasan (1904) 27 Mad. 13; Mothey Anja Ratna Raja Kumar v. Koney Narayana Rao & Ors. AIR 1953 SC 433 and Ananthaya v. Vishnu 17 Mad. 160, referred to.

Webster's 3rd New International Dictionary of the English Language; Encyclopaedia Britannica (15th Edn.); Gitarahasya by B. G. Tilak Principles of Hindu Law (14th Edn.) pp. 671 and chap. I para 6 by Mulla, and Hindu Law & Usage (11th Edn.) pp. 290 by Mayne, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1399 to 1403 of 1970.

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Appeal from the Judgment and order dated 20th December 1-968 A the Madras High Court in Tax Case No. 314/64 (Reference No. 82 of 1964) and

Civil Appeal No. 301 of 1974

Appeal from the Judgment and order dated 3rd April 1972 of the Madras High Court in Tax Case No. 328 of 1966 (Reference No. 88/66).

S. T. Desai, J. Ramamurthi; for the appellant (In CA 1399-1403 of 1970).

S. Swaminathan, Mrs. S. Gopalakrishnan for the Respondent in all the appeals.

The Judgment of the Court was delivered by JASWANT SINGH, J. These Appeals Nos. 1399 to 1403 of 1970 and 301 of 1974 by certificates granted by the High Court of Madras shall be disposed of together by this judgment as they raise common question of law and fact.

The circumstances giving rise to these appeals are: The late R. Sridharan along with his father and brothers constituted a Hindu undivided family governed by Mitakshara law. On June 28, 1952, while he was still unmarried, a partition took place between him, his brothers and his father. As a result of this partition, a block of shares in T. V. Sundaram Iyengar and Sons Private Limited and three other limited companies fell to his share. On June 14, 1956, Sridharan married Rosa Maria Steinbchler, a Christian woman of Austrian descent, under the Special Marriage Act, 1954. On November 29, 1957, a son named Nicolas Sundaram was born out of this wedlock. For the assessment years 1957-58, and 1958-59, Sridharan was assessed to income tax and wealth tax in the status of an 'individual' on his own declaration to that effect. In the assessment proceedings in respect of income tax and wealth tax for the assessment years 1959-60, 1960-61 and 1961-62 and in the assessment proceedings under the Expenditure Tax Act for the year 1961-62, he claimed to be assessed in the status of a member of Hindu undivided family consisting of himself and his son, Nicolas Sundaram, contending that the property held by him was ancestral and Nicolas Sundaram was a Hindu. The Income Tax officer, Wealth Tax officer and Expenditure Tax officer refused to accede to the contention of Sridharan and assessed him in the status of an 'individual' as in the previous years on the grounds that the value of the share and other investments standing in his name being his exclusive properties and by virtue of section 21 of the Special Marriage Act, 1954, succession to the property of a person whose marriage has been solemnized under that Act being governed by the Indian Succession Act, 1925, and not by the ordinary Hindu law, Nicolas Sundaram could not become a member of Hindu undivided family with his

father. Sridharan thereupon went up in appeal to the Appellate Assistant Commissioner but remained unsuccessful. The orders passed by the Income

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Tax /Wealth Tax/Expenditure Tax officers and the Appellate Assistant Commissioner were also affirmed in appeals against the assessments respectively made under the Income-tax Act', Wealth Tax Act and the Expenditure Tax Act by the Appellate Tribunal. In the course of its consolidated order rejecting the appeals, the appellate Tribunal observed that although section 21 of the Special Marriage Act pre served some of the rights in the family property of the children born out of marriage solemnized under that Act, it did not clothe such off spring with the character of Hindus and therefore, there was no Hindu undivided family of Sridharan and his son which could claim to be taxed as Hindu undivided family.

Thereafter on the applications made by Sridharan under section 27 (1) of the Wealth Tax Act, section 66 (1) of the Income-tax Act and section 25(l) of the Expenditure Tax Act, the Income-tax Appellate Tribunal referred the following common question of law arising from its aforesaid decision for the opinion of the High Court:-

"Whether, on the facts and in the circumstances of the case, the assessee and his son constituted a Hindu undivided family for purposes of assessment under the Income-tax, Wealth-tax and Expenditure-tax Acts ?"

The High Court following the decision of this Court in *Gowli Buddanna v. Commissioner of Income-tax(l)* held that Sridharan's claim to be reckoned as Hindu undivided family was well merited and the Tribunal was in error in holding that there was no Hindu undivided family of Sridharan and his son which could claim to be assessed and taxed as such either under the Income-tax Act, or Wealth Tax Act or the Expenditure Tax Act. The High Court accordingly answered the question in the affirmative but granted certificate of fitness for appeal to this Court.

Sridharan died on April 9, 1962. A few days after the valuation date relevant for the assessment year 1963-64, his widow Mrs. Rosa Maria Steinbchler filed a wealth tax return claiming that the assessment for the assessment year 1962-63 should be made in the status of Hindu undivided family. The Wealth Tax officer following his earlier decision in the assessment proceedings in respect of the previous years rejected the claim of Rosa Maria Steinbchler holding that she was not a Hindu and in any case since her marriage with Sridharan was under the Special Marriage Act, 1954, Nicolas Sundaram had no right by birth in the properties obtained by the assessee on partition. He further held that Nicolas Sundaram could claim Sridharan's property only under the Indian Succession Act, 1925 and not under the Hindu law. on appeal, the Appellate Assistant Commissioner affirmed the order of the Wealth Tax officer. A further appeal was

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"Whether the assessee, Sridharan and his son constituted A in law a Hindu undivided family for the purpose of assessment under the Wealth-tax Act, 1957 ?"

The High Court answered the question in the affirmative i.e. . against the Revenue observing that the decision in the previous reference directly governed the facts of the fresh reference.

Aggrieved by this order of the High Court, the appellant applied and obtained leave to appeal to this Court under section 29(1) of the q Wealth-tax Act, 1957 and Article 133(1)(c) of the Constitution of India. This is how the appeals are before us.

Counsel appearing for the appellants and respondents have repeated before us the contentions respectively advanced on behalf of the parties before the High Court.

It cannot be disputed that a joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. It cannot also be disputed that property obtained by Sridharan on partition between his father and brothers could become ancestral property so far as his sons, grandsons and great grandsons were concerned who could according to Mitakshara law acquire an interest therein by birth.

The sole question which, however, falls for our consideration in these appeals is whether Nicolas Sundaram is a Hindu governed by Hindu law. It is a matter of common knowledge that Hinduism embraces within itself so many diverse forms of beliefs, faiths, practices and worship that it is difficult to define the term 'Hindu' with precision.

The historical and etymological genesis of the word "Hindu" has been succinctly explained by Gajendragadkar, C.J. in *Shastri Yagnapurushdasji & ors. v. Muldas Bhundardas Vaishya & Anr.*(1).

In Unabridged Edition of Webster's Third New International Dictionary of the English language, the term 'Hinduism' has been defined as meaning "a complex body of social, cultural, and religious beliefs and practices evolved in and largely confined to the Indian subcontinent and marked by a caste system, an outlook tending to view all forms and theories as aspects of one eternal being and truth, a belief in ahimsa, karma, dharma, sansara, and moksha, and the practice of the way of works, the way of knowledge, or the way of devotion as the means of release from the bound of rebirths; the way of life and form r of thought of a Hindu".

In Encyclopaedia Britannica (15th Edition), the term 'Hinduism' has been defined as meaning "the civilization of Hindus (originally, the inhabitants of the land of the Indus River). It properly denotes the Indian civilization of approximately the last 2,000 years, which

(1) A.I.R. 1966 S.C. 1119.

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gradually evolved from Vedism, the religion of the ancient Indo-European peoples who settled in India in the last centuries of the 2nd millennium BC. Because it integrates a large variety of heterogeneous elements, Hinduism constitutes a very complex but largely continuous whole, and since it covers the whole of life, it has religious, social, economic, literary, and artistic aspects. As a religion, Hinduism is an utterly diverse conglomerate of doctrines, cults, and way of life In principle, Hinduism incorporates all forms of belief and worship without necessitating the selection or elimination of any. The Hindu is inclined to revere the divine in every manifestation, whatever it may be, and is doctrinally tolerant, leaving others-including both Hindus and non-Hindus-whatever creed and worship practices suit them best. A Hindu may embrace a non-Hindu religion without ceasing to be a Hindu, and since the Hindu is disposed to think synthetically and to regard other forms of worship, strange gods, and divergent doctrines as inadequate rather than wrong or objectionable, he tends to believe that the highest divine powers complement each other for the well-being of the world and mankind. Few religious ideas are considered to be finally irreconcilable. The core of religion does not even depend on the existence or non-existence of God or on whether there is

one god or many. Since religious truth is said to transcend all verbal definition it is not conceived in dogmatic terms. Hinduism is, then both a civilization and a conglomerate of religions, with neither a beginning, a founder, nor a central authority, hierarchy, or organization. Every attempt at a specific definition of Hinduism has proved unsatisfactory in one way or another, the more so because the finest Indian scholars of Hinduism, including Hindus themselves, have emphasized different aspects of the whole".

In his celebrated treatise "Gitarahasaya", B.G. Tilak has given the following broad description of the Hindu religion:-

: "Acceptance of the Vedas with reverence; recognition of the fact that the means or ways of salvation are diverse; and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion".

In *Bhagwan Koer v. J. C. Bose & ors.*(1) it was held that Hindu religion is marvellously catholic and elastic. Its theology is marked by eclecticism and tolerance and almost unlimited freedom of private worship. Its social code is much more stringent, but amongst its different castes and sections, exhibits wide diversity of practice. No trait is more marked of Hindu society in general than its horror of using the meat of the cow.

This being the scope and nature of the religion, it is not strange that it holds within its fold men of divergent views and traditions who have very little in common except a vague faith in what may be called the fundamentals of the Hindu religion.

(1) [1904] I.L.R. 31 Cal. 11.

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It will be advantageous at this stage to refer to page 671 of Mulla's *A Principles of Hindu Law* (Fourteenth Edition), where the position is stated thus:-

: "The word 'Hindu' does not denote any particular religion or community. During the last hundred years and more it has been a nomenclature used to refer comprehensively to various categories of people for purposes of personal law. It has been applied to dissenters and non-conformists and even to those who have entirely repudiated Brahminism. It has been applied to various religious sects and bodies which at various periods and in circumstances developed out of or split off from, the Hindu system but whose members have nevertheless continued to live under the Hindu law and the Courts have generally put a liberal construction upon enactments relating to the personal laws applicable to Hindus".

In paragraph 6 of Chapter I of Mulla's aforesaid Treatise, the following have been enumerated as persons to whom Hindu law applies:-

- "(i) not only to Hindu by birth, but also to Hindus by religion, i.e. converts to Hinduism;
- (ii) to illegitimate children where both parents are Hindus;
- (iii) to illegitimate children where the father is a Christian and the mother is a Hindu, and the children are brought up as Hindus. But the Hindu law of coparcenary, which contemplates the father as the head of the family and the sons as coparceners by birth with rights of survivorship, cannot from the very nature of the case apply to such children;

- (iv) to Jains, Buddhists in India, Sikhs and Nambudri Brahmins except so far as such law is varied by custom and to Lingayat who are considered Sudras;
- (v) to a Hindu by birth who, having renounced Hinduism, has reverted to it after performing the religious rites of expiation and repentance. Or even without a formal ritual of reconversion when he was recognised as a Hindu by his community;
- (vi) to sons of Hindu dancing girls of the Naik caste converted to Mahomedanism, where the sons are taken into the family of the Hindu grandparents and are brought up as Hindus;
- (vii) to Brahmos; to Arya Samajists; and to Santhals of Chota Nagpur and also to Santhals of Manbhum except so far as it is not varied by custom; and

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- (viii) to Hindus who made a declaration that they were not Hindus for the purpose of the Special Marriage Act, 1872."

This enumeration is based upon decisions of various courts relating to old uncodified Hindu law.

In *Lingappa v. Esudasen*(1) which related to maintenance, it was held that Hindu law does not apply to the illegitimate children of a Hindu father by a Christian mother who are brought up as Christians. This decision indirectly leads to the conclusion that legitimate children of a Hindu father by a Christian mother who are brought up as Hindus would be governed by Hindu law.

In *Mothey Anja Ratna Raja Kumar v. Koney Narayana Rao & ors.*(2) while approving the observations made in *Ananthaya v. Vishnu*(3) this Court inter alia held that under the Mitakshara law, an illegitimate son is entitled to maintenance as long as he lives, in recognition of his status as a member of his father's family.

Under the codifying Acts namely the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act, 1956, the orthodox concept of the term 'Hindu' has undergone a radical change and it has been given an extended meaning. The aforesaid codifying Acts not only apply to Hindus by birth or religion i.e. to converts to Hinduism but also to a large number of other persons. According to explanation (b) to section 2(1) of the Hindu Succession Act, 1956, Hindu Adoption and Maintenance Act, 1956 and Hindu Marriage Act, 1955 as also according to explanation (ii) to section 3(1) of the Hindu Minority and Guardianship Act, 1956, any child legitimate or illegitimate, one of whose parents is a Hindu by religion and who is brought up as a Hindu is a Hindu.

In the present case, Sridharan is a Hindu by birth and was lawfully married to Rosa Maria Steinbchler. Even after his marriage, he did not renounce Hinduism but continued to profess that religion. Having been begotten out of the aforesaid valid and lawful wedlock, Nicolas Sundaram is a legitimate child and lineal descendant of Sridharan. There is no material on the record to show that Nicolas Sundaram was not brought up as a Hindu or that he did not conform to the habits and usages of Hinduism or that he was not recognised as a Hindu by the society surrounding him or that he became a convert to another faith. Sridharan has also unequivocally acknowledged and expressly declared that he and his son, Nicolas Sundaram formed a Hindu undivided

family. This declaration in the circumstances is sufficient, as also found by the High Court? to establish that Nicolas Sundaram was brought up as a Hindu member of the family to which his father belonged. At page 290 of his Treatise on Hindu Law, and Usage (Eleventh Edition), Mayne says that a child in India, under ordinary circumstances, must be presumed to have his father's

(1) [1904] 27 Mad. 13. (2) A.I.R. 1953 S.C. 433. (3) 17 Mad. 160.

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religion, and his corresponding civil and social status. He, there-fore, have no hesitation in holding that Nicolas Sundaram is a Hindu and he could validly be a member of the Hindu undivided family headed by his father and be governed by Hindu law.

Section 21 of the Special Marriage Act which has been heavily relied upon by the Revenue has, in our opinion, no bearing on the present case. That section provides that succession to the property of a person whose marriage has been solemnized under the Special Marriage Act, 1954 and the property of the issue of such marriage shall be governed by the provisions of the Indian Succession Act (XXXIX of 1925). In other words, the section guarantees inter alia to the issue of the person whose marriage has been solemnized under the Special Marriage Act a collateral statutory right of succession to the estate of the latter in case he dies intestate. It does not in any way impair or alter the joint family structure between an assessee and his son. Nor does it effect, as observed by the High Court, the discretion vested in a Hindu assessee to treat his properties as joint family properties by taking into his fold his Hindu sons so as to constitute joint family properties.

For the foregoing reasons, we are of the opinion that the aforesaid question referred to the High Court was rightly answered by it on both the occasions. In the result, we find no merit in these appeals which are dismissed with costs.

M.R.

Appeals dismissed.

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