

PETITIONER:
RAM BILAS

Vs.

RESPONDENT:
JAGAT NARAIN SHRIVASTAVA

DATE OF JUDGMENT 24/02/1993

BENCH:

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. This appeal is preferred against the judgment of the Madras High Court answering the question referred to it, at the instance of the Revenue, against the Revenue. The question referred is :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee's share in the partnership firm of M/s Erode Service constituted a separate and individual property and not the property of the joint family consisting of himself and his five sons?"

2. One Angappa Mudaliar had five sons including the assessee. There was a complete partition among Angappa Mudaliar and his five sons in the year 1943. The said partition was also accepted and recorded by the Income Tax Department under Section 25-A of the Indian Income Tax Act, 1922. Angappa Mudaliar died on January 25, 1962 leaving behind him certain assets. The question is whether the share obtained by the assessee in his father's assets in his separate property? The High Court has answered it saying that it is governed by Section 8 of Hindu Succession Act and therefore the said share is his separate property. This question has since been concluded by the decision of this Court in CWT v. Chander Sen¹ which has also been followed in CIT v. P.L Karuppan Chettiar². It is held that in such circumstances the share obtained by the son is governed by Section 8 of Hindu Succession Act and therefore his separate property. The appeal is accordingly dismissed. No costs.

¹ (1986) 3 SCC 567: 1986 SCC (Tax) 641: (1986) 161 ITR 370

² 1993 Supp (1) SCC 580: (1992) 197 ITR 646 113

RAM BILAS v. JAGAT NARAIN SHRIVASTAVA

ORDER

1. These appeals by special leave are against the judgment of the High Court dated March 19, 1974 in Second Appeal No. 370 of 1971 and the order dated March 18, 1976, rejecting the review application against the main order. The High Court allowed the defendant's second appeal by the main order, after the defendant had failed in the trial court as well as in the first appellate court.

2. The suit property is a house in Faizabad. The

defendant-respondent, now substituted by his LRs, was a tenant in the suit house when the house was purchased by the appellants on February 8, 1968 for a sum of Rs 3750, the sale deed being executed by Smt Chinta Devi, wife of Ram Shanker Lal, and their children, Lava Shanker and Smt Shail Bala. The house belonged originally to Ramjas Lai, father of Ram Shanker Lai who died in 1944. The whereabouts of Ram Shanker Lai were unknown and he was not heard by even his wife and children for a long time prior to execution of the sale deed in appellant's favour on February 8, 1968. The exact date from which Ram Shanker Lai was not heard of or seen by any of his close relations is not clear. However, in the sale deed itself, it was mentioned by his wife and children that the said Ram Shanker Lai had not been heard of or seen by any one of them for more than seven years prior to the date of execution of that sale deed. It may also be mentioned that the statement of the defendant, Jagat Narain, forming part of the record, made before the Nazul Officer, Faizabad on July 8, 1958 contains his admission that his maternal uncle Ramjas Lai had died 15 years earlier and the whereabouts of his son, Ram Shanker Lai were not known from the lifetime of his father, and that Ram Shanker Lai had most probably died. This would indicate that even according to the defendant's statement recorded in the year 1958, Ram Shanker Lai was presumed to have been dead at that time.

3. The appellant after purchasing the suit house in the above manner instituted a suit for ejectment of the defendant-respondent also claiming therein arrears of rent in view of the fact that the defendant had admittedly not paid any rent to him. The defendant contested the suit on a vague plea. The defendant contended that a loan of Rs 1500 was taken by Ramjas Lai from him which he did not repay and after the death of Ramjas Lai, his son Ram Shanker Lai had agreed that in lieu of the loan the defendant could obtain a sale deed. The defendant further pleaded that to honour that statement, the defendant was also

114

given possession. It is sufficient to say that the pleading of the defendant did not amount to setting up acquisition of title by him in any manner prescribed by law.

4. The trial court decreed the suit and the defendant's first appeal was dismissed. Thereafter, the second appeal by the defendant has been allowed by the High Court giving rise to the present appeals. The High Court has noticed the fact that even though the precise date of death of Ram Shanker Lal was not proved, yet the fact that he was not seen or heard of since 1944 was conceded by the defendant. However, after noticing this fact, the High Court proceeded to say that "Ram Shanker Lal can be presumed to be dead. There can be no presumption that Ram Shanker Lal did on February 7, 1968, with the result that his heirs and vendors could transfer valid title to the petitioner". It is difficult to appreciate much less accept this conclusion of the High Court which has been treated as an essential condition to uphold the validity of the sale made by the wife and children of Ram Shanker Lal in favour of the appellant. All that was necessary to be seen was whether Ram Shanker Lal was alive on the date of execution of the sale deed in 1968 so that in the absence of his joining in execution of the sale deed, the sale deed could be treated as ineffective to transfer his share in the ancestral property. From the conclusion reached by the High Court itself, Ram Shanker Lal had to be presumed to have died much prior to the execution of the sale deed in 1968 since it was conceded that he was neither seen nor heard of since 1944

even by his wife or his children. This being so, the only persons who were required to execute the sale deed for effecting a valid transfer of the property in favour of the appellant on February 8, 1968 when the sale deed was executed in the appellant's favour were the wife, son and daughter of Ram Shanker Lal, who admittedly have executed the sale deed in appellant's favour under which the appellant claims title. There was thus no ground available in the second appeal, for the High Court to set aside the decree passed in the plaintiff's favour.

5. Consequently, Civil Appeal No. 1263 of 1976 is allowed and the impugned judgment dated March 19, 1974 by which Second Appeal No. 370 of 1971 was allowed is set aside resulting in restoration of the decree passed in plaintiff's favour by the trial court as affirmed in first appeal. In view of this result, the order of the High Court dismissing the review petition is ineffective and the Civil Appeal No. 1264 of 1976 is, therefore, allowed on this basis. The appellant will get the cost throughout from the respondent.

115

INDRAMANI BAI v. ADDL. C.I.T.

ORDER

1. Assesseees are the appellants. They are aggrieved by the judgment of the Andhra Pradesh High Court answering the question referred to it under Section 256(1) of the Income Tax Act, at the instance of the Revenue, against them. The two questions referred read as follows:

"(1) Whether on the facts and circumstances of the case the profits of Rs 41,666 derived by the assessee was an adventure in the nature of trade;

(2) If the answer to the above question is in affirmative, whether the assessment could be made in the status of an association of persons."

2. The assesseees are the wives of two brothers, who are partners in a firm. In December 1963, the assesseees purchased a piece of land measuring 8479 sq. yards in the Banjara Hills area of Hyderabad, for a consideration of Rs 10,620. They say, they raised the purchase-money by selling their silver to the partnership firm, of which their respective husbands are partners. The firm deals in bullion. Shortly after purchasing the land, they carved it into four plots and sold them individually. Two agreements of sale were entered into, one in May and the other in July 1964 and sale deeds executed in pursuance thereof on October 9, 1964 and November 13, 1964. The total consideration received under the sale deeds is Rs 52,285. The Income Tax Officer brought the difference amount to tax treating the transaction as an adventure in the nature of trade. The assesseees questioned the same by way of an appeal before the Appellate Assistant Commissioner. It was dismissed. The matter was then carried in further appeal to the Tribunal. The Tribunal allowed the appeal holding that the intention of the assesseees while purchasing the said land was to make an investment and that they had no intention of re-selling the same. It observed that having regard to the background of the assesseees, the transaction cannot be held to be an adventure in the nature of trade. On reference the High Court came to a contrary conclusion. According to the High Court, the fact that soon after the purchase of the land, the assesseees carved it into plots and sold them within a few months, coupled with the other facts and circumstances of the case, establishes that the intention of the assesseees, even when they purchased the land, was to resell

the same and not to make an investment. It is the said conclusion which is questioned before us.

3. On the facts found, we cannot say that the High Court was in error in coming to the conclusion it did. On the other hand, the Tribunal seems to have made certain assumptions while coming to the conclusion in favour of the assessee, which were not really warranted. The Tribunal refers to the

116

'background of the ladies' as one of the circumstances inducing it to come to the conclusion in favour of the assessee but it has not taken care to elucidate what that background was. The fact that soon after the purchase, the assessee carved out the land into plots and sold them within a few months, coupled with other circumstances of the case, is consistent more with the theory of adventure in the nature of trade than with the other theory accepted by the Tribunal.

4. We are, therefore, unable to see any ground for interference in this appeal. It is accordingly dismissed. There will be no order as to costs.

118