1963

April 9

CHAMPARAN CANE CONCERN

v.

STATE OF BIHAR AND ANR.

(S. K. DAS, A. K. SARKAR and M. HIDAYATULLAH JJ.)

Agricultural Income Tax—Assessment—Land owned by two persons in shares—Common Manager appointed—Partnership or co-ownership—Test—Bihar Agricultural Income Tax Act, 1948 (Act 32 of 1948), ss. 2, 3, 13, 28 (3)—Indian Partnership Act, 1932 (Act IX of 1932), s. 2 (k), 4.

The Champaran Cane Concern, appellant, carried on agricultural operations in lands owned by two persons. One of these two persons had a share of four annas in a rupee and other twelve annas in a rupee. They appointed another person as a common manager for facility of cultivation and management. There was no partnership agreement entered into by these two persons. In the returns submitted to the tax authorities for the assessment years the concern was shown as a "firm".

The Agricultural Income Tax authorities assessed the appellant for three years on the basis that the appellant was a partnership firm under s. 3 of the Bihar Agricultural Income Tax Act, 1948. The assessee claimed that it was not a partnership firm but a co-ownership concern and that it could be assessed only under s. 13 of the said Act. This plea was rejected by the Income Tax Officer. Appeals were filed to the Deputy Commissioner of Agricultural Income Tax and the same were dismissed. Applications for revision were then filed before the Board of Revenue. The Board did not accept the plea of the present appellant that the assessment should have been made under s. 13 of the Act. Thereafter an application was made to the Board, for making a reference to the High Court which was refused. Thereupon, the High Court was moved under s. 28 (3) of the Act for a reference by the Board and the High Court called for a reference. The High Court held that the question whether, the assessee was a co-ownership concern or a partnership firm was a question of fact, and that there were facts and circumstances in the case from which it was open to the taxing authorities to come to the conclusion that

1963

Champaran Cane Concern
v.
State of Bihar

the concern was a partnership firm. The High Court answered the reference against the assessee. The present appeal was filed by Special leave of this Court.

In the appeal before this Court substantially the same questions were raised as before the High Court, the taxing authorities and the Board of Revenue.

Held that the question whether a concern is a partnership or not, is a mixed question of fact and law and if the authorities who have to ascertain that question apply a wrong principle of law in instructing themselves as to what they have to find, then their finding of fact is not conclusive because they have done it under wrong principle.

Modern Rigg & Co. and *R. B. Eskrigge & Co.* v. *Monks* (1923) 8 T. C. 450, referred to.

Held further that the appointment of a common manager by two co-owners acting together is consistent with either view and does not clinch the issue in favour of a partnership.

The mere fact that the profits or even losses are distributed in accordance with the shares of the two owners does not necessarily establish a partnership within the meaning of the Partnership Act.

One of the principal differences between a partnership and co-ownership is that co-ownership is not necessarily the result of agreement whereas partnership is. The second difference is that co-ownership does not necessarily involve community of profit or of loss but partnership does. Another difference is that one co-owner can without the consent of other, transfer his interest etc. to a stranger but a partner cannot do this. Fourthly, in a partnership each partner acts for all but a co-owner is not such an agent real or implied of the other.

A mistake by the Revenue Board in framing the question for reference to the High Court will not change the real position in law.

Simply because a co-ownership concern has described itself as a "firm" in the printed forms of return does not necessarily mean that it is a partnership firm within the meaning of s. 4 of the Indian Partnership Act as indicated in s. 2 (k) of the Act.

From the facts and circumstances of the case it is found that the appellant is a co-ownership concern and not a partnership. The manager is liable to assessment under s. 13 of the Act.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 537, 538 and 539 of 1962.

Appeals by special leave from the judgment and decree dated September 29, 1959, of the Patna High Court in Miscellaneous Judicial cases Nos. 227 to 229 of 1957.

H. N. Sanyal, Solicitor-General of India and *P. K. Chatterjee,* for the appellants.

S. P. Varma, for the respondents.

1963. April 9. The Judgment of the Court was delivered by

S. K. DAS J.—The Champaran Cane Concern, appellant before us, was assessed to agricultural income-tax under the Bihar Agricultural Income-tax Act (Bihar Act 32 of 1948), referred to as the Act in this judgment, by the Agricultural Income-tax Officer, Motihari for three years 1356 F. 1357 F. and 1358 F. corresponding to 1948-49, 1950-51 and 1951-52 respectively. It was assessed as a partnership firm for all the three years, though the assessee claimed that it was a co-ownership concern belonging to two persons, Padampat Singhania having Re. 0-4-0 share and Lala Bishundayal Jhunjhunwala having Re. 0-12-0 share. The concern, it was stated, carried on agricultural operations in six farms consisting of a little over Ac. 2,000-00 of land out of which about Ac. 1,600-00 were purchased jointly by Padampat Singhania and Bishundayal Jhunjhunwala and Ac. 483-00 were purchased in the name of a mill, namely, Motilal Padampat Sugar Mill of which the aforesaid two persons were the owners. Later on by a resolution of the mill-company, the farms

Das J.

1963

Champaran Cane Concern
v.
State of Bihar

Das J.

were separated from the mill and the lands in their entirety were cultivated by the concern. As nothing now depends upon the distinction between the lands purchased in the name of the mill and those acquired otherwise, we shall ignore the distinction for the purpose of these cases.

The assessee claimed that the concern was a co-ownership concern belonging to the two persons above named in the shares already indicated, and as they were residents of Uttar Pradesh at a very long distance from the farms in Champaran, they appointed one S. K. Kanodia as common manager for facility of cultivation and management. This common manager lookde after and managed the agricultural operations during the years in question. The further case of the assessee was that the lands were undivided between the co-owners and the total net profits arising out of the joint cultivation were divided between the two co-owners. On these statements the assessee pleaded that s. 13 of the Act applied and the common manager should have been assessed in respect of the agricultural income-tax payable by each of the two co-owners in respect of their shares only. This plea of the assessee was rejected by the Income-tax Officer. Appeals were then preferred against the assessments made to the Deputy Commissioner of Agricultural Income-tax. These appeals were dismissed with certain modifications with which we are not now concerned. Then, three applications in revision were filed to the Board of Revenue. The Board reduced the assessment under schedule C but did not accept the plea of the assessee that the assessments should have been made under s. 13 of the Act. The assessee then moved the Board of Revenue for making a reference to the High Court on the following question of law which it stated arose out of the order of the Board :

> "Whether on the facts and circumstances of the case the common manager is to be assessed.

> under s. 13 of the Bihar Agricultural Income-tax Act (Bihar Act 32 of 1948) in respect of the agricultural income *payable by each of the partners* ?"

It is to be noticed that the underlined words in the question appeared to assume that the concern was a partnership firm. The Board, however, refused to make a reference.

The High Court of Patna was then moved under s. 28 (3) of the Act and, it called for a reference from the Board on a differently worded question which expressed the real issue between the parties :

> "Whether in the facts and circumstances of the case, the common manager should be assessed under section 13 of the Bihar Agricultural Income Tax Act in respect of the agricultural income tax payable by the persons jointly liable ?"

The question framed by the High Court did not assume that the co-owners of the concern were partners thereof. Strangely enough when the Board submitted a statement of the case in pursuance of the order of the High Court, it again reverted to the old form of the question. The High Court, however, took the question to be the one which it had asked the Board to refer to it and on that footing answered it against the assessee. The High Court said that the question whether the assessee was a co-ownership concern or a partnership firm was a question of fact, and even otherwise, there were facts and circumstances from which it was open to the taxing authorities to come to the conclusion that the firm was a partnership firm. On this footing the High Court answered the question against the assessee.

1963

Champaran Cane Concern v. State of Bihar

Das J.

The assessee then moved this court for special leave and having obtained such leave has brought the present appeals to this court from the decision of the High Court dated September 29, 1959.

We may now refer to some of the provisions of the Act which bear upon the question before us. S. 2 of the Act is the definition section. According to the definition given in that section "agricultural income" means *inter alia* any income derived from land which is used for agricultural purposes. It was not disputed before us that the income which the assessee in those cases derived was from land which was used for agricultural purposes, namely, the cultivation of sugarcane etc. The definition section further stated that the word "firm" had the same meaning as in the Indian Partnership Act, 1932, and the word "person" meant any individual, association of individuals owning or holding property for himself or for any other or partly for his own benefit and partly for another either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law and included an individual, Hindu family, firm or company. The charging section is s. 3 which says that agricultural income-tax shall be charged for each financial year in accordance with and subject to the provisions of the Act on the total agricultural income of the previous year of every person. Agricultural income-tax means the tax payable under the Act. It would appear from what we have stated above that by reason of the definition of the words "firm" and "person" the assessee if it is a partnership firm would be liable to tax as a firm on its agricultural income by reason of the charging section, namely, s. 3. In s. 3 of the Indian Income-tax Act, 1922 which is similar in terms, the words "of every firm or association of persons or the partners of the firm" were subsequently added in 1924 and the Indian Income-tax Act makes a distinction in the matter of assessment

between a registered and an unregistered firm. We are referring to these provisions, because at one stage it was argued on behalf of the assessee that s. 13 of the Act which we shall presently quote applied to the present cases even if the assessee were a partnership firm. Appearing on behalf of the assessee, the learned Solicitor General has, however, conceded before us that he is not in a position to argue that s. 13 of the Act will apply even if the assessee is a partnership firm.

We may now read s. 13—

> "Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator or the like on behalf of persons jointly interested in such land or in the agricultural income derived thereform, the aggregate of the sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received by him shall be assessed on such common manager, receiver, administrator or the like, and he shall be deemed to be the assessee in respect of the agricultural income-tax so payable by each such person and shall be liable to pay the same".

It is quite clear from the section that where a common manager appointed under any law or under any agreement holds land from which agricultural income is derived, on behalf of persons jointly interested in the land or in the agricultural income derived therefrom, the aggregate of the sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received by him shall be assessed on the common manager in respect of the agricultural income-tax

1963

Champaran Care Concern
v.
State of Bihar

Das J.

so payable by each such person and the common manager shall be liable to pay the same. We have already stated that the learned Solicitor General has not now argued before us that s. 13 will apply in the case of a partnership firm. He has however very strongly argued that s. 13 in terms will apply if the assessee in the present cases is a co-ownership concern (as distinguished from a partnership firm) and the common manager thereof must be assessed in respect of the aggregate of the sums payable as agricultural income-tax by each such co-owner. Mr. S. P. Varma appearing for the respondent-State of Bihar has indeed conceded that if the assessee in the present cases is a co-ownership concern, then s. 13 will apply and the question referred to the High Court must be answered in favour of the assessee. He has however argued that the High Court was right in holding that the assessee was a partnership firm and on that footing answering the question against the assessee.

Thus, the entire controversy before us narrows down to this: on the facts and circumstances stated in the cases, was the assessee a partnership firm or a co-ownership concern ? We shall presently come to the distinction between these two, but we think that in a question of this sort both form and substance must be considered. Now, partnership or no partnership is ordinarily a question of fact, but we agree with learned counsel for the assessee that it is a mixed question of fact and law in the sense that if the authorities who have to ascertain question of fact apply a wrong principle of law in instructing themselves as to what they have to find, then their finding of fact is not conclusive because they have done it according to wrong principles (see *Morden Rigg & Co. and R. B. Eskrigge & Co.* v. *Monks* (1). Looked at from the aforesaid standpoint, the question before the taxing authorities in the present cases was whether on the facts and circumstances established in the cases an inference of a partnership firm within

(1) (1923) 8 T. C. 450, 464.

the meaning of the Indian Partnership Act, 1932 followed and s. 13 was not attracted thereto. That, we take it, must be a question of law. That was the question which was referred to the High Court and the High Court answered it on the footing that the proper inference was that the assessee was a partnership firm within the meaning of the Indian Partnership Act, 1932. The assessee contends that the proper inference is that the assessee was a co-ownership concern and not a partnership firm and on that footing the common manager is entitled to be assessed under s. 13 of the Act.

Let us first see what are the facts and circumstances which have been established in the case. First of all, we have the name of the assessee as the Champaran Cane Concern, a name which may apply to a partnership firm as well as to a co-ownership concern. Secondly, the finding of the Deputy Commissioner of Agricultural Income-tax, a finding which is part of the statement of the case, is that the two co-owners appointed Kanodia as the common manager for facility of management. Now, the appointment letter showed that the two co-owners joined together in appointing Kanodia as common manager for supervision of cultivation and for management of the agricultural properties in the district of Champaran. "Partnership" within the meaning of the Indian Partnership Act of 1932 is a relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The appointment of Kanodia by the two co-owners acting together is consistent with either view and does not clinch the issue in favour of a partnership. The High Court appears to have taken the appointment of Kanodia by the two co-owners as a circumstance establishing a partnership. The High Court has further pointed out that the two co-owners lived in Uttar Pradesh and belonged to two different families. We do not see

1963

Champaran Cane Concern v. State of Bihar

Das J.

how that circumstance gives any indication in law of a partnership. As to division of the profits and losses, the finding of the Deputy Commissioner of Agricultural Income-tax was that the two proprietors had no definite shares in the agricultural lands, by which he must have meant that the lands of the six farms had not been partitioned amongst the two co-owners by metes and bounds. The cultivation was made jointly on behalf of the two co-owners by the common manager and the profits arising therefrom were distributed to them in proportion of their respective shares of Rs. 0—4—0 and Rs. 0—12—0. This circumstance has again been taken by the High Court as a circumstance from which an inference of partnership necessarily follows. Again, we do not agree with the High Court. Two co-owners may appoint a common manager for facility of cultivation and management without entering into a partnership and the fact that the profits or even the losses are distributed in accordance with the shares of the two owners does not necessarily establish a partnership within the meaning of the Partnership Act, 1932. In Lindley on Partnership (Twelfth Edition page 57) the main differences between co-ownership and co-partnership have been compared. One of the principal differences is that co-ownership is not necessarily the result of agreement, whereas partnership is. In the cases before us there is nothing in the record to show that there was any agreement between the two proprietors to form a partnership firm. The second difference is that co-ownership does not necessarily involve community of profit or of loss, but partnership does. In the cases before us there is a finding that there is community of profit. A third difference is that one co-owner can without the consent of the other, transfer his interest etc, to a stranger. A partner cannot do this. About this point there is no evidence nor any finding that the two proprietors Padampat Singhania and Bishundayal Jhunjhunwala could not transfer their interests in the

concern without the consent of each other. The greatest difficulty which faces the respondent in the present cases is that it cannot point to any fact or circumstance from which it can be inferred that one proprietor was the agent, real or implied, of the other. In a partnership each partner acts for all. In a co-ownership one co-owner is not as such the agent, real or implied, of the other. There is a complete absence of any fact or circumstance establishing a relation of agency between the two proprietors in the present case; nor have the taxing authorities come to any finding that there was such a relation.

The High Court made a reference to the returns filed on behalf of the assessee for the three years in question as also the frame of the question which the assessee itself wished to be referred to the High Court. As to the frame of the question we have stated earlier that the Board of Revenue really made a mistake and it may even be that on behalf of the assessee the question was not properly framed. The assessee's contention all along was that it was a co-ownership concern and not a partnership, but in framing the question the word 'partners' was used. We do not think that a mistake in the framing of the question, which was later corrected by the High Court, will change the real position in law. As to the returns which were filed they were not printed in the paper book. Learned counsel for the respondent gave us copies of the returns. These returns showed that in all the three years the assessee indicated its status as a co-ownership concern and the name of the assessee was shown as the manager, Champaran Cane Concern or common manager, Champaran Cane Concern. The body of the return contained four alternatives as to whether the return was being submitted by an individual, a firm, a joint family or an association of individuals. The intention of putting four alternatives in the printed form of the return is to

1963

Champaran Cane Concern v. State of Bihar

Das J.

cut out the alternatives which do not apply. In the cases before us the alternative relating to individual, family and association of individuals were cut out and the alternative "firm" remained. The High Court seems to have thought that the retention of the word 'firm' in the return amounted to an admission that the assessee was a partnership firm. We do not agree. In the printed form of the return there was no alternative as to a co-ownership concern and in a popular sense, a co-ownership concern may describe itself as a firm. That does not necessarily mean that it is a partnership firm within the meaning of s. 4 of the Indian Partnership Act as indicated in s. 2 (k) of the Act. In our view no facts and circumstances have been found in these cases from which the taxing authorities properly instructed in law could have come to the conclusion that the assessee was a partnership firm within the meaning of s. 2 (k) of the Act. On the contrary the facts and circumstances found by the taxing authorities were all consistent with the claim of the assessee that it was a co-ownership concern the common manager whereof was liable to assessment under s. 13 of the Act.

A number of decisions were cited at the Bar as to the distinction between co-ownership and partnership. We have already referred to the main differences between the two. The legal position as to this distinction seems to us to be so clear and well settled that we consider it unnecessary to refer to the case law on the subject. We do not think that any useful purpose will be served by referring to the decisions cited at the Bar.

For the reasons given above we have come to the conclusion that the answer which the High Court gave to the question was not correct. We accordingly allow the appeals and set aside the judgment and orders of the High Court dated September 29, 1959,

and answer the question in favour of the assessee. The assessee will be entitled to the costs throughout.

Appeals allowed.

1963

Champaran Cane Concern
v.
State of Bihar

Das J.

1963

April 9.

ADDAGADA RAGHAVAMMA AND ANR.

v.

ADDAGADA CHENCHAMMA AND ANR.

(K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR JJ.)

Hindu Law—Partition—Adoption—Burden of proof and onus of proof—Distinction—Separation—Elements necessary to make it effective—Declaration and knowledge—Doctrine of relation back if affect vested right—Concurrent findings of fact, if and when can be interfered with—Certificate granted under Art. 133—Scope and limit—Constitution of India, Art. 133.

The appellants and the respondents trace their interest and rights through their geneology to one Veeranna who died in 1906. One of his sons Pitchayya, predeceased him in 1905 and it is alleged that sometime before his death Pitchayya took Venkayya, the son of his brother Chimpirayya, in adoption. It is further alleged that a partition of the joint family properties between Veeranna and his four sons took place. Venkayya died in 1938 having a son Subbarao. Chimpirayya died in 1945 having executed a will whereunder he gave his properties in equal shares to Subbarao and Kamalamma, the daughter of his predeceased daughter. He also directed Raghavamma, the wife of his brother Pitchayya, to take possession of the entire property belonging to him, manage it and to hand over the same to his two grand children when they attained majority. Chimpirayya excluded his daughter-in-law Chenchamma from management as well as inheritance. But Raghavamma allowed Chenchamma to take possession of the property. Subbarao died in 1949. In 1950, Raghavamma filed a suit for possession of the property impleading Chenchamma as the first defendant, Kamalamma as the second defendant and Punnayya as the third defendant.