

COMMISSIONER OF WEALTH TAX, WEST BENGAL A

v.

CHAMPA KUMARI SINGHI & ORS.

January 19, 1972

[K. S. HEGDE, A. N. GROVER AND A. N. RAY, JJ.] B

Wealth Tax Act, 1957, Section 3—Jain undivided family, whether Hindu Undivided Family.

The High Court held that the assessee, a Jain undivided family was not a Hindu undivided family within the meaning of section 3 of Wealth Tax Act, 1957. According to the High Court, in order to form a Hindu undivided family its members must be Hindus; the assessee family being Jains were not Hindus and so its members could not form a Hindu undivided family although it was "capable of forming a unit of very much of the same type and governed by the law applying to a Hindu undivided family". On the question whether the word 'Hindu' preceding the words undivided family signifies that the undivided family should be of those (i) who profess Hindu religion; or (ii) to whom Hindu Law applies; or, (iii) who though not professing Hindu religion have come to be regarded as Hindu undivided family by judicial and legislative practice. C
D

HELD: The expression Hindu undivided family includes 'Jain undivided family'.

For a long time Courts seem to have taken the view that Jains are Hindu dissenters. [123 E]

Bhagwandas Tejmal v. Rajmal, (1873) 10 Bbm. HCR. 241, *Lala Moha-beer Pershad v. Musammud Kuntar Koover*, 8 Cal. W.Rep. 116 Civ. Rul and *Sheokuarbai v. Jeoraj*, [1921] P.C. 77, referred to. E

The above view has been challenged by Jain historians and writers and it has been maintained that Jains are quite distinct from Hindus and have a separate code of law which unfortunately was not brought to the notice of the courts. [124 E] F

Bobbaladi Gateppa v. Bobbaladi Eramma & Others, A.I.R. 1927 Mad. 228 and C.R. Jain, *Jain Law*, (1926) pp. 3—23, 219—258, referred to.

But, the suggestion that Jain law which is found in the available books should still be applied and the error which has crept in the matter of jains being governed by Hindu Law should be rectified cannot possibly be followed particularly in view of statutory enactments which in express terms have been made applicable to Jains. [125 B] G

Panna Lal & Others v. Sitabai, I.L.R. 1954 Nagpur 30, *Sheokuarbai v. Jeoraj*, [1921] P.C. 77, referred to.

Before the amendment and codification of major branches of Hindu law by the four statutes, i.e. the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, the Hindu Adoption and Maintenance Act, 1956, the undisputed position was that the Jains were governed by Hindu law modified by custom and a Jain joint family was a Hindu joint family with all the incidents H

- A** attached to such a family under the Hindu Law. The legislative practice also was to generally treat Jains as included in the term 'Hindu' in various statutory enactments. Wherever Jains were mentioned in addition it was *ex abundanti cautela*. The new statutes did not change the situation. The fallacy underlying the reasoning of the High Court is that the artificial field of application of the law in those statutes shows that Jainism is not treated even as a form or a development of Hinduism. Even if the religions are different, what is common is that all those who are to be governed by the provisions of these enactments are included in the term 'Hindu'. They are to be governed by the same rules relating to marriage, succession, minority, guardianship, adoption and maintenance as Hindus. The statutes thus accord legislative recognition to the fact that even though Jains may not be Hindus by religion they are to be governed by the same laws as the Hindus. The expression 'Jain undivided family' is not known to law. The Jains are governed by all the incidents relating to the Hindu joint family.
- B**
- C** Hindu undivided family is a legal expression which has been employed in taxation laws. It has a definite connotation and embodies the meaning ascribed to the expression 'Hindu Joint Family'. [127 E-128A]

Kamawati v. Digbijai, A.I.R. 1922 P.C. 14, *Bachebi v. Makhan Lal & Another*, I.L.R. 3 All. 55 *Bhagwan Koer v. J. C. Bose, Ambalal v. Keshav Bandhochand Gujar*, I.L.R. 1941 Bom. 250 and *Kalyani Vithal Das v. Commissioner of Income Tax*, L.R. 64 I.A. 28, referred to.

- D** CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1090 of 1971 and 1686 of 1968.

Appeals by special leave/certificate from the judgment and order dated August 25, 1967 of the Calcutta High Court in Wealth Tax Reference No. 435 of 1963.

- E** *S. Mittra, B. D. Sharma and R. N. Sachthey*, for the appellant (in both the appeals).

S. T. Desai, D. N. Mishra, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondents (in both the appeals).

- F** The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave from the judgment of the Calcutta High Court arising out of a reference under the Wealth Tax Act 1957 in which the question involved is one of importance, namely, whether a Jain undivided family is included in the expression "Hindu undivided family" within s. 3 of the Act.

- H** The facts are few and may be stated. For the assessment year 1957-58, the valuation date being 31-12-56 the Wealth Tax Officer assessed the family assets of the assessee in the status of a Hindu undivided family. On appeal to the Appellate Assistant Commissioner the contentions raised, *inter alia*, were that (i) upon the description of the assessee in the notice of demand the assessment should be deemed to have been made in the status of an association of persons which was not a unit on which tax

could be levied under the Act; (ii) even if the assessee was to be treated as a Hindu undivided family, the imposition of wealth tax on such family was *ultra vires* the Constitution. A

These contentions failed before the Appellate Assistant Commissioner. The Appellate Tribunal, to whom the matter was taken in appeal, held that the assessee followed the Jain religion and since the unit chargeable to wealth tax under s. 3 of the Act was either individual or Hindu undivided family or company none of the units covered the case of the assessee which was a Jain family. According to the Tribunal Jains were not Hindus and, therefore, the expression "Hindu undivided family" in s. 3 did not cover the case of a Jain family. The Tribunal set aside the assessment on this ground alone. The Commissioner of Wealth tax filed an application under s. 27(1) of the Act praying that the question of law which arose out of the order of the Tribunal be referred to the High Court. At the time of the hearing of that application it was suggested on behalf of the assessee that further questions arising out of the order of the Tribunal should also be referred. Finding that questions other than the question suggested by the Commissioner of Wealth tax arose out of the order, the Tribunal referred the following question of law for the opinion of the High Court :—

"1. Whether, the assessee, a Jain undivided family, was not a Hindu undivided family within the meaning of s. 3 of the Wealth tax Act, 1957, and as such the Tribunal was right in setting aside the assessment made on the assessee ? E

2. Whether levy of Wealth tax on Hindu undivided family or joint family governed under Mitakshra school of Hindu law was beyond the legislative competence of Parliament and *ultra vires* the Constitution of India ? F

3. Whether the Wealth Tax Act in so far as it purports to levy Wealth tax on Hindu undivided families is void and inoperative as it offends Article 14 of the Constitution of India ?" G

The High Court held that the Jains not being Hindus in the generally accepted sense of the term a Jain undivided family could not be a Hindu undivided family although the incidence of a Jain family and a Hindu family "may be the same or largely the same". According to the High Court, in order to form a Hindu undivided family its members must be Hindus, the assessee family being Jains, were not Hindus and so its members. H

A could not form a Hindu undivided family although it was "capable of forming a unit of very much of the same type and governed by the law applying to a Hindu undivided family". The answer to the first question, therefore, was returned in the affirmative and in favour of the assessee. The other two questions were not pressed before the High Court, presumably in view of the decision in *Banarsi Dass v. Wealth Tax Officer, Special Circle, Meerut*⁽¹⁾.

According to s. 2(c) of the Act assessee means a person by whom Wealth tax or any other sum of money is payable under the Act and includes :—

- C (i) every person in respect of whom any proceedings under this Act has been taken for the determination of wealth tax payable by him or by any other person or the amount of refund due to him or such other person;
- D (ii) every person who is deemed to be an assessee under this Act;
- (iii) * * * * *

Section 3 is in the following terms :—

E "Charge of wealth tax—Subject to the other provisions contained in this Act, there shall be charged for every (assessment year) commencing on and from the first day of April 1957, a tax (hereinafter referred to as wealth tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the schedule".

The only other provision in the Act in which the expression "Hindu undivided family" occurs is s. 20. It deals with assessment after partition of a Hindu undivided family. Under s. 3 of the Act it is the Hindu undivided family which is one of the assessable entities. It should be distinguished from a Hindu co-parcenary which is a much narrower body than the Joint family. A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary includes only those who acquire by birth an interest in the joint coparcenary property, being the sons, grandsons and great grandsons of the holder of the joint property. Thus there can be a joint Hindu family

(1) 56 I.T.R. 224.

consisting of a single male member and widows of deceased coparceners. It must be remembered that the words "Hindu undivided family" are used in the Income tax statutes with reference not to one school of Hindu law only but to all schools. The sole previous decision in which an identical question came up for consideration under the Income tax law is that of the Nagpur Judicial Commissioner's Court in *Nathu Sao v. Commissioner of Income tax C.P. & Berar*⁽¹⁾. In that case the assessee was a member of the Lad Vaishh community and was a Jain. He claimed to be governed by the Hindu law and contended that his widowed mother and widowed aunt who lived with him constituted a Hindu joint family. It was held that ordinarily Hindu Law applied to Jains in the absence of proof of custom or usage to the contrary and that the expression "Hindu undivided family" did not mean a Hindu coparcenary but was a wider expression which would take in the widowed mother and the widowed aunt of the assessee in that case. No contrary view seems to have been expressed in any other case subsequently and it appears that it is for the first time that the Calcutta High Court in the judgment under appeal has upheld the contention that a Jain undivided family cannot fall within the expression "Hindu undivided family". It will not be out of place to mention that indisputably ever since income tax laws have been in force no distinction has ever been made between a Jain undivided family and a Hindu undivided family and a Jain family has always been assessed as a Hindu undivided family. Even in the forms prescribed for making returns of Income tax no such differentiation or distinction has ever been made.

The main reasoning which prevailed with the High Court is that although Hindu law applies to Jains except in so far as such law is varied by custom, Jains do not become Hindus in the same way as Khojas and Cutchi Memons of Bombay and Sunni Borahs of Gujarat etc. cannot be regarded as Hindus although Hindu law applies to them in matters of inheritance and succession. Moreover, Hinduism does not include Hindu converts to Christianity and Islam and also dissenters from Hinduism who formed themselves into distinct communities or sects with peculiar religious usages so divergent from the principles of the Shastras that they could not be regarded as Hindus. Reliance was placed on the decision of the Mysore High Court in *P. F. Pinto v. Commissioner of Wealth Tax, Mysore*⁽²⁾. In that case the ancestors of the assessee were originally Hindus. They later on became converts to Christianity. It was found that although for the purposes of succession to property the Hindu law was still applicable to the family of the assessee, he could be assessed only as an

(1) 2 I.T.R. 463.

(2) 65 I.T.R. 123.

- A individual for wealth tax purposes and could not be assessed in the status of a Hindu undivided family. The Mysore High Court was inclined to the view that the expression 'Hindu undivided family' in s. 3 of the Act was limited to Mitakshra families or families of persons professing Hindu religion governed by Mitakshra law and thus it could not include a Christian undivided family although governed by Hindu law. The Calcutta High Court in the judgment under appeal, however, did not consider that the Mysore High Court was right in holding that s. 3 of the Act was limited only to Mitakshra families. It may be pointed out that so far as Income tax law is concerned the expression 'Hindu undivided family' has been held to have reference to all schools of Hindu law and not one school only. [See *Kalyani Vithal Das v. Commissioner of Income tax*(¹)].

- The real question for determination is whether the word 'Hindu' preceding the words 'undivided family' signifies that the undivided family should be of those (i) who profess Hindu religion; or (ii) to whom Hindu law applies; or (iii) who though not professing Hindu religion have come to be regarded as Hindu undivided family by judicial decisions and legislative practice. It may be mentioned that for a long time the courts and particularly the Privy Council seem to have taken the view that Jains are of Hindu origin; they are Hindu dissenters and although generally adhering to the ordinary Hindu Law they do not recognise any divine authority of the Vedas nor do they practice a number of ceremonies observed by the Hindus. But the modern trend of authority is against the view that Jains are Hindu dissenters. As a result of comparative research in Hinduism, Jainism and Buddhism, it is being emphatically claimed that the theory that Jains are Hindu dissenters is based on a misreading of the ancient authorities relating to these religions (See C. R. Jain—'Jain Law'—pp. 3-23 and 219-258). One of the early decisions in which Jains were stated to be of Hindu origin being Hindu dissenters is that of Westropp C.J. in *Bhagwandas Tejmal v. Rajmal*(²). The learned Chief Justice based his view on high authority including the researches of Mr. Mountstuart Elphinstone, Late Col. Mackenzie (9th Vol. of the Asiatic Researches, including the essay of Mr. Cole Brooke on the Sect of Jainas), the work of Abbe Dubois on the Manners etc. of the People of India and the elaborate account of the Jain sect in the First Volume of Prof. H. H. Wilson's work. He also referred to certain decisions of the Sudder Divani Adault in Calcutta and the High Court of Calcutta; in particular to the opinion of Peacock C.J. in *Lala Mohabeer Pershad v. Musammut Kunder Koover*(³).

(1) L.R. 64 I.A. 28.

(2) (1873) 10 Bom. HCR 241.

(3) 8 Cal. W. Rep. 116 Civ. Ru.

The following passage from the judgment of Westropp C.J. is noteworthy :—

“The term Hindu or Gentu, when used in Regulations Act, Statutes, and Charters in which Hindus or Gentus have been declared entitled to the benefit of their own law or succession and of contract, has been largely and liberally construed. See the remarks at pages 184, 185, 186, 5 Bom. High C. Reports (*Lopes v. Lopes*), where Sir Edward Hyde East’s evidence in 1830 before the House of Lords’ Committee is mentioned, in which he stated that Sikhs were treated as a sect of Hindus or Gentus of which they were a dissenting branch. The authorities, already quoted, show that Jainas are regarded as a sect of Hindus.”

Out of the decisions of the Privy Council, we may mention *Sheokuarbai v. Jeoraj*⁽¹⁾ in which their lordships relied on the statement in Mayne’s Hindu law and Usage that Jains are of Hindu origin; they are Hindu dissenters and although “generally adhering to ordinary Hindu law, that is, the law of the three superior castes, they recognise no divine authority in the Vedas and do not practice the Shradha or ceremonies for the dead”.

The above view has been challenged by Jain historians and writers and it has been maintained that the Jains are quite distinct from Hindus and have a separate code of law which unfortunately was not brought to the notice of the courts. Kumāraswami Sastri, Officiating Chief Justice, delivering the judgment of the Bench in *Bobbaladi Gateppa v. Bobbaladi Eramma & Others*⁽²⁾ elaborately discussed the contrary view and observed that if the matter were *res integra* he would be inclined to hold that modern research had shown that Jains were not Hindu dissenters but that Jainism had an origin and history long anterior to Smritis and commentaries which were recognised authorities of Hindu law and usage.

Mr. C. R. Jain in his work “Jain Law” written in 1926 has discussed the findings of various Orientalists subsequent to those mentioned in the judgment of Westropp C.J. and has put forward the thesis that Hinduism and Jainism were parallel creeds though they shared the same form of social order and mode of living. Jain Law was quite independent of Hindu law. According to him the Courts had tried on each occasion to ascertain the Jain Law but unfortunately for various reasons Jains concealed their Shastras and objected to their production in Courts. He has emphasised that Jain Law which is found in the available books should still be applied and the error which has crept in the matter

(1) [1921] P.C. 77.

(2) A.I.R. 1927 Mad. 228.

A of Jains being governed by Hindu Law should be rectified. Since 1926 there have been several enactments apart from the codification of certain major Branches of Hindu law which in express terms have been made applicable to Jains. The course suggested by C. R. Jain cannot possibly be followed particularly in the presence of statutory enactments.

B In *Panna Lal & Others v. Sitabai*⁽¹⁾, Hidayatullah J. (as he then was) delivering the judgment of the Division Bench observed that it was too late in the day to contend that "Jains" are not included in the term "Hindus" for the purposes of law. He referred to Mayne's Hindu law as also the leading cases on the point apart from West and Buhler's Hindu Law (4th Edn.), Gopal
 C Chandra Sarkar's Hindu Law (7th Edn.) and Hari Singh Gour's Hindu Code (4th Edn.). All these are acknowledged authorities and the conclusion which was derived not only from the statements contained in their works on Hindu law but also from decided cases was that the Jains were to be regarded as Hindus for the purposes of law though they seem to dissent from some of the
 D principles of orthodox Hinduism. In the Nagpur case the question which was being considered was whether The Hindu Women's Right to Property Act 1937 was meant to apply to Jains as well or to Hindus proper. It was in that connection that the extent to which Jains were governed by Hindu law or were to be treated as Hindus for purposes of that law came up for discussion. The following passage may be reproduced with
 E advantage :—

"The legislature must be taken to be aware of the pronouncements of the Privy Council as well as the leading decisions of the Indian High Courts where a liberal interpretation was given to the term 'Hindu'.
 F We do not think that the Legislature used the term without advertence to these dicta and, in our judgment, the Legislature must be deemed to have used the term "Hindu" in that larger sense which has been explained by Mayne at page 5 of his treatise in the passage quoted by us elsewhere and which has been the foundation of decisions on the subject in the courts of India".
 G

It may be mentioned that the statement from Mayne's Hindu Law referred to above is the same which was relied upon by the Privy Council in *Sheokuarbai v. Jeoraj*⁽²⁾.

H We may next notice certain decisions in which the word 'Hindu' as used in various statutes came to be interpreted by the Courts. In *Kamawati v. Digbijai Singh*⁽³⁾ s. 331 of the Indian

(1) I.L.R. 1954 Nagpur 30.

(2) A.I.R. 1922 P.C.14.

(3) [1921] P.C. 77.

Succession Act 1865 had to be interpreted. According to that section the provisions of that Act were not to apply to intestate or testamentary succession to the property of any Hindu. It was held that the person who had ceased to be a Hindu in religion and had become a Christian could not elect to be bound by the Hindu Law in the matter of succession after the passing of the Indian Succession Act and that a Hindu convert to Christianity was solely governed by that Act. In other words, according to the Privy Council a person who had ceased to be a Hindu by religion was not a Hindu within the meaning of s. 331 of the aforesaid Act. It was held in *Bachebi v. Makhan Lal & Another*⁽¹⁾ that the term 'Hindu' in s. 331 of the Indian Succession Act 1865 included a Jain and consequently in matters of succession Jains were not governed by that Act. It was pointed out that the ordinary Hindu law of Inheritance was to be applied to Jains in the absence of proof of custom or usage varying that law. The Privy Council in *Bhagwan Koer v. J. C. Bose & Others*⁽²⁾ expressed the view that a Sikh was a 'Hindu' within the meaning of that term as used in s. 2 of the Probate and Administration Act 1881. It was pointed out that the Courts had always acted upon the premise that Sikhs were Hindus and that Hindu Law applied to them in the same way as it applied to Jains in the absence of custom varying that Law. It was observed :

"It appears to their Lordships to be clear that in s. 331 the term 'Hindu' is used in the same wide sense as in earlier enactments, and includes Sikhs. If it be not so, then Sikhs were, and are, in matters of inheritance, governed by the Succession Act, and Act based upon, and in the main embodying, the English law; and it could not be seriously suggested that such was the intention of the legislature".

In *Ambalal v. Keshav Bandhochand Gujar*⁽³⁾ the question was whether Jains were governed by Hindu law of Inheritance (Amendment) Act 1929 which applied to all persons governed by Mitakshara as modified by the Mayukha. It was argued in that case that the Indian Succession (Amendment) Act of 1929 speaks of Jains as well as Hindus and ss. 4 and 57 of the Indian Succession Act 1925 also did the same. The Court pointed out that s. 331 of the Indian Succession Act 1865 did not make any separate mention of Jains and even then it had been held that the term 'Hindu' included Jains. The Hindu Wills Act of 1870 which applied to the territories under the Lt. Governor of Bengal and the cities of Bombay and Madras no doubt mentioned Jains as well as Hindus being governed by certain sections of the

(1) I.L.R. 3 All. 55.

(2) I.L.R. 31 Cal. 11.

(3) I.L.R. 1941 Bom. 250.

- A Succession Act of 1865 and the Indian Succession Act 1925 was a consolidating Act which repealed the previous Act of 1865 as well as Hindu Wills Act of 1870. It was, therefore, probably thought necessary *ex-majore cautela* to separately mention the Jains in the consolidating measure. However, in all the other enactments affecting the Hindu Law there was no separate mention of Jains along with the Hindus. The Jains were, therefore, governed by the Hindu Law of Inheritance (Amendment) Act 1929. The mention of Jains separately in Article 25 of the Constitution was noticed in *Pannalal v. Sita Bai*⁽¹⁾ and it was observed that the framers of the Constitution felt, having regard to the differences in the two faiths that an express mention might be made of all faiths *ex-abundanti cautela* and to put the matter beyond all controversy, and that faith is one thing and law is another and the Constitution could not be taken to have undone the long series of decisions on the subject. Before the amendment and codification of major branches of Hindu law by the four statutes, *i.e.* The Hindu Marriage Act 1955, the Hindu Succession Act 1956, the Hindu Minority and Guardianship Act 1956, the Hindu Adoption and Maintenance Act, 1956, the undisputed position was that the Jains were governed by the Hindu law modified by custom and a Jain joint family was a Hindu joint family with all the incidents attached to such a family under the Hindu law. The legislative practice also was to generally treat Jains as included in the term 'Hindu' in various statutory enactments.
- C Wherever Jains were mentioned in addition it was only by way of abundant caution. The new statutes did not change the situation and it is not possible how the High Court in the judgment under appeal pressed them into service in support of its view. The fallacy underlying the reasoning of the High Court is that the artificial field of application of the law in those statutes shows that Jainism is not treated even as a form or a development of Hinduism. That is an erroneous approach. We are not concerned with the question whether Jains are a sect of Hindus or Hindu dissenters. Even if the religions are different, what is common is that all those who are to be governed by the provisions of these enactments are included in the term 'Hindu'. They are to be governed by the same rules relating to marriage, succession, minority, guardianship, adoption and maintenance as Hindus. The statutes thus accord legislative recognition to the fact that even though Jains may not be Hindus by religion they are to be governed by the same laws as the Hindus. In this view of the matter the expression 'Hindu undivided family' will certainly include the 'Jain undivided family'. The latter class of family is not known to law. The Jains are governed by all the incidents relating to the Hindu joint family. Hindu undivided

(1) I.L.R.1954 Nagpur 30.

family is a legal expression which has been employed in taxation laws. It has a definite connotation and embodies the meaning ascribed to the expression 'Hindu joint family'.

For the above reasons the appeal is allowed and the question referred is answered in favour of the Revenue and against the assessee. There will be no order as to costs in this Court. The appeal by Certificate (CA 1686/68) being defective for want of reasons is hereby dismissed.

K.B.N.

Appeal allowed.