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COMMISSIONER OF WEALTH TAX, WEST BENGAL

v.

BISHWANATH CHATTERJEE AND OTHERS

April 8, 1976

B [A. N. RAY, C.J., M. H. BEG, R. S. SARKARIA, P. N. SHINGHAL AND JASWANT SINGH, JJ.]

Wealth Tax Act, s. 3—Coparceners governed by Dayabhaga School of Hindu Law—If could be assessed as Hindu Undivided Family.

Hindu Law—Coparcener under Dayabhaga School—If could be assessed as Hindu Undivided Family.

C Rejecting the respondents' plea that as persons governed by the Dayabhaga School of Hindu Law they had held definite and determined shares in the properties inherited by them from their father and were liable to separate assessment of wealth tax, the Wealth Tax Officer assessed them as a Hindu Undivided Family. On appeal the Appellate Assistant Commissioner held that the properties should be taxed in the hands of the co-sharers separately. On further appeal, the Appellate Tribunal held that notwithstanding that there was no unity of ownership amongst members governed by the Dayabhaga School of D Hindu Law in respect of family property and each member thereof had no definite share in it, such property, until partitioned, was assessable to wealth tax in the hands of the Hindu Undivided Family. On reference, the High Court held in favour of the assessee.

Dismissing the appeal to this Court,

HELD : Dayabhaga means partition of heritage. A Dayabhaga male's wife or sons or daughters have no ownership in his property during his lifetime. E Ownership of wealth is vested in the heirs by the death of their father, when they become co-heirs and can claim partition. The heritage of a Dayabhaga male does not become the joint property of the heirs or of the joint family on the demise of the last owner but becomes the fractional property of the heirs in well-defined shares. That is why partition in Dayabhaga is defined as an act of particularising ownership. In Dayabhaga, the sons become tenants in common and not joint tenants in respect of the estate inherited by them from their father. While Mitakshara is known as the School of "aggregate ownership", Dayabhaga is known as the school of "fractional ownership". The F essence of a coparcenary under the Mitakshara Law is unity of ownership; under the Dayabhaga it is unity of possession, not unity of ownership at all. Under the Dayabhaga school every coparcener takes a definite share in the property and he is the owner of that share which is defined immediately the inheritance falls in. [1099D-G; 1100B-H]

Sreemutty Soorjeemoney Dossee v. *Denobundoo Mullick*, 6 M.I.A. 526 at p. 553.

G 1. *Hindu Law by Colebrooke* p. 9, 2. *Law relating to the Joint Hindu Family (Tagore Law Lectures) by Krishna Kamal Bhattacharya*, p. 168 and 3. *Principles of Hindu Law by Mulla* (14th Edition) p. 348. *Hindu Law & Usage, by Mayne*, 11th Edition 364, approved.

(i) Under s. 3, the liability of wealth tax arises in respect of the net wealth of the assessee. The term "net wealth" means *all the assets belonging to the assessee*, on the valuation date. The expression "belong" according to the Oxford Dictionary means "to be the property or rightful possession of". [1098G-H] H

(ii) The liability to wealth tax arises out of ownership of the asset and not otherwise. Mere possession or joint possession unaccompanied by the right to or ownership of property would, therefore, not bring the property within the

definition of "net wealth", for it would not then be the asset belonging to the assessee. [1099C] A

In the instant case, the property in question was the individual property of the father of the respondents and it devolved on the heirs according to the provisions of the Hindu Succession Act, 1956. The co-parcenary had unity of possession but not unity of ownership on the property. Each coparcener took a defined share in the property and was the owner of his share. Each such defined share thus belonged to the coparcener. It was his net wealth within the meaning of s. 2(m) of the Wealth Tax Act and was liable to wealth tax, as such, under s. 3. [1102C-D] B

Commissioner of Wealth-tax, West Bengal v. *Gouri Shankar Bhar,* (1972) 84 I.T.R. 699, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1101 of 1969.

From the Judgment and Order dated the 26th April 1968 of the Calcutta High Court in Wealth Tax Matter No. 421 of 1964. C

S. T. Desai, B. B. Ahuja, S. P. Nayar and *R. N. Sachthey,* for the Appellant.

S. K. Sen, A. K. Nag and *D. P. Mukherjee* for the Respondents.

The Judgment of the Court was delivered by D

SHINGHAL, J. This appeal by certificate has come before us as the question of law arising for decision is said to be of great importance. The facts giving rise to the appeal are quite simple and may be shortly stated.

One Bireswar Chatterjee, who was admittedly governed by the Dayabhaga School of Hindu law, was assessed to income-tax as an individual. He died intestate on January 7, 1957, leaving his widow, sons and daughters. The Wealth-tax Officer rejected their plea that on the death of Bireswar Chatterjee they held definite and determined shares in his properties and were liable to separate assessment, and assessed them as a Hindu undivided family for the assessment year 1958-59. On appeal, the Appellate Assistant Commissioner held that since the assessee was governed by the Dayabhaga School of Hindu law, the properties could not belong to the Hindu undivided family and were to be taxed "in the hands of the co-sharers separately." The department took an appeal to the Income-tax Appellate Tribunal, 'B' Bench, Calcutta. There was difference of opinion between the members of the Tribunal, and in accordence with the opinion of the majority of the members it was ordered that "notwithstanding that there was no unity of ownership amongst members governed by the Dayabhaga School of Hindu law in respect of the family property and each member thereof had definite shares in it, such property, until partitioned, was assessable to wealth-tax in the hands of the Hindu undivided family." The Tribunal however referred the following question of law to the Calcutta High Court for decision,- E F G

> "Whether on the facts and in circumstances of the case, the Tribunal was right in holding that properties possessed jointly by the members governed by the Dayabhaga School of Hindu law were assessable to wealth-tax jointly in the status of a Hindu undivided family?" H

A The High Court accepted the contention that the question assumed that the property was owned jointly by the members of a Hindu undivided family governed by the Dayabhaga School of Hindu law, and reframed it as follows,-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the property
B possessed by the heirs of a Hindu male governed by the Dayabhaga School of Hindu law were assessable to wealth-tax jointly in the status of a Hindu undivided family ?"

It took the view that the matter was covered by its earlier decisions including *Commissioner of Wealth-tax. West Bengal* v. *Gouri Shankar Bhar*(1) where it had been held that on the death intestate of a Daya-
C bhaga male, his heirs do not inherit his estate as members of a Hindu undivided family, and remain as co-owners with definite and ascertained shares in the properties left by the deceased unless they voluntarily decide to live as members of a joint family. The High Court also took notice of the fact that a suit for partition had been filed and a preliminary decree had been obtained on July 4, 1959, and answered the reframed question in the negative. As has been stated, the High
D Court has certified this to be fit case for appeal to this Court.

Mr. S. T. Desai appearing for the Commissioner of Wealth-tax has challenged the view taken by the High Court and has argued that under the Dayabhaga School of Hindu law the property left by the father is taken by the sons jointly by descent, as coparceners, as their joint family comes into existance by operation of law. He has
E accordingly argued that the father's property is liable to be taxed under section 3 of the Wealth-tax Act, hereinafter referred to as the Act, as a unit until it is partitioned amongst its members by metes and bounds. Reference has in this connection been made to certain commentaries and judgments and we shall refer to them as and when necessary.

Section 3 of the Act is the charging section and the correctness or
F otherwise of the view taken by the High Court depends on its meaning and content. The section provides for the charge of wealth-tax in these terms.-

> "3. 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 (here-
G inafter 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 liability to wealth-tax therefore arises in respect of the "net wealth" of the assessee, which expression has been defined as follows
H in section 2(m),—

> "(m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions

(1) (1968) 68 I.T.R. 345.

of this Act of all the *assets*, wherever located, *belonging to the assessee* on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owned by the assessee on the valuation date other than,....."

The expression "belong" has been defined as follows in the Oxford English Dictionary.—

"To be the property or rightful possession of." So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealth-tax arises out of ownership of the asset, and not otherwise. Mere possession, or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of net wealth" for it would not then be an asset "belonging" to the assessee.

The question is whether the estate or property of Bireswar Chatterjee could be said to belong jointly to his heirs, after his death?

It is not in controversy, and is in fact admitted, that the property in question belonged to Bireswar Chatterjee who was its sole owner in his life time and was assessed to income-tax as an individual. His family consisted of his widow, sons and daughters and was governed by the Dayabhaga School of Hindu law. Bireswar Chatterjee's property was therefore the heritage, or the wealth, which vested in his heirs on his death. According to Jimuta Vahana, his wife or sons or daughters had no ownership in his property during his life time for "sons have not ownership while the father is alive and free from defect." (Hindu Law by Colebrooke, P.9) Ownership of wealth is however vested in the heirs "by the death of their father" (page 54, supra) when they become coheirs and can claim partition. It is on this basis that "Dayabhaga" (partition of heritage) has been expounded by Jimuta Vahana. According to him, "since anyone parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible." (page 16, supra). The heritage does not therefore become the joint property of the heirs, or the joint family, on the demise of the last owner, but becomes the fractional property of the heirs in well defined shares. This concept of fractional ownership has been stated as follows by Krishna Kamal Bhattacharya in his "Law relating to the Joint Hindu Family" (Tagore Law Lectures) with reference to the doctrine of negation of the son's right by birth (page 168),—

> "As a corollary of the doctrine set forth above, negativing the son's right by birth, is another peculiar doctrine of the Bengal School, that of what is called the 'fractional ownership' of the heirs, contrasted with the doctrine of 'aggregate ownership expounded by all other schools."

That is why 'partition' in Dayabhaga is defined as an act of "particularising ownership", and is not the act of fixing diverse ownerships on particular parts of an aggregate of properties as in Mitakshara. The

A learned author has clarified the position in unmistakable terms as follows (pages 172—73),—

> "From what has been said above, it is evident that there is no unity *of ownership in Bengal joint family,* although there may be something like a unity of possession." (Emphasis added)

B This is why Mitakshara is designated as the School of "aggregate ownership", while Dayabhaga is known as the School of "fractional ownership." As has been stated in Gopalchandra Sarkar Sastri's "Hindu law" (eighth edition page 465), while the joint family system prevails in Bengal, "there cannot be a real joint family consisting of father and sons during the father's life-time, inasmuch as joint property which is the essence of the conception of joint family, would be C wanting to make them joint." This is why, accoring to the Bengal School, the sons become tenants-in-common and not joint-tenants in respect of the estate inherited by them from their father.

The position of joint family under the Dayabhaga law has been stated as follows in Mayne's Treatise on "Hindu Law and Usage" (eleventh edition, page 364),—

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> "It follows therefore that under the Dayabhaga law, a father and his sons do not form a joint family in the technical sense having coparcenary property. But as soon as it has made a descent, the brothers or other co-heirs hold their shares in quasi-severalty. Each coparcener has full powers of disposal over his share which is defined and not E fluctuating with births and deaths as in the case of a Mitakshara family and his interest, while still undivided, will on his death pass on to his own heirs male or female or even to his legatees."

That was stated to be the law in *Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mullick*(1).

F The position has been dealt with in Mulla's "Principles of Hindu Law" (fourteenth edition, at page 348), as follows,—

> "The essence of a coparcenary under the Mitakshara law is unity of ownership. On the other hand, the essence of a coparcenary under the Dayabhaga law is untiy of possession. It is not unity of ownership at all. The owner- G ship of the coparcenary property is not in the whole body of coparceners. Every coparcener takes a defined share in the property, and he is the owner of that share. That share is defined immediately the inheritance falls in. It does not fluctuate with births and deaths in the family. Even before partition any coparcener can say that he is entitled to a particular share, one-third or one-fourth. Thus H if A dies leaving three sons, B, C, and D, each son will take one-third, and each one will be the owner of his one-third share. The sons are coparceners in this sense that

(1) 6 M.I.A. 526 at p. 553.

possession of the property inherited from A is joint. It is the unity of possession that makes them coparceners. So long as there is unity of possession, no coparcener can say that a particular third of the property belongs to him; that he can say only after a partition. Partition then, according to the Dayabhaga law, consists in splitting up joint possession and assigning specific portions of the property to the several coparceners. According to the Mitakshara law, it consists in splitting up joint ownership and in defining the share of each coparcener."

In fact we find that a case somewhat similar to the one before us arose when one Prafulla Chandra Bhar, a Hindu governed by the Dayabhaga School, died intestate. His mother, widow, three sons and one daughter survived him. Since the death took place before the Hindu Succession Act, 1956 came into operation, he was succeeded by his widow and three sons, each inheriting one-fourth share in the estate. Gouri Shankar Bhar, one of the sons, took out letters of administration and filed a wealth-tax return in his capacity as administrator describing the status of the assessee as a Hindu undivided family. The Wealth-tax Officer also treated the status as such, and made the assessment. Gouri Shankar however filed an appeal and contended that the family being governed by the Dayabhaga School, the shares of the coparceners in the property of the deceased were definite and ascertained and the assessment should not have been made in their status as a Hindu undivided family and each member should have been assessed separately upon the value of his share in the inherited property. The Appellate Assistant Commissioner overruled the contention and took the view that even though the shares of the coparceners were definite and ascertained, the income from the property of the family did not belong to the several members in specified shares but continued to belong to the Hindu undivided family as a whole. On further appeal, the Tribunal held that as the coparcener under the Dayabhaga law had a definite share in the property left by the deceased and was legally the owner thereof, he had a defined share and that since the wealth-tax was levied on the basis of ownership, it was proper that the assessment should have been made on the individual coparceners on their respective shares and assessment of the total wealth in the hands of the undivided family would be illegal. The matter was referred to the High Court at the instance of the Commissioner of Wealth-tax. The High Court of Calcutta in *Commissioner of Wealth-tax* case (supra) made a reference, *inter alia*, to the decision in *Biswa Ranjan Sarvadhikari* v. *Income-tax Officer, F. Ward District, (2) Calcutta*[1] and upheld the view that where property is owned by two or more persons governed by the Dayabhaga School and their shares are definite and ascertainable, then, although they are in joint possession, the tax will be assessed on the basis of the share of the income in the hands of the assessee and not as of a Hindu undivided family. It was held that the position was not different under the Wealth-tax Act. The matter was brought to this Court on appeal and it was conceded by Solicitor General appearing for the Commissioner of Wealth-tax that as the property was the individual property of the

(1) (1963) 47 I.T.R. 927.

A deceased, it devolved on his heirs in severalty. It was held that as each of them took a definite and separate share in the property, each of them was liable, in law, to pay wealth-tax as an individual. While upholding the decision of the High Court it was however observed by this Court that it was not necessary to decide, in that case, whether a Dayabhaga family could be considered as a Hindu undivided family B within the meaning of section 3 of the Act. That decision is *Commissioner of Wealth-tax, West Bengal* v. *Gauri Shankar Bhar.*(1)

In the case before us, it is not in dispute that the property in question was the individual property of Bireswar Chatterjee and that it devolved on his heirs according to the provisions of the Hindu Succession Act, 1956. It will be recalled that a suit for partition C was filed on June 21, 1957 and a preliminary decree was passed on July 4, 1959. For reasons already stated, the coparcenary had unity of possession but not unity of ownership on the property. Each coparcener therefore took a defined share in the property and was the owner of his share. Each such defined share thus "belonged" to the coparcener. It was his "net wealth" within the meaning of section 2(m) of the Act and was liable to wealth-tax as such under D section 3. The High Court was therefore right in answering the reframed question in the negative, and as we find no force in the argument of Mr. Desai, the appeal fails and is dismissed with costs.

P.B.R. *Appeal dismissed.*

(1) (1972) 84 I.T.R. 699.

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