Privy Council Appeal No. 37 of 1947

Guru Prohit Pandit Bharat Raj - - - - - *Appellant*

v.

B. Parshottam Das and others - - - - - *Respondents*

and

Same - - - - - - - - - - - *Appellant*

v.

Same - - - - - - - - - - - *Respondents*

Consolidated Appeals

FROM

THE COURT OF THE BOARD OF REVENUE UNITED PROVINCES OF AGRA AND OUDH

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH APRIL, 1948

Present at the Hearing:

LORD NORMAND
LORD MACDERMOTT
SIR JOHN BEAUMONT

[*Delivered by* LORD MACDERMOTT]

These are consolidated appeals from two orders of the Board of Revenue, United Provinces, Allahabad, dated the 5th January, 1943, and the 28th August, 1943, dismissing appeals from orders of the 29th July, 1942, and the 19th April, 1943, respectively, passed by the Additional Collector of Benares in a matter arising from an application by the respondents under section 4 of the United Provinces Encumbered Estates Act, 1934 (hereinafter called the Act of 1934) and continued under that Act and the United Provinces Debt Redemption Act, 1940 (hereinafter called the Act of 1940).

On the 13th January, 1932, one Har Kishan Das mortgaged certain lands to the appellant to secure a debt of Rs.1,78,500. The mortgagor was the manager and head of a joint Hindu family consisting of himself, his sons and grandsons, and the mortgaged property, the subject of this appeal, was and has remained the property of this joint family.

In 1935, after the death of the mortgagor, the appellant instituted a suit against the then surviving members of the joint family to recover the balance of his mortgage debt. On the 3rd July, 1936, while this suit was pending, the present respondents filed an application in the Court of the Collector of Benares for relief under the Act of 1934 and, as a result, the mortgage suit was stayed.

After the passing of the Act of 1940 the application was continued, as already indicated, with a view to obtaining under that Act the protection from execution and foreclosure which it afforded in respect of the lands

of certain agriculturists. The lands to which the application related formed part of the property mortgaged to the appellant. They fall into four categories which, with the local rates payable in respect of each, are as follows:—

	Rs.	as.	ps.
(1) Lands in Danialpur and Bikapur in the district of Benares	46	5	1
(2) Lands in Puranpatti in the district of Benares	9	10	0
(3) Lands in Hemchapur in the district of Gorakhpur	25	14	9
(4) Lands in Parsar in the district of Jhansi	78	11	2

The respondents made this application as the only members then in existence of the joint family. Of them Nos. 1 and 2 are the sons of the mortgagor, Nos. 3, 4, and 5 are the sons of No. 1 and No. 6 is the son of No. 2. In 1938 another son, Ganga Das, was born to respondent No. 2 making the membership of the joint family seven in all.

On the 29th July, 1942, the Collector made an order declaring the lands in question protected lands under section 17, read with section 19, of the Act of 1940. The appellant then took the matter to the Board of Revenue and on the 5th January, 1943, it affirmed the declaration of protection in respect of all the lands specified above and dismissed the appeal. From this decision the appellant now appeals. His second appeal arises from subsequent proceedings before the Collector and the Board of Revenue, but it is unnecessary to go into these as, upon the conclusions reached by their Lordships, the second appeal will be ruled by the decision in that from the Board of Revenue's order of the 5th January, 1943.

To obtain the protection from execution sought by the respondents under the Act of 1940 an applicant must be an " agriculturist " which is defined by the portion of section 2 (3) relevant to this case as meaning " a proprietor of a mahal or of a share in or portion of a mahal or a tenant ", and he must also, by section 17 (1) (*a*) be " an agriculturist, the local rate payable by whom or recoverable from whom does not exceed twenty-five rupees per annum. . . . "

Though, as will appear later, the respondents are superior proprietors of certain of the lands in question and, as such, are not directly concerned either personally or through tenants in the agricultural use of those lands, the appellant did not contend in the Courts in India, or suggest as a ground for his appeal to the Board, that the respondents were not agriculturists within the meaning of the Act of 1940 in respect of all or any of their lands. This being so their Lordships do not propose to discuss the wide terms of the definition and will proceed on the assumption that the respondents were agriculturists for the purposes of the statute as regards all the said properties.

Under the Mitakshara Law it is well settled that a member of an undivided Hindu family cannot be regarded as having a definite share in the family property before partition. It was on this proposition that the appellant based his first submission to the effect that the respondents should be treated as a single, joint family, unit and should not be considered separately, as individuals, for the purpose of qualifying for protection under the terms of section 17 of the Act of 1940. This point, however, is no longer open to the appellant as it has been decided against him in the recent judgment of the Board in the case of *Hardat Ram and others* v. *Thakur Paras Nath and others* (No. 47 of 1946) which was delivered by Sir Madhavan Nair on the 13th January, 1948. There it was held that the relief given by the legislation under consideration was personal and that each debtor member should be regarded separately. This conclusion was based on a careful survey of the relevant statutory provisions which need not now be re-examined. It appears sufficiently from the following passage in the judgment:

> " As regards the objection that no individual member of the joint Hindu family can claim a definite share of the property till partition, their Lordships, after carefully considering the question, are definitely

of opinion that this case should be judged solely with reference to sections 3 (*e*) (i) and 17 (1) (*a*) of the Act of 1940, to which attention has already been drawn, and not by applying to it any basic principle of the Mitakshara Law. Though it cannot be predicated that a member of an undivided Hindu family under the Mitakshara Law has a definite share in the family property till partition, it cannot be disputed that he has a joint co-parcenary interest in the ancestral property along with the other co-parceners."

Proceeding, then, on the basis that the terms of section 17 (1) (*a*) of the Act of 1940 must be applied to the respondents individually, two further questions arise—(1) What is the total amount of the local rates payable by or recoverable from the respondents, for the purposes of section 17, in respect of the lands in question? and (2) Of that amount does the share or proportion to be allocated to each respondent exceed Rs.25 per annum?

On the first of these questions it was contended for the appellant that the rates payable on the lands in the Jhansi district, which were Rs.78.11.2 per annum, should be included in the computation. The Collector appears to have disregarded these rates in making his order of the 29th July, 1942. On appeal therefrom to the Board of Revenue the appellant waived all grounds of appeal save those relating to the amount of local rates and it would appear that the point under discussion was then closely canvassed. The Board decided that the Jhansi rates should be left out of account, the material part of its judgment of the 5th January, 1943, reading as follows:—

" The respondents are superior proprietors and receive the land revenue from the zamindars, who are described as ' Malik Adna '. The position has been discussed in appeal No. 60 *Gulam Mustafa versus Musammat Imam Bandi Bibi* decided on the 12th December, 1942, from district Jaunpur. The zamindars, namely, the ' Malik Adna ' pay local cess and there is no liability on the superior proprietors to pay; under section 7 of the Local Rates Act, 1914, the zamindar or ' Malik Adna ' recovers the local rates from the tenants and it is they who settle the land and cultivate the ' sir '."

On the facts it is clear that these rates were not paid by the respondents, but the test is whether in law they were payable by or recoverable from them and that depends on the provisions of the United Provinces Local Rates Act, 1914, which by chapter II places liability for payment on " the landlord independently of, and in additon to, any land revenue for the time being assessed on the estate . . .", and by chapter III empowers the landlord to recover the rates paid from tenants and certain other inferior interests. By section 2 (5) of this Act—" ' landlord ' means the person responsible for the payment of the land revenue, if any, assessed on the estate, and includes a muafidar or other person holding land, of which the land revenue has been wholly or in part released, compounded for, redeemed or assigned." In the view of their Lordships this definition cannot, on the true construction of the statute, extend to superior proprietors, such as the respondents, who receive the land revenue from under proprietors who themselves hold the lands directly or through tenants. They are, therefore, of opinion that the decision of the Board of Revenue was right and that the rates payable in respect of the Jhansi property should be disregarded.

A further point arose on this branch of the case respecting the local rates of Rs.9-10-0 payable in respect of the lands in Puranpatti in the district of Benares. This sum was not reckoned by the Collector and the omission to do so was not ruled upon by the Board of Revenue which found it unnecessary to decide whether there had been a mistake regarding this item. The record affords little material on which to reach a conclusion concerning this matter, but as it is evident that there was such a rate and that the considerations respecting the Jhansi rating did not apply to it, their Lordships will assume in the appellant's favour, for the purposes of this judgment, that the respondents were liable to pay this sum. So assuming,

and giving effect to the proviso to section 17 of the Act of 1940 by which, for the purposes of that section, the local rates in the Benares district are to be taken as doubled, the relevant total of local rates payable in respect of the lands in question is Rs.137-12-11 computed as follows:

	Rs.	as.	ps.
(1) On the lands in Danialpur and Bikapur Benares, Rs.46-5-1 × 2 ... ... =	92	10	2
(2) On the lands in Puranpatti, Benares, Rs.9-10-0 × 2 ... ... =	19	4	0
(3) On the lands in Hemchapur, Gorakhpur ...	25	14	9
	137	12	11

Turning to the second of the questions stated above it will be convenient to consider first of all the submission made on behalf of the appellant that, in order to ascertain the relevant shares or proportions of the total rating liability for the purposes of section 17 (1) (*a*), the division should be made *per stirpes* and that the divisor should, in consequence, be two. This was on the theory that if the joint family and its landed property had to be notionally divided in applying section 17, the appropriate unit was the *stirps* of which, at all material times there were two namely, the respondents B. Parshottam Das and B. Jai Krishna Das and their respective sons. In their Lordships' view this contention must be rejected. It cannot be related to the specific provisions of section 3 (*e*) (ii) of the Act of 1940 which deal only with the qualification of a member of a joint Hindu family to rank as an agriculturist for the purposes of that Act, nor can it be reconciled with the principle of personal protection laid down by their Lordships in *Hardat Ram's* case.

The next matter to be considered is whether, in the process of allocating the total of the local rates between the members of the joint family the membership should be reckoned at six, as it was when the application for relief was first made, or at seven, as it was after the birth of Ganga Das in 1938. While it is clear that in working out the provisions of the Act of 1940 the qualification for relief must be settled with regard to the facts existing at some particular date, their Lordships can see no reason for looking upon the date of the original application as crucial or for saying that an increase in the joint family membership taking place in 1938, before any final adjudication in the matter had been made, should be left out of account. They therefore consider that the relevant membership should be taken at seven and not six.

The basis of the notional division to be made for the purpose of applying section 17 (1) to individual members of a joint Hindu family was the subject of much debate in the course of the argument. Apart from the stirpital basis which has already been rejected, the rival contentions were—(*a*) that the division should be amongst the members *per capita*, and (*b*) that the division should be amongst the members according to the shares they would take in the joint property on partition. The correct basis was not decided in *Hardat Ram's* case, but would appear to be one or other of the alternatives just mentioned. The question thus arising is one of some difficulty due, no doubt, to the manner in which the requirements of the statute conflict with the conception of the joint family according to the Mitakshara Law. In the present case, however, it is unnecessary to resolve this difficulty as on either view, having regard to the conclusions already arrived at, the proportion of the total rating burden of Rs.137-12-11 falling upon any one of the respondents does not exceed Rs.25 per annum, the only possible divisors being seven in one case and eight and six in the other.

For these reasons their Lordships are of opinion that the respondents were entitled to the relief claimed under the Act of 1940. They will therefore humbly advise His Majesty that the decisions of the Board of Revenue be affirmed and the appeals dismissed. The appellant will pay the costs of the appeals.

(59894) Wt. 8062—31 180 4/48 D.L. G. 338

In the Privy Council

GURU PROHIT PANDIT BHARAT RAJ

v.

B. PARSHOTTAM DAS AND OTHERS

and

SAME

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(*Consolidated Appeals*)

DELIVERED BY LORD MACDERMOTT

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