

JUDGMENT ANALYSIS: KIRAN DEVI V. BIHAR STATE SUNNI WAKF BOARD

[Nandini Jaiswal, Second Year]

Abstract

The head of the combined family is called the Partner or Managers of the joint family and occupies a position unlike any other member of the family. As long as the family members remain inadequate the senior family member is considered to be the Karta family of **Kunjipokkarukutty v. A Ravunni, AIR 1973 Ker 192.**

Although the karta being responsible for management of the business affairs of the JHF, but Just because a business was run by a karta of a Hindu Undivided Family in a tenanted premise, there is no presumption that it is a joint Hindu family, held the Supreme Court in a recent judgment.

"There can be presumption of Hindu joint family property if the property has been acquired by the male member or if the same has been treated as joint Hindu family. But no such presumption is attached to a business activity carried out by an individual in a tenanted premise", observed the Supreme Court in the case **Kiran Devi v. Bihar State Sunni Wakf Board.**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6149 OF 2015

KIRAN DEVI

-----APPELLANT(S)

VERSUS

THE BIHAR STATE SUNNI WAKF BOARD & ORS.

-----RESPONDENT(S)

FACTS:

The case was a civil appeal relating to the tenancy rights over a property owned by the Bihar Sunni Wakf Board. The plaintiff had filed a suit seeking declaration of tenancy rights on the basis of a claim that his great grandfather had been running a hotel business as a tenant of the Wakf Board. The Wakf Board's primary defense was that the tenancy had been surrendered by the successor of the original tenant and the hotel business was discontinued and hence the plaintiff had no rights over the property. In respect to this argument, the plaintiff contended that the surrender of tenancy was invalid, as it was a unilateral surrender made by the karta without taking note of the rights of the coparceners of the joint Hindu family.

The Suit was ultimately transferred to the Wakf Tribunal, which rejected the prayer of the plaintiff, accepting the surrender of tenancy. This was reversed by the Patna High Court in revision by the plaintiff. The High Court decision was challenged in the Supreme Court by a subsequent tenant, as she was directed to be dispossessed by the High Court to induct the plaintiff. To decide the validity of the surrender of the tenancy, the Supreme Court had to consider the issue whether the business run in the tenanted property was a joint family business.

ISSUES:

The challenge in the present appeal is to an order passed by the High Court of Judicature at Patna dated 6.2.2013 whereby a writ petition filed by respondent herein was allowed, holding that the tenant in the premises in question was representing to the 'plaintiff' of joint Hindu family and that the Karta was not competent to surrender the tenancy rights in favor of the respondents The Bihar State Sunni Wakf Board and consequently the induction of the appellant as a tenant by the Wakf Board was illegal. Accordingly, a direction was issued to dispossess the appellant from the suit premises and to handover the vacant possession to the plaintiff.

To decide the validity of the surrender of the tenancy, the Supreme Court had to consider the issue whether the business run in the tenanted property was a joint family business or not?

DECISION:

A bench comprising **Justices Ashok Bhushan, S Abdul Nazeer and Hemant Gupta** answered the issue in negative.

ERROR BY THE PATNA HIGH COURT:

High Court erred in concluding that the business run by the tenant was a joint Hindu family business. Tenancy was an individual right vested in the great grandfather of the plaintiff, which was later surrendered by the plaintiff's grandfather. Tenancy was entered in individual capacity and not in the capacity as Karta of the Hindu Undivided Family. We also find that the High Court has committed a basic error of law and fact that the payment of rent or the Ration Card proves that the tenant was carrying business as a Joint Hindu Family Business. There can be presumption of Hindu joint family property if the property has been acquired by the male member or if the same has been treated as joint Hindu family. But no such presumption is attached to a business activity carried out by an individual in a tenanted premise.

A perusal of the facts on record would show that it was a contract of tenancy entered upon by great grandfather of the plaintiff. Even if the great grandfather was maintaining the family out of the income generated from the hotel business, that itself would not make the other family members as coparceners in the hotel business. It was the contract of tenancy which was inherited by the grandfather of the plaintiff who later surrendered it in favor of the wakf board. The tenancy was an individual right vested with the grandfather of the plaintiff who was competent to surrender it to the landlord. The High Court has clearly erred in law by holding that

since the grandfather was a tenant, the tenancy is a joint family asset. The contract of tenancy is an independent contract than the joint Hindu family business".

Referring to a precedent, the Supreme Court held that there is no presumption under Hindu Law that business standing in the name of any member of the joint family is a joint business even if that member is the manager of the joint family, unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate **G. Narayana Raju (Dead) by his Legal Representative v. G. Chamaraju & Ors AIR 1968 SC 1276.**

Justice Hemant Gupta observed, "mere payment of rent by great grandfather or by the grandfather of the plaintiff raises no presumption that it was a joint Hindu family business."

The High Court has presumed the existence of the joint family of which Ram Sewak Ram was said to be the Karta from perusal of the Ration Card issued on 02.12.1949.

In this regard, the Supreme Court observed that Hindu Joint Hindu Family cannot be presumed to be in existence only on the basis of Ration Card unless there is evidence that the funds of joint Hindu Family were invested in the business in the tenanted premises.

The Court also held that even if the business was presumed to be a family business, from the facts it was possible to infer that the surrender of tenancy would have been for the benefit of the joint Hindu family. The pleaded stand of the Plaintiff is that the hotel was closed for several years. Therefore, the liability to pay monthly rent continued to accrue upon Karta. The question is as to whether, in these circumstances, on account of cessation of activities of running of the

hotel, the act of the surrender of tenancy is in fact for the benefit of the joint family. The Court held that such surrender was for the benefit of the Joint Hindu family. Allowing the civil appeal, the Supreme Court set-aside the High Court judgment and restored the Wakf Tribunal's Order.

[Coram: **Justices Ashok Bhushan, S. Abdul Nazeer and Hemant Gupta**].

