J. S. BAJAJ & ORS. A

v.

ARJANDAS DAYARAM VACHHANI & ORS.

January 21, 1970

[S. M. SIKRI, V. BHARGAVA AND I. D. DUA, JJ.] B

The Displaced Persons (Compensation and Rehabilitation) Rules. r. 19(2) *and* (3)—*Scope of.*

Rule 19(2) of the Displaced Persons (Compensation and Rehabilitation) Rules provides for the method of compensation to joint families which have migrated to India as a result of the partition of the country in 1947. Rule 19(3)(b) provides that for the purpose of calculating the C number of members of a joint family. Under r. 19(2), a person who was a lineal descendant in the main line of another living member of the family entitled to claim partition shall be excluded.

A joint family consisting of a father and his sons had migrated to India from Sind. The father made an application for the verification of claim in respect of the properties left by the family in Sind and the D claim was verified. One of the sons claimed that the father and sons should be treated as tenants-in-common. The authorities under the Act held that the parties constituted a joint Hindu family and that in view of the r. 19(3)(b), r. 19(2) was not applicable. The High Court quashed the order holding that the living member of the family whose lineal descendants are to be excluded under r. 19(3)(b), must be a person other than their father, on the assumption that a person against whom partition can be claimed by the father must be some member of the family other E than his lineal descendants.

In appeal to this Court,

HELD : The special provision embodied in the rule is intended to treat a joint Hindu family consisting only of a father and his sons as one unit for the purpose of payment of compensation for the joint family property left in Pakistan. The rule is rational and logical and its language F is not susceptible of the meaning given to it by the High Court, because under Hindu law a father and each of his sons are entitled to claim partition against each other. [444 A-B, C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1178 of 1966.

Appeal by special leave from the judgment and order dated G June 15, 16, 1965 of the Bombay High Court in Special Civil Application No. 2061 of 1963.

V. A. Seyid Muhammad and *S. P. Nayar*, for the appellant.

N. N. Keswani for the respondents.

The Judgment of the Court was delivered by H

DUA. J. This appeal by special leave is directed against the decision of a Division Bench of the Bombay High Court allowing

A a petition under Arts. 226 and 227 of the Constitution by Arjandas Dayaram Vachhani challenging the order of the Deputy Chief Settlement Commissioner (with delegated powers of Chief Settlement Commissioner) under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), hereafter referred to as the Act, disallowing the writ petitioner's revision B from the order of the Settlement Officer (with delegated powers of Settlement Commissioner) which had affirmed on appeal the order of the Assistant Settlement Officer. The writ petitioner's case was held to fall within r. 19(3) of the Displaced Persons (C & R) Rules, hereafter called the Rules, made by the Central Government under s. 40 of the Act. The question which falls C for decision is a very short one and it relates to the meaning and effect of r. 19(3).

The facts are not in dispute. Kishanchand Dayaram Vachhani and his four sons Arjandas Dayaram Vachhani, Dayaram A. Vachhani, Ramchand Dayaram Vachhani and Kanayalal Dayaram Vachhani constituted a joint Hindu family when, as a D result of partition of the country in 1947, they migrated from Sind (now in Pakistan) to India. After their migration Kishanchand Dayaram Vachhani, the father, made an application for vertification of claim in respect of the properties left by the joint Hindu family in Sind. This claim was duly verified. It is unnecessary to make a detailed reference to the history of the case. Suffice E it to say that on October 28, 1961 Shri Purshottam Sarup, Deputy Chief Settlement Commissioner (with delegated powers of Chief Settlement Commissioner) (Rehabilitation Department) allowed the appeal preferred by Arjandas Dayaram Vachhani from the order of Shri H. K. Chaudhary, Regional Settlement Commissioner, Bombay, dated May 14, 1961 and after setting aside the impugned order, directed that the property in question F be treated as joint family property in which the parties would be entitled to apportionment as members of joint Hindu family in accordance with the Rules. Pursuant to this direction Shri K. S. Bedi, Assistant Settlement Officer, Bombay, on June 12, 1963 directed that the case be re-processed. Shri Arjandas Dayaram Vachhani appealed from this order to the Settlement Officer (with G delegated powers of the Regional Settlement Commissioner) but without success. That officer recorded a fairly exhaustive order dated October 21, 1963 in which the entire history of the case was noticed. A revision was taken to the Deputy Chief Settlement Commissioner, Shri Purshottam Sarup (with delegated powers of Chief Settlement Commissioner). That officer also H went into the controversy at some length and by his order dated February 13, 1964 disallowed Shri Arjandas Dayaram Vachhani's claim both under r. 20 and r. 19(2) of the Rules. It was pointed out that in his (Shri Purshottam Sarup's) earlier order it had

been clearly stated that the parties constituted a joint Hindu family and were entitled to apportionment. The father and the sons could not be treated as separate and that their claim as tenants in common or as co-sharers was contrary to his earlier decision which had remained unchallenged. In view of sub-r. (3) of r. 19, r. 19(2) was held inapplicable.

On an application under Arts. 226 and 227 of the Constitution the High Court disagreed with the view of the Chief Settlement Commissioner and held r. 19(3) to be inapplicable when the joint Hindu family consists only of father and his sons. On this view the order of the departmental authorities was set aside. The short question which now falls for our determination in this appeal is whether the sons of Kishanchand Dayaram Vachhani are entitled to claim the benefit of r. 19(2) which has been granted by the High Court on their writ petition in disagreement with the view of the departmental authorities which excluded the claim of the sons under r. 19(3). Rule 19 may here be read :

"Special provision for payment of compensation to joint families :

(1) Where a claim relates to properties left by the members of an undivided Hindu family in West Pakistan (hereafter referred to as the joint family) compensation shall be computed in the manner hereinafter provided in this rule.

(2) Where on the 26th September, 1955 hereinafter referred to as the relevant date the joint family consisted of :

(a) two or three members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into two equal shares and calculating the compensation separately on each such share,

(b) four or more members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into three equal shares and calculating the compensation separately on each such share

(3) For the purpose of calculating the number of the members of a joint family under sub-rule (2), a person who on the relevant date :—

(a) was less than 18 years of age,

A (b) was a lineal descendant in the main line of another living member of joint Hindu family entitled to claim partition shall be excluded :

Provided that where a member of a joint family has died during the period commencing on the 14th August, 1947 and ending on the relevant date leaving behind on the relevant date all or any of the following heirs namely :—

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(a) a widow or widows,

(b) a son or sons (whatever the age of such son or sons) but no lineal ascendant in the main line, then all such heirs shall, notwithstanding anything contained in this rule, be reckoned as one member of the joint Hindu family.

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Explanation :—For the purpose of this rule, the question whether a family is joint or separate shall be determined with reference to the status of the family on the 14th day of August, 1947 and every member of a joint family shall be deemed to be joint notwithstanding the fact that he had separated from the family after that date."

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E According to the High Court the other living member of the joint Hindu family whose lineal descendants are to be excluded under sub-r. (3) (b) must be a person other than their own father. This view, in our opinion, is contrary to the plain words used in this sub-rule. The High Court expressed its opinion in these words :

F "It is clear that this condition is intended to apply to a case where a joint family consists of more than two persons where each one of them is entitled to claim partition and the members sought to be excluded are lineal descendants of one of such members. It is only in such cases that it could be said that they were lineal descendants of a member who was entitled to claim partition against another. In the present case the father and each of the sons is entitled to claim partition against each other. If the lineal descendants are to be excluded even in a case like the present it only means that all the descendants of the father must be excluded even though there is no other member against whom the father can seek to enforce partition. Having regard to the words used the only interpretation which can be placed on clause (b) of sub-rule (3) of r. 19, is the one adopted by us."

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The error into which the High Court seems to have fallen is that it has assumed that a person against whom partition can be claimed by the father of the lienal descendants constituting the joint Hindu family must be some member of that family other than his lienal descendants and that it excludes his right to claim partition when the only other members of the joint family are his own lineal descendants. For this assumption there does not seem to us to be any justification either in the language or in the scheme of the Act and the rules or in any other provision of law applicable to the parties before us and governing the present controversy.

According to the general provisions of Hindu law the father in a joint Hindu family has the power to partition the joint family property and indeed in the present case the High Court has accepted the legal position that the father and each of his sons are entitled to claim partition against each other. It is only on the language of r. 19(3) and as the judgment under appeal suggests, on that Court's disinclination to accept as proper, the exclusion of the sons when the joint family consists only of the father and his sons that the High Court construed r. 19(3) in the manner stated above. We are unable to find any warrant for this view. The plain reading of r. 19(3) is against it. The language is not susceptible of the meaning that there should be in existence some member of the joint family other than the sons, against whom the father should be entitled to claim partition. The words of the sub-rule being plain and unambiguous they have, in our view, to be construed in their natural and ordinary sense. No cogent reason has been suggested for departing from the rule of literal construction in this case. The consequence flowing from this construction is quite intelligible and seems to us to be rational and logical. The special provision embodied in r. 19 for paying compensation to joint Hindu families is, in our view, intended to treat a joint Hindu family consisting only of a father and his sons as one unit for the purpose of payment of compensation for the joint family property left in Pakistan. Such a joint family is not intended to be broken up by the statutory scheme of the Act and the Rules. Sub-rule (3)(b) of r. 19 was, in our opinion, correctly construed by the Chief Settlement Commissioner and the High Court was wrong in disagreeing with it and in allowing the writ petition. The appeal accordingly succeeds and is allowed with costs.

V.P.S. *Appeal allowed.*