APPELLATE CIVIL

Before A. N. Bhandari, C.J. and Bishan Narain, J.

THE COMMISSIONER OF INCOME-TAX, DELHI, AJMER, RAJASTHAN AND MADHYA BHARAT, NEW DELHI,—*Petitioner.*

versus

SHRI PRATAP CHAND,—*Respondent.*

Income-tax Reference No. 10 of 1956.

1958

Aug., 29th

Special Marriage Act (III of 1872)—Preamble—Scope of the Act—A Hindu getting married under the Act on declaring that he did not profess the Hindu religion—Whether can form a joint Hindu family with his son born of such a marriage—Son—Whether acquires interest in father's ancestral property by birth—Caste Disabilities Removal Act (XXI of 1850)—Section 1—Operation of.

Held, that the Special Marriage Act, 1872, only provides a form of marriage in certain cases and it is neither concerned with nor makes any provision relating to succession to property by those Hindus who get married under this Act.

Held, that a Hindu who declares (for the purpose of the Special Marriage Act, 1872) that he is not a Hindu does not cease to be a Hindu and Hindu Law remains applicable to him. The Act does not affect the law of coparcenary and succession to property as applicable to Hindus married under that Act. Consequently he forms a Hindu Undivided Family with his son and his son acquires an interest by birth in his father's ancestral property.

Held, that the Caste Disabilities Removal Act, 1850, comes into operation only after it has been found that the person concerned has changed his religion. The purpose of this special statute is to remove certain disabilities which result from change of religion by virtue of personal law applicable to the convert before his conversion.

Reference under Section 66(1) of the Indian Income-Tax Act, 1922, (XI of 1922), by the Income-Tax Appellate Tribunal, Bombay.

K. N. RAJ GOPAL SASTRI AND D. K. KAPUR, for Petitioner.

G. S. PATHAK AND RAM DITTA MALL, for Respondent.

ORDER

Bishan Narain, J.

BISHAN NARAIN, J.—On the application of the Commissioner of Income-tax, the Income-tax Appellate Tribunal (Delhi Branch) has drawn up the case and has referred the following question to this Court under section 66(1) of the Indian Income-tax Act:—

> "Whether on the facts and in the circumstances of the case, the assessee Partap Chand's male issue by his marriage solemnised in 1947 under the Special Marriage Act of 1872 on his declaring that he did not profess the Hindu religion, acquired an interest by birth in the assessee's ancestral properties?"

Partap Chand assessee filed two returns for the assessment year 1953-54, one in the status of an individual showing therein his income from salary etc., and the other as *Karta* of a Hindu Undivided Family consisting of himself and his minor son showing therein income from ancestral property. In this case we are only concerned with his return as *Karta* of Hindu Undivided Family and not with his return as an individual. The facts relevant for this purpose are these. The assessee's father was Somer Chand. There was a family arrangement between Somer Chand and Partap Chand and thereunder Partap Building, Cannaught Circus, New Delhi, and some shares were allotted to Partap Chand with effect from 16th April, 1946. This family arrangement has been recognised by the Income-tax authorities. The property so allotted to Partap Chand has been held in the present case to be ancestral property in his hands. In 1947, Partap Chand was married under the Special Marriage Act (No. III) of 1872. At the time of

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marriage, Partap Chand made a declaration that he did not profess Hindu religion. His son was born sometime in 1948. On these facts the assessee's case is that he with his minor son constitutes a Joint Hindu Family under the Hindu Law while the case of the Income-tax Authorities is that succession to Partap Chand's property, self-acquired or ancestral, must be regulated by the provisions of the Succession Act, i.e., by succession and not by survivorship.

It was argued on behalf of the Income-tax Commissioner that the assessee by his declaration at the time of the marriage under the provisions of the Special Marriage Act that he did not profess Hindu religion abjured and renounced the Hindu Law as applicable to him. It is argued that after this declaration he ceased to be a Hindu and the succession to his property must be govered by the provisions of the Indian Succession Act, 1925.

Now, the Special Marriage Act as originally enacted in 1872, enabled Hindus who did not approve of the religious marriage rites to take advantage of this Act by declaring under section 10 of the Act that they did not profess the Hindu religion. This is no longer necessary after the enactment of the Amending Act of 1923. Under Law it was not necessary for Partap Chand, at the time of his marriage in 1947, to declare that he did not profess Hindu religion but he chose to make that declaration. Now, the 1872 Act as originally enacted does not specifically lay down the effect of the declaration on the applicability of Hindu law relating to succession to the declarant's ancestral property or on his membership of the Joint Hindu Family. The Act was amended by the Amending Act of 1923. It amended section 1 of the Act whereby Hindus professing Hindu

religion could also get married under the Act without declaring that they did not profess the Hindu religion. The Amending Act added sections 22 to 26 which in certain respects modified the applicability of Hindu Law to Hindus who professed themselves to be Hindus at the time of their marriage under the Special Marriage Act. The Amending Act did not in any way lay down any rule, modifying previous provisions of the Act or by adding any new provision, by which the effect of declaration on the Hindus who got married under the Act by declaring that they did not profess Hindu religion, could be determined. The effect of declaration under section 10 made before 1923, has been discussed by various High Courts. (Vide *Jnanendra Nath Ray (deceased), In the Goods of* (1), *Vidvagavri Hargovandas* v. *Narandas Kashidas Mugatwala* (2), *Punvadas Das* v. *Manmohan Ray and others* (3), *Emperor* v. *M. J. Walter* (4), *and Thukru Bai* v. *C. Attavar and others* (5). In all these decisions it has been held that the Amending Act of 1923, has no retrospective application and that by the declaration the declarant did not cut himself off from the personal law applicable to him as a member of the joint Hindu Family. In the Patna case it has been held that son of such a declarant takes the property by survivorship and not by succession.

From these decisions it is clear that the Special Marriage Act only provides a form of marriage in certain cases and it is neither concerned with nor makes any provision relating to succession to property by those Hindus who get married under

(1) I.L.R. XLIX Cal. 1069
(2) 1928 Bombay 74.
(3) A.I.R. 1934 Patna 427.
(4) A.I.R. 1934 Oudh. 155.
(5) A.I.R. 1935 Mad. 653.

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this Act. This is also indicated by the preamble of the Act.

The learned counsel for the Income-tax Commissioner frankly conceded that all these decisions run contrary to the contention advanced by him. He, however, challenged the soundness of these decisions on the ground that the learned Judges in these cases have not considered the effect of the Caste Disabilities Removal Act (No. XXI) of 1850 on th provisions of the Special Marriage Act. He also urged that the provisions of the amending Act 1923, clearly indicate that the legislature intended that a Hindu who gets married under the provisions of the Special Marriage Act by declaring that he did not profess Hindu religion is not governed by Hindu Law in any respect whatsoever.

Taking up the first point, I am unable to see how section 1 of the Caste Disabilities Removal Act, 1850, is relevant for the present purpose. That enactment comes into operation only after it has been found that the person concerned has changed his religion. The purpose of this special statute is to remove certain disabilities which result from change of religion by virtue of personal law applicable to the convert before his conversion. This statute was construed by the Privy Council in *Mitar Sen Singh* v. *Maqbul Hasan Khan and others* (1), and it was laid down that "the section in terms only applies to protect the actual person who either renounces his religion or has been deprived of caste. It is intended to protect such a person from losing any right of property or of succeeding as heir." It is, therefore, clear that the provisions of this Act can be relevant only after it has been held that the person concerned has changed his religion. I, therefore, hold that

(1) 1930 P.C. 251.

this enactment of 1850 is of no assistance in construing the provisions of the Special Marriage Act.

The learned counsel then urged that the provisions of the amending Act indicate that the intention of the legislature in 1872 or at least in 1923 was that a person marrying under the Act by declaring that he did not profess Hindu religion was not to be governed by Hindu Law. The argument is that when such a person declares that he professes Hindu religion then the Hindu Law remains applicable to him only subject to modifications detailed in sections 22 to 26 of the Act and therefore, it would not be reasonable to hold that a Hindu declaring to the contrary would be subject to Hindu Law without any modification whatsoever. There is no doubt that reading the Act as a whole after the amendments of 1923 and as it stands today, this anomalous situation arises but this can be set right by the legislature only and not by Courts of Law. In this connection it must be remembered that in 1923, the legislature did not consider it fit to clarify the position by making provisions similar to or on the lines of sections 22 to 26 for those who at the time of marriage declared that they did not profess Hindu religion. This omission cannot be supplied by us. In any case I do not consider it a sound rule of construction to construe a social piece of legislation enacted in 1872 by the provisions of an Act on the same subject passed after 30 years without specific modification or amendment in the subsequent enactment. The learned counsel for the Income-tax Commissioner, however, relied on the rule of construction laid down in the House of Lord's decision reported in *Kirkness (Inspector of Taxes)* v. *John Budson and Co., Ltd.* (1), wherein it has been laid down that subsequent legislation may

(1) (1955) 2 A.E.L.R. 345

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be looked at to resolve any ambiguity in the earlier Act. It was, however, laid down in this very decision that you cannot look at the subsequent enactment to create any ambiguity in the earlier Act. In the present case, however, no such ambiguity exists if the 1872 Act is read by itself. There is no provision in 1872 Act which affects in any way the law of coparcenary and succession to property as applicable to Hindus married under that Act. The Act as it stands today specifically lays down that persons marrying under the Act and declaring that they profess Hindu religion continue to be governed by Hindu Law though only in a modified form. The Act is completely silent about the persons who after 1923, marrying under the Act declare that they do not profess Hindu religion. Undoubtedly an anomalous situation does arise but as I have already said this anomaly can only be removed by the legislature and not by Courts of Law. It, therefore, follows that the decisions of the various Courts given above cannot be challenged on this ground also.

For these reasons and following the decisions enumerated above, I hold that a Hindu who declares (for the purpose of the Special Marriage Act, 1872) that he is not a Hindu does not cease to be a Hindu and Hindu Law remains applicable to him. This view is in consonance with the view expressed in Mulla's Hindu Law at page 7 (Eleventh Edition). It follows from this conclusion trat Pratap Chand and his minor son form Hindu Undivided Family and that Pratap Chand's minor son acquired an interest by birth in the assessee's ancestral property.

I am, therefore, of the opinion that the question referred to us should be answered in the affirmative.

Bhandari, C. J.

BHANDARI, C. J.—I agree.

B.R.T.