

1936

MAKUNDI
LAL
v.
HASHMAT-
UN-NISSA

might have been a consolidation under order XLV, rule 4 of the Civil Procedure Code. We accordingly certify under section 109(c) that this case is a fit one for appeal to His Majesty in Council.

As regards the request for the consolidation of these two appeals we have already pointed out that order XLV, rule 4, does not apply to this case. It appears that the Patna High Court in *Har Prasad Rai v. Brij Kishen Das* (1) came to the conclusion that they had an inherent power for consolidating appeals to the Privy Council for the purpose of security for costs and to save expenses. Ordinarily inherent powers exist as regards matters relating exclusively to the proceedings in the court which exercises such powers. We find no authority for holding that we have inherent power to make orders relating to appeals pending before their Lordships of the Privy Council when there is no specific provision in the rule and when the relevant rule is confined to particular cases. In any case, as the defendants respondents are different and they may engage different counsel, we see no reason why the appellant should not be called upon to furnish security for the costs of the respondents in each of these cases separately. We accordingly refuse the prayer for consolidating the two appeals.

We see no reason to allow the appellants to furnish security otherwise than in cash.

MISCELLANEOUS CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

COMMISSIONER OF INCOME-TAX v.

MUHAMMAD ASLAM*

1936
August, 7

Income-tax Act (XI of 1922), section 3—“Association of individuals”—Co-owners of income-producing property who have appointed a common collecting agent—Whether taxable as an “association”.

*Miscellaneous Case No. 335 of 1934.

(1) (1918) 45 Indian Cases, 551.

The expression "other association of individuals" in section 3 of the Income-tax Act should, in view of its context and of the Act as a whole, be taken as being *ejusdem generis* with the word immediately preceding it, namely the word "firm". Thus, before there can be an "association of individuals" within the meaning of the section, it must be shown that the association has at least some of the attributes of a firm or partnership, though not amounting to one in strict law.

Where a *mandi* or market, which had originally belonged to one person, came, in course of time, by succession or transfer to be owned by several persons, and an accountant was appointed by some of the co-owners, though apparently not by all the owners as a body, to collect the rents and keep accounts, and on occasions the co-owners made their own collections or brought suits for recovery of rent in respect of their shares only, it was *held* that the co-owners were not an "association of individuals" within the meaning of section 3 of the Income-tax Act; and even if the accountant was acting under the authority of all the co-owners, the appointment by a body of co-owners of a mere collecting agent would not convert them into an "association of individuals" within the meaning of section 3.

Mr. K. Verma, for the Income-tax Department.

Dr. K. N. Ka'ju and Mr. P. L. Banerji, for the assessee.

COLLISTER and BAJPAI, JJ.:—The Commissioner of Income-tax has on his own motion under section 66(1) of the Income-tax Act referred the following two questions to this Court for decision:

(1) Whether on the facts of the case stated below (i.e. in his statement of the case) the various co-sharers owning the *mandi* known as the Khalifa Mandi at Allahabad constitute an association of individuals within the meaning of section 3 of the Income-tax Act?

(2) If the answer to the above question be in the affirmative, whether in view of the fact that Mufti Muhammad Aslam has, subsequently to the issue and service of the notice under section 2(12) of the Income-tax Act, 1922, transferred his proprietary interest to his wife, the Income-tax Officer is debarred from treating him as the principal officer of the association within the meaning of the section quoted above?

1936

COMMISSIONER
OF
INCOME-TAX
v.
MUHAMMAD
ASLAM

1936

COMMISSIONER
OF IN-
COME-
TAX
v.
MUHAMMAD
ASLAM

The Khalifa Mandi consists in some shops, houses and a piece of open ground on which a market is held. It originally belonged to one Mufti Karim Quli, who died in 1860. It appears that from 1925 onwards twenty-six persons have by right of succession or transfer been the owners of this mandi. Up to 1925 the owners used to lease the mandi to thekadars, but in that year they appointed a man named Kanhaiya Lal to collect rents and maintain accounts. These accounts were kept in Hindi; but subsequently, for the convenience of some of the co-sharers, another man, named Abdul Shakoor, was also appointed, who wrote in Urdu. It appears that Kanhaiya Lal has now resigned, but we do not know the date of his resignation and we do not know whether Abdul Shakoor is still in the employment of the owners.

As regards question No. (1) the learned counsel for the department contends that an association of individuals within the meaning of section 3 of the Income-tax Act will cover any case where a number of persons have a specified but undivided share in property which produces income; but he has not been able to show us any authority for this definition. Taken by itself, it cannot be denied that the expression is capable of a very wide interpretation, but having in view its context and the Act as a whole, we do not think it was the intention of the legislature that the words should have so comprehensive a meaning. Originally the words used in the Act were "individual, company, firm and Hindu undivided family", but under an Amending Act of 1924 (XI of 1924) the words "individual, Hindu undivided family, company, firm and other association of individuals" were substituted. There is no comma after the word "firm" and from this as well as from the fact that the words "Hindu undivided family" have been transposed to a higher position in the sentence it must be inferred that it was the intention of the legislature that the expression "other association of individuals" should

be *ejusdem generis* with the word immediately preceding, i.e., the word "firm". Thus, before there can be an association of individuals within the meaning of the section, it must first be shown that the association has at least some of the attributes of a firm or partnership, though not in the strictly legal sense of the term. Learned counsel for the department has referred us to the following cases: *Commissioner of Income-tax v. Mohideen Sahib* (1), *Hotz Trust v. Commissioner of Income-tax* (2), *Commissioner of Income-tax v. Mrs. Saldanha* (3), *Trustees of the Tribune Press v. Commissioner of Income-tax* (4), *In re B. N. Elias* (5), and *Mian Channu Factories Union v. Commissioner of Income-tax* (6). None of the above cases, with the possible exception of *In re B. N. Elias*, is of much assistance to us in deciding the questions which are laid before us. In the last mentioned case it was held that persons who have joined themselves together in the purchase of a property and have remained joined as owners and for holding and using it in order to make gain thereby are an association of individuals within the meaning of section 3 of the Income-tax Act. The following observations of the learned CHIEF JUSTICE in that case may with advantage be quoted :

"Those words 'association of individuals' have to be construed in their plain, ordinary meaning. There is no difficulty about the word 'individuals'. 'Associate' means, according to the Oxford Dictionary, 'to join in common purpose, or to join in an action'. Did these individuals join in a common purpose, or common action, thereby becoming an 'association of individuals'? In my view, they did. In the first place, they joined together in the purchase of this property on the 9th January, 1920. In the second place, they have remained joined as owners of this property from the date of the purchase down to the present time. Thirdly, they have joined together, as the powers of attorney show, for the purpose of holding this property and of using it for the purpose of earning income to the best advantage of them all."

(1) A.I.R., 1927 Mad., 1052.

(2) (1930) I.L.R., 11 Lah., 724.

(3) (1932) I.L.R., 53 Mad., 891.

(4) (1935) I.L.R., 16 Lah., 829.

(5) (1935) I.L.R., 63 Cal., 538.

(6) A.I.R., 1936 Lah., 548.

1936

COMMISSIONER
OF IN-
COME-
TAX
v.
MUHAMMAD
ASLAM

We now have to see what are the facts in the present case. The Commissioner of Income-tax at one place states that in 1925 "the owners as a body employed one Kanhaiya Lal, an accountant and a servant of the former lessees, to collect rents and maintain the accounts thereof." He then mentions that subsequently a second man was employed and he then goes on to state: "The collections were made generally by the staff, but sometimes the co-sharers made them themselves and reported them to the accountants for the purpose of writing up and adjusting the accounts." It thus appears that the rents were sometimes collected by one or other of the accountants and sometimes by individual co-sharers. Thus although the learned Commissioner has stated at the beginning that these accountants were appointed by the owners as a body, it seems at least doubtful whether all the co-sharers had consented or were satisfied with their appointment. It also appears that there is no large measure of agreement among the co-sharers. It does not appear from the Commissioner's statement of the case that the accountants had authority to do anything more than collect rents and maintain accounts. On page 4 of our printed book we read that "suits have been filed by some of the co-sharers for the recovery of rent in respect of their shares only". Even if the accountants were acting under the authority of all the co-sharers, we do not think the mere appointment by a body of co-owners of a common collecting agent will convert such body of co-owners into an "association of individuals" within the meaning of section 3 of the Act. We express no opinion as to what the position would be if the co-owners of an income-producing property appointed one or more persons, whether from among themselves or from outside, to perform all the functions of a common scheme of management. For the reasons given we are unable to agree with the Income-tax Commissioner that the owners of the Khalifa Mandi are an

“association of individuals” within the meaning of section 3 of the Income-tax Act. This is our reply to question No. (1) of the reference.

In this view of the first question, the second question does not fall to be decided.

1936

COMMISSIONER
OF IN-
COME-
TAXv.
MUHAMMAD
ASLAM

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Mr. Justice Bajpai*

BISHAN DAYAL (PLAINTIFF) v. KESHO PRASAD
AND ANOTHER (DEFENDANTS)*

1936
August, 11

*Civil Procedure Code, section 66—Benami auction purchase—
Suit for possession of half share of the property purchased at
auction in defendant's name—Allegation that purchase was
made on behalf of plaintiff and defendant jointly—Suit
whether maintainable.*

The plaintiff sued for possession of a half share of a certain property, of which the defendant was the certified purchaser at an auction sale in execution of some other person's decree. The plaintiff's allegation was that the bid at the auction was made by the defendant on behalf of both the plaintiff and the defendant and the plaintiff was accordingly the owner of half the property. The parties were not members of a joint Hindu family, or of a partnership firm:

Held that the suit was barred by section 66 of the Civil Procedure Code. The section does not apply to the case of those persons who by operation of law, and not by virtue of any private agreement or understanding, are entitled to treat as joint property an acquisition, made by the use of joint funds, by one or other of them in his own name; e.g., members of a joint Hindu family, or members of a partnership firm, or joint decree-holders where one of them executes the decree for the benefit of all and purchases the property in lieu of the joint decretal amount. But the section does apply where a partnership or agreement is entered into between two persons to purchase property at an execution sale, with funds contributed by both, in the name of one person alone.

*First Appeal No. 314 of 1932, from a decree of I. M. Qidwai, Subordinate Judge of Banda, dated the 30th of June, 1932.