ANDHRA PRADESH HIGH COURT

Raja V. V. Muvva Gopalakrishna Yachendra

Vs.

Raja V. V. Sarvagna Krishna Yachendra

S.T. Appeals Nos.83, 119 to 121, 85 to 88, 90 and 91 of 1954

(Chandra Reddy and Umamaheswaram, JJ.)

18.02.1954. 04.03.1955

JUDGMENT

Chandra Reddy, J.

1. These appeals raise a question pertaining to the Madras Estates (Abolition and Conversion into the apportionment of compensation deposited under Ryotwari) Act, 1948. The compensation was deposited in respect of the Venkatagiri Estate which was taken over by the Government after notification on 7-9-49. The estate of Venkatagiri has been in existence since Muhammadan times. On the disruption of the Moghul Empire, it owned allegiance to the Nawab of Arcot. In addition to the payment of peishkush they had to maintain an armed force for the assistance of Government in times of disorder or rebellion. As a result of the treaty between the East India Company on the one side and the Nawab of Arcot on the other, the administration of that part of the country under the suzerainty of the latter was made over to the British. Under this treaty, the Zamindari of Venkatagiri was recognised and the Rajah had to pay to the East India Company what he was paying before to the Muhammadan rulers. Some time later, in accordance with the arrangement entered into between the zamindars in Western Arcot and Lord Clive, the East India Company took over the responsibility for the preservation of law and order and the zamindars were relieved of the task of maintaining armed forces and in its stead they undertook to pay an additional revenue on their estates, which was added to the peishkush. It was assured that the fixed peishkush would remain unalterable. In pursuance of this arrangement, a Sanad was granted in 1802 to the Zamindar of Venkatagiri and other zamindars embodying the terms agreed upon. Ever since, successive zamindars held the estate paying peishkush which has been invariable. In the latter half of the 19th century, the then Zamindar, Rajah Velugoti Kumara Yachama who had seven sons of whom three were given in adoption, handed over his estate to his eldest son, Rajah Gopalkrishna. A decade thereafter, two of his sons, Muttukrishna and Venkatakrishna claimed that the father had no right to make the eldest son his successor to the estate and the property was divisible among the four sons, who remained in the family in equal shares. It may be mentioned that at that time Venugopal, the last of the sons, was a minor. Consequent upon the advice given by the father and mutual friends the claim was withdrawn and a settlement arrived at which was embodied in a document marked as Ex. A-1 in these cases.
Under the terms of this document, the Venkatagiri Estate was recognised as an impartible one

with the right of primogeniture, that the other three sons should receive amounts specified therein besides a provision being made for the marriages of Venkatakrishna and Venugopal who were then unmarried and the Rajah Gopalakrishna and his successors to the estate should pay to the three brothers and to their male descendants a sum of Rs. 1,000/- by way of allowance. The purport of the clause in Ex. A-1 as regards maintenance is as follows : Venkatagiri Estate being impartible, Sri Muttukrishna, Sri Venkatakrishna and Sri Venugopalakrishna and their Purusha Santhathi (male issue, progeny or descendants) are entitled to get allowances from the said estate. The four brothers, the last being a minor, by his father and guardian Kumar Yachama Nayudu Bahadur, appointed the Rajah of Bobbili as mediator to determine the amount of allowance to be given to the three above-named brothers and to their Purusha Santhathi. The mediator taking fully into consideration the status of all the parties, the condition and respectability of the estate and all other matters fit to be considered, decided that Sri Rajah Gopalakrishna, Raja of Venkatagiri and those that succeeded him should pay the allowances in the manner fixed herein below :

2. In pursuance of that decision, the Rajah and those that succeeded him undertook and accepted to pay allowance every year from the income of the estate from 6-4-1889. The three brothers should be paid at the rate of Rs. 1,000/-per month for the rest of their lives. The Rajah and his successors should pay the Purusha Santhathi and the three persons mentioned above in perpetuity in the manner aforesaid the same allowance. If, at any time, in any of the branches any male should the without any male descendant either by way of aurusa or by way of adoption the amount of allowance should go to the gnatis in his own branch according to Hindu Law. Should any of the said three branches of the family become extinct by the total absence of Purusha Santhathi either by way of aurusa or by way of adoption, the allowance being paid to their branch should be stopped subject to the condition that if there be a widow or widows left of the last male who died in that branch, one half of the allowance of Rs. 1,000/- should be paid to the widow or widows of the person who so died without Purusha Santhathi as maintenance for life. But, if there be female Santhati in that branch it shall not be paid to that female Santhati. Nor should it be paid to the Purusha Santhati of the other two branches or to either of the branches or in any other manner.

3. In 1890, a suit was filed on behalf of Venugopal who was still a minor impeaching the settlement and repeating the claim that the estate was partible. On his attaining majority, he withdrew the suit and recognized the validity of the document. Thus, the settlement became final as regards all the brothers.

4. In the beginning of this century, the Impartible Estates Act was passed. It contained a list of estates to be governed by the Act and this included the Venkatagiri Zamindari.

5. In the year 1948, the Madras Legislature enacted the Madras Estates (Abolition and Conversion into Ryotwari) Act (hereinafter called the Act) for the repeal of the permanent settlement for the acquisition of the rights of the landholders in permanently settled and certain other estates in the province and for the introduction of the ryotwari estates in such estates. It provided for the payment of compensation for the acquisition of these rights. The compensation payable for the estate was determined by capitalizing the net income arrived at on the principles stated in the Act. As this compensation represented the different interests, the aggregate amount was to be apportioned as provided in Section 45 of the Act by a Tribunal appointed under the Act

for the various purposes mentioned therein. The total amount of compensation payable was arrived at Rs. 38,79,839/- in the year 1950, the Government deposited Rs. 12,11,419/- as representing half the compensation under Section 54(a)(1) of the Act after deducting Rs. 7,28,500/- towards arrears of peishkush and land cesses etc.

6. Petitions were filed before the Tribunal on behalf of the principal land-holder and his sons, the brothers of the principal land-holder and the appellants for the division of these amounts. In the present appeals, we are not concerned with the petitions filed on behalf of the brothers of the Rajah. The appellants in these appeals are Krishna Bahadur, the adopted son of Venkatakrishna referred to above and his three sons. While Krishna Bahadur claimed that he was entitled to half of the advance compensation as a sharer his three sons each claimed 1/4th or 1/5th of the entire compensation. The Tribunal decided that the appellants were maintenance-holders along with the two brothers of the Rajah and that 1/5th of the compensation should be set apart for distribution among the maintenance holders under Section 45(4) of the Act. In the apportionment of the compensation amongst the maintenance-holders, the branch of Krishna Bahadur was given Rs. 75,000/-.

7. Against the above judgment all the parties concerned excepting the 2nd brother of the Rajah called the Maharaj Kumar who has compromised with the Rajah, have filed appeals. At present, we are only concerned with those filed by Krishna Bahadur and his three sons.

8. The decision of the Tribunal is impugned by the appellants on various grounds: (1) the Venkatagiri estate having been constituted an impartible estate by agreement of parties under Ex. A. 1, and the Impartible Estates Act having been repealed, the compensation payable for the acquisition of the estate has become partible and therefore the appellants are entitled to an equal share with the principal landholder and his descendants as a coparcener; (2) as the allowance was agreed to be paid in lieu of a share they are in the position of creditors and not maintenance-holders; and it ought to have been capitalised by 33.1/3 years' purchases; (3) at any rate the peishkush and land cess deducted from half the total compensation should have been debited to the share of the principal landholder and 1/5th of the compensation set apart for the maintenance-holders should have been out of the aggregate amount and not out of the deposit as made; (4) the provision in Section 45(1) limiting the amount payable to all the maintenance-holders as 1/5th of the total compensation is ultra vires as it offends against Article 14 of the Constitution.

9. On the first point, the argument was that the Venkatagiri estate was a partible one till the year 1889, when Ex. A.1 came into existence and it is only by virtue of the arrangement between the parties that the estate was converted into an impartible one. It was urged that this estate was being partitioned among the various branches till that date. The purpose for which the document had been brought into existence being to preserve the integrity of the estate by making it impartible, having failed, the parties are relegated to the original position, and the petitioners are therefore entitled to a share as coparceners along with the principal landholders. The basis of the contention that the estate was made impartible by contract in 1889 is the recital in Ex. A.1, that the three brothers of Rajagopalakrishna claimed an equal share along with him and that they were given a 1/4th share each in the moveable properties, and secondly, a passage in the Nellore District Manual which shows that there were two instances of division in the family in the 19th century. We think there is no foundation for this argument either on the terms of Ex. A.1 or in general law. It is categorically stated in the document that the estate was impartible and the

brothers were entitled to get allowance from the estate. The mere fact that a claim was put forward for a share does not indicate that the estate was partible before and the impartible estate was the result of contractual consensus. The whole document proceeds on the assumption that it was an impartible estate from the beginning. It should also be borne in mind in this context that the estate was of a military tenure. The letter written by Lord Clive at the time of the issue of the sanad bears this out. Having regard to the nature of the tenure, it must be taken to be an impartible one. Excepting the two instances referred to in the District Manual, which look like political events more due to the intervention of the Nawab of Hyderabad, who by that time seems to have obtained suzerainty over this area, there has been no case of division of this estate for nearly two centuries.
That apart, the statutory recognition of the estate as an impartible one by reason of its inclusion in the schedule to the Impartible Estates Act 2 of 1904 precludes the parties from going behind it and finality attaches to it.

10. As pointed out in - *'Lalithakumari Devi v. Rajah of Vizianagaram[1]',* by Rajamannar, C.J., the inclusion in the schedule was as a result of an enquiry by the authorities concerned and therefore finality attached to it. The estate being impartible, the appellants cannot be deemed to be coparceners with the right to a share in the property.

11. The nature and incidents of an impartible estate have been summed up by Sir Dinshaw Mulla in - *'Shiba Prasad v. Prayaga Kumari Debee[2]',* in the following words:

> "Impartibility is essentially a creature of custom. In the case of ordinary joint family property the members of the joint family have (1) the right of partition, (2) the right to restrain alienations by the head of the family except for necessity, (3) the right of maintenance and (4) the right of survivorship. The first of these rights cannot exist in the case of an impartible estate, though ancestral in the very nature of the estate.The second is incompatible with the custom of impartibility as laid down in - '*Sartaj Kuari v. Deoraj Kuari[3]',* and the first Pittapur case, - *'Venkata Surya Mahipathi Rama Krishnarao v. Court of Ward[4]',* and so also the third as held in the second Pittapur case, - *'Gangadara Rama Rao Bahadur v. Raja of Pittapur'[5],* To this extent the

[1] AIR 1954 Mad19 [3]10 All 272 [5] AIR 1918 PC 81
[2] AIR 1932 PC 216 [4]22 Mad 383

> general law of the Mitakshara has been superseded by custom, and the impartible estate, though ancestral, is clothed with the incidents of self acquired and separate property.
> But the right of survivorship is not inconsistent with the custom of impartibility. This right, therefore, still remains, and this is what was held in - *'Baijnath Prasad v. Tej Bali Singh[6]',* To this extent, the estate still retains the character of joint family property, and is devolution is governed by the general Mitakshara law applicable to such property.
> Though the other rights, which a 'coparcener acquires by birth in joint family property no longer exist, the birth-right of the senior member to take by survivorship still remains."

The law as declared in this case was affirmed in the subsequent decisions of the Privy Council. In

a recent decision of the Madras High Court - *'Janardhana Krishna Rangarao v. State of Madras*[7]*',* the case law on the subject was reviewed. Rajamannar, C.J., and Venkatarama Ayyar, J., expressed the opinion that a junior member had no interest in the impartible estate at the time of the notification, the material time for the purpose of determining the rights of the paries being the date of the notification, by virtue of which the estate is statutorily transferred to the Government. We express our respectful accord with the doctrine laid down in that case. That was a case filed by a junior member of the Bobbili estate under Article 226 of the Constitution claiming an equal share along with the principal land-holder in the compensation deposited under Section 54(A). In the view taken by the learned Judges, the petition was dismissed.

12. Does the fact that the estate was converted into money change the character of the money equivalent? The answer to this is contained in some of the pronouncements of the Privy Council and the Madras High Court in AIR 1953 Madras 185, referred to supra. In - '*Kochunni v. Kuttanunni*[8]*',* the question that arose for consideration there was whether the properties attached to the Sthanam of the Muppil Nair of Kavallappara estate were Tarwad or joint family properties and whether the holding was converted into ryotwari tenure by the levy of land-revenue and if a conversion had taken place whether the other members of the Tarwad had an interest in the Sthanic properties. After negativing the contentions of the members of the Tarwad that the properties were those of the Tarwad and the levy of land-revenue had resulted in the conversion of the Sthanam properties into ryotwari tenure, their Lordships proceeded to observe

> "that even if any conversion did take place it was so, as the High Court observes in one part of the judgment, (at page 176, line 38 of the record) only in relation to the Government and not in relation to the other members of the family, with reference to whom the lands continued to enjoy the benefits of the incidents which were previously attached to them."

13. A contention similar to the one raised in these cases was repelled by the Bench in

[6] AIR 1921 PC 62 [8] AIR 1948 PC 47

[7] AIR 1953 Mad185

AIR 1953 Madras 185. It was argued that with the taking over of the impartible estate under the Act and the conversion of the impartible estate into money the incidents of impartibility attached to the estate had ceased and consequently compensation amount should be regarded as the property of the joint family consisting of all the members of the family. This argument did not find favor with the learned Judges. It was held that the incident of impartibility continued even after the estate was acquired by the Government and compensation paid therefore. The learned Judges remarked :

> "It is obvious that only persons who have interest in the property which is acquired are entitled to a share in the compensation awarded on the acquisition of the property by the Government." Following the view enunciated in this case, we hold that the custom of impartibility did not cease with the acquisition of the estate and the money equivalent of this property was impressed with the same character and therefore the appellants had no right to share along with the principal landholder in the compensation paid. As pointed out in the latter case, conversion of this nature would not alter its quality and its essential

characteristics will attach themselves to the money equivalent. Vide - '*Ramachandra Rao v. Ramachandra Rao*[9]*',* This issue is therefore found against the appellants.

14. The next point is whether the appellants are in the position of creditors and their claim falls within the operation of Section 45(3) of the Act. It was argued that the allowance of Rs. 1,000/-a month to each of the brothers was stipulated to be paid in lieu of a share in the estate, that it came into existence only from the date of Ex. A-1 and that the fact this money payment was described as an allowance established such a claim. We do not think that the recitals in this document are fatal to this contention. Nowhere in Ex. A-1 is it stated that the allowance of Rs. 1,000/- was agreed to be paid in lieu of a share. In fact, in clause 5 of the document, it is stated that the brothers were entitled to get the allowance because Venkatagiri was impartible. It is therefore clear that the right to get this allowance is not based on a right to a share, but it is obviously claimed as an incident of impartible estate. In fact, the sum of Rs. 1,000/- was not the amount mentioned by one party and accepted by the other. This was fixed by the Rajah of Bobbili as a mediator who arrived at the figure after taking into consideration several factors mentioned therein.

15. It may also be mentioned that the parties, namely, the appellants always treated this allowance as maintenance allowance. In I.P. No.27 of 1930, Nellore, Krishna Bahadur claimed that this was maintenance and it could not be attached by creditors. This was upheld by the Subordinate Judge. In 1945 the same claim was put forward as is evident from the judgment in A.S. No.195 of 1946 on the file of the Madras High Court. Giving evidence in O.S. No.24 of 1945 out of which the abovementioned appeal arose, Krishna Bahadur said that a sum of Rs. 1,000/- was being paid to him by way of maintenance which he utilised for maintaining himself and his family. This long course of conduct shows that the parties understood it only as maintenance. In fact in - *'Maharaja Sahib of Venkatagiri v. Raja Rjeswara Rao*[10]*',* and - *'Kumar Krishna Yachendra v. Rajeswara Rao*[11]*',* the High Court of Madras and the Privy

[9] AIR 1922 PC 80
[10] AIR 1939 Mad 614
[11] AIR 1942 PC 3

Council, respectively proceeded on the footing that this allowance was maintenance allowance. We therefore think that the allowance agreed to be paid under Ex. A-1 was only maintenance allowance and the agreement did not give rise to any higher rights and the position of a debtor and creditor was not created there under. The word 'allowance' used in the document is a neutral expression not connoting anything by itself. It can acquire a particular meaning only when the purpose is ascertained. In the context of Ex. A-1 it could have reference only to maintenance.

16. There are difficulties in the way of regarding this claim as a debt. It is provided in the document that this allowance would lapse on the failure of the male descendants, and the collaterals could not get it. If it is debt, it could be transferable, but under the terms of the document, such a course is not permissible. In - *'Venkatappa Nayanim Bahadur Varu v. Rajah Thimminayanim Bahadur Varu*[12]*',* a Bench of the Madras High Court ruled, inter alia, that an allowance agreed to be paid under similar circumstances was a maintenance allowance and that persons in enjoyment of it would not be regarded as creditors of the estate. It is true that this case was overruled in - '*Poovvanay Ayissa v. Kundron Chokru*[13]*',* by a Full Bench on the question of registration of a charge over property not involved in the suit. But, nothing is said against the principle stated above.

17. To substantiate the contention on this branch of the case Mr. Venkataramana Ayyar relied on the observations made by Rajamannar, C.J., in AIR 1954 Madras 19, as to the nature of the provision for payment of a monthly allowance of Rs. 5000/- made by Chitti Babu, the then Rajah of Vizianagaram, to his younger son, Vizia, in a trust deed executed in the year 1912. The learned Judge stated that this amount of Rs. 5,000/- was not liable to variation particularly by way of diminution. The reasoning in support of this conclusion was that the settlor was conveying practically all his properties to the trustee for the benefit of the eldest son, the second son at that time being a minor, that the result of the conveyance to the eldest son would mean leaving the younger son with nothing, that there was no reason for the settlor to treat the second son in an unfair way and the latter must have thought of making some provision to the younger son. The learned Judge added that if Chitti Babu had died intestate all the properties other than the impartible estate would have become divisible amongst both the sons. It may be mentioned that the other learned Judge expressed a different opinion on this aspect of the matter. His view was that this allowance was liable to be reduced under Section 14, Impartible Estates Act. Be that as it may, the remarks of Rajamannar C.J. can have no operation in the instant case. In the case cited, the benefit conferred under the trust deed on the elder son was burdened with certain obligations and when the beneficiary elects to take the benefit, he must also bear the burden created thereby. Moreover, the question for decision in this case is not whether the allowance could be varied but relates to the distribution of compensation and it is the criterion furnished by the provisions of Section 45 of the Act that should be applied.

18. Reliance was next placed on - '*Thimmannayanim v. Venkatappa Nayanim*[14]*',* What

[12] AIR 1915 Mad 639 [14] AIR 1928 Mad 713 (FB)

[13] AIR 1920 Mad 242

was called in aid by the counsel for the appellants is the principle stated by Odgers, J., at page 722 that where the right of maintenance is made the subject of a compromise which has been incorporated in a decree, the Court has no power to alter it without consent or override the decree. That doctrine has no application to this case as the allowance fixed is not the subject of a compromise which has been incorporated in a decree.

19. It was argued for the appellants that as the allowance was agreed to be paid by reason of a claim having been put forward for a share and as this allowance was made a charge on the estate as seen from the recital in Ex. A-1 that the zamindar could enjoy the impartible estate only subject to the payment of it, this could not partake of the character of maintenance, but it is only an annuity. This argument lacks force. As regards the first part of the argument we have already stated that the terms of Ex. A-1 show that the reason for agreement to pay allowance is not the claim for a share but the parties thought that the junior members of the family were entitled to maintenance by virtue of the estate being an impartible one. Even otherwise, the two circumstances relied on by the appellants will not change the character of the allowance.

20. In this context, two of the pronounce merits of the Privy Council may be usefully noticed. In - *'Rajindra Narain Singh v. Mt. Sundar Bibi*[15]*',* a creditor sought to attach and sell the right and interest which a judgment-debtor had in sixteen zamindari villages, which he was put in possession of in a compromise of a suit brought by him to eject his brother from a zamindari estate. The deed provided, inter alia, that the plaintiff therein (i.e., the judgment-debtor and after his death his male issue in the male branch should hold and possess the villages yielding a profit

of Rs. 8000/- a year in lieu of maintenance without power of transfer during the life-time of his brother etc. The execution petition was resisted on the ground that the judgment-debtor's interest was a right to future maintenance within Section 60(1), Civil Procedure Code, and therefore not liable to attachment and sale. This objection found acceptance with the Subordinate Judge. The High Court of Allahabad on appeal disagreed with the trial Court on the legal position as to the nature of the judgment-debtor's interest in the property. The learned Judges remarked;

> "It is not easy to define in legal terminology the precise interest of the judgment-debtor, Rajindra Narain Singh, in the fund provided by this compromise. Perhaps the nearest definition would be that he is an annuitant subject to certain defined charges, with a reversionary interest in the corpus upon the death of his brother Lal Bahadur Singh." Further down in the judgment, it is stated:
> "We are unable to take the view that an arrangement of this kind is in any way contemplated by or covered by the expression 'a right to future maintenance'."

We are not concerned here with the further directions issued by the High Court in remitting the application to be dealt with according to law in the light of their decision.

21. On appeal by the judgment-debtor, the Privy Council differed from the High
[15] AIR 1925 PC 176
Court on this aspect of the matter and made the following observations:

> "Their Lordships do not agree with the High Court on the subject of the actual legal position of the right of maintenance conferred upon the judgment-debtor. That right of maintenance arose under a compromise which was made between the judgment-debtor and his brother. The compromise agreement is not produced, but its terms are said by the parties to be recorded in a decree pronounced by the Subordinate Judge of Janpur on 20-5-1915.
> The substance of this agreement is that the judgment-debtor, one of the two brothers parties to the compromise, was declared to have a right of maintenance in certain villages enumerated, the right being conferred expressly without power of transfer."

22. A similar view was also taken by the Privy Council in - *'Commissioner of Income Tax, Central and United Provinces v. Mt. Bhagwati*[16]*',* A Hindu widow claimed that she was entitled to a share of her husband contending that her husband died as a separate member of the family. Ultimately, she and the surviving members of the family entered into a compromise, the terms of which, inter alia, were that the widow was not entitled to a share in the estate that she should be paid as maintenance allowance a sum of Rs. 1,000/- every month and a charge created over all the immoveable properties for the payment of this money.

> This allowance was sought to be taxed by the Income-tax Department while the widow claimed exemption on the ground of its being maintenance. The contention of the Income-tax Department having been negatived by the High Court, the matter was taken in appeal to the Privy Council with no better result. Their Lordships rejected an argument

put forward on behalf of the appellants that by a deed of agreement the widow had surrendered her right to maintenance from the joint family income, and got substituted in its place the money allowance which, on account of its character as such, had become taxable in their hands.

It was remarked that the respondent by virtue of that document "effectively secured her maintenance right which was an inchoate one by getting a charge to safeguard it".

23. The principle that can be deduced from these two rulings is that maintenance allowance does not cease to be such merely because that right is conferred under a compromise or the payment of it is charged upon the estate.

24. It was further contended on behalf of the appellants that as this allowance is payable from generation to generation, it is a heritable annuity and not a maintenance which is payable in an impartible estate and limited to a particular degree. Being an annuity, argues the learned counsel, it should be capitalised by 33.1/3 years' purchase. He cited to us cases of land acquisition where the value was arrived at by capitalising the net annual income by a number of years' purchase. We do not think that there is any scope for claiming the allowance in this case as a heritable annuity. Every person who receives the benefit under the document is a direct object of bounty and he does

[16] AIR 1947 PC 143

not claim it through his predecessor or his ancestor. There are also difficulties in the way of treating it as a heritable estate. If it is so regarded, the restriction of this rights to male descendants would create an estate called tail male unknown to Hindu Law and would offend against the doctrine of Tagore's case, - *'Jotendromohun Tagore v. Ganendromohun Tagore*[17]*',* Nor would the principles applicable to land acquisition cases bear on the instant case, because it is not an absolute or heritable interest. As already pointed out, when a branch became extinct, by total absence of male issue or descendants the allowance would be stopped. So, it is an interest contingent upon each branch having a male issue and it is difficult to see by how many years' purchase the allowance would be capitalized. We have already stated that this allowance is a maintenance allowance traceable to the custom. Further, if the maintenance has become payable either under an instrument in writing or a contract or a family arrangement out of the income of the estate, it will be governed by the provisions of the Act. The claim in this case is put forward on the basis of a contract or family arrangement evidenced by Ex. A.1, whatever might be the description of the payment to be made to the parties. Consequently, it falls, in our opinion, under Section 45. The Act itself provides a complete Code for the determination of the aggregate compensation and the apportionment thereof amongst the various interests and the parties will have to seek their rights and remedies within the four corners of the Act. Section 45 recites:

"45(1): In the case of an impartible estate which had to be regarded as the property of a joint Hindu family for the purpose of ascertaining the succession thereto immediately before the notified date, the following provisions shall apply:

(2) The Tribunal shall determine the aggregate compensation payable to all the following persons, considered as a single group:

(a) the principal landholder and his legitimate sons, grandsons and great grandsons in the male line living or in the womb on the notified date, including sons, grandsons and great

grandsons adopted before such date (who are hereinafter called 'sharers'): and
(b) other persons who immediately before the notified date, were entitled to maintenance out of the estate and its income either under Section 9 or Section 12 Madras Impartible Estates Act, 1904 or under any decree or order of a Court, award, or other instrument in writing or contract or family arrangement which is binding on the principal landholder (who are hereinafter called 'maintenance holders')".

25. It is seen that for purposes of apportionment of the compensation, all the maintenance holders are regarded as a single group and what is to be set apart for this group is specified in clause (4) thus:

"The portion of the aggregate compensation aforesaid payable to the maintenance-holders shall be determined by the Tribunal and notwithstanding any arrangement already made in, respect of maintenance whether by a decree or order of a Court, award or other instrument in writing or contract or family

[17]18 Suth WR 359

arrangement, such portion shall not exceed one-fifth of the remainder referred to in sub-section (3) except in the case referred to in the second proviso to Section 47, sub-section (2)".

It is therefore clear from the provisions of the section that all cases of maintenance payable for any reason are covered by that section and that they can only get a portion of the compensation as stated in the Act. The maximum that is allowed under the Act is l/5th of the total compensation. In these cases, the Tribunal has allowed the maximum compensation. Therefore this contention also fails.

26. Coming now to the third submission, the case of the appellants is that firstly since no application was filed by the Government as contemplated under Section 45(3) and therefore no adjudication by the Tribunal as regards the binding nature of the debt, the Government was not entitled to deduct any sum towards arrears of peishkush or land-cesses, and, secondly, that since this is a debt payable by the zamindar personally, the peishkush and land-cess deducted by the Government can only be dealt with under Section 46 of the Act. We do not think that we can accede to either of the two propositions. Under the proviso to Section 41, the Government is given the right to deduct from the amount to be deposited all moneys due to them in respect of peishkush and any other claim which was secured immediately before the notified date by mortgage or charge on the estate or any portion thereof. The Act does not contemplate the Government approaching the Tribunal for adjudication upon the binding nature of the moneys due to them from the estate under Section 45(3).
It is within the right of the Government to deduct all amounts due to them. Section 46 of the Act would come into play only in the case of individual creditors of either the principal landholder or of the maintenance-holders who are excluded from the purview of Section 45(3). If a debt is payable out of the income of the estate, that falls within the scope of Section 45(3). So far as peishkush is concerned, there can be no doubt that apart from the proviso to Section 41, it is a debt due by the estate as it is charged upon the estate. It was urged that the land-cess payable by

the zamindar cannot be deducted under Section 41(1) as it cannot be said to be a claim secured immediately before the notified date by a mortgage, or charge on the estate or any portion thereof. On the other hand, it was contended for the respondents that the land-cess alone forms a claim which was secured by a charge on the estate by reason of the Madras Revenue Recovery Act. We feel there is more force in the argument addressed by the Government Pleader. However, it is not necessary for us to adjudicate on the merits of the relative contentions in view of the provisions of Section 54A of the Act. It is advance payment of compensation that is sought to be apportioned amongst the various interests. This was deposited under Section 54-A and the mode of distribution must be in the manner provided by that section. Section 54-A is in these terms:

> "Sec.54A(1): In the case of every estate not governed by Section 38, the Government shall estimate roughly the amount of the compensation payable in respect of the estate, and deposit one-half of the amount within six months from the notified date in the office of the Tribunal, as advance payment on account of compensation:
> Provided that in the case of an estate notified before the commencement of the Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1950, the deposit may be postponed to a date which is not later than the 30th day of June, 1950.
> (2) From the amount to be deposited under sub-section (1) the Government shall be entitled to deduct
> (a) one half of all money referred to in the proviso to Section 41(1) and
> (b) one half of the basic annual sum referred to in sub-section (3) of Section 50, if the deposit in pursuance of this section is made in the fasli year in which the estate is notified but after the interim payment in respect of that fasli year has been deposited under Section 50.
> 3. On the making of a deposit in pursuance of this section, the Government shall be deemed to have been completely discharged in respect of all claims to, or enforceable against, the amount deposited.
> 4. The Tribunal shall, after such inquiry, if any, as it thinks fit apportion the amount deposited in pursuance of this section among the principal land-holder and the other persons referred to in Section 42, as far as possible in accordance with the value of their respective interests; and the provisions of Sections 42 to 46 (both inclusive), 48, 49, 51, 52 and 53 shall apply mutatis mutandis in respect of the amount deposited."

It is clear from sub-section (4) that what should be apportioned is the amount deposited by the Government after making such deductions as are envisaged in sub-section (2). It is, therefore, not open to the maintenance-holders to contest the right of the Government to make the deductions mentioned in sub-section (2), In the circumstances, no exception could be taken to the deduction made by the Government, and the maintenance-holders could claim only a share in the deposit as made under that section. We, therefore, agree with the view of the Tribunal on this point also.

27. There remains the issue on the constitutional validity of the Act limiting the share of the maintenance-holders to a maximum of 1/5th. Section 45(4) which contains the relevant provisions is impugned as offending against Article 14 of the Constitution. It is complained that this sub-section makes a discrimination against the junior members of zamindari families.

Another ground of attack is that while a junior member of an ordinary Mitakshara family is entitled to an equal share along with the managing member of such a family that right is denied to junior members in an impartible estate and in its stead a very meagre share is given to persons in the position of the appellants in the compensation which represents the value of the estate. We think this is an untenable contention.
For one thing, unlike members of an ordinary Hindu Mitakshara family, junior members in the position of appellants have no interest in an impartible estate except a right to receive maintenance on account of the custom as developed in course of time. There is no question of the Act depriving the junior members of any right possessed by them prior to the Act or the Act making a discrimination between one class of persons and another.

28. Even otherwise, a law, based on classification which is reasonable having regard to the object to be attained, cannot be said to contravene Article 14 of the Constitution. That Article does not mean that law must be general in character and universal in application. The State Legislatures of the country have certainly powers to classify persons who could be governed by particular laws and in making those classifications they have wide latitude and discretion. The only thing is that the classifications must be reasonable having regard to the object of the legislation.

29. But, this controversy need not detain us any further in view of Article 31-B of the Constitution, which precludes an attack on the constitutional validity of any of the enactments included in Sch.9. In this context, it is essential to set out the terms of Article 31-B:

> "Without prejudice to the generality of the provisions contained in Article 31-A none of the Acts and Regulations specified in Sch. 9 nor any of the provisions thereof shall be deemed to be void or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any Court, or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

It is not disputed that the Madras Act 26 of 1948 is specified in Sch.9. But Mr. Venkataramana Ayyar sought to exclude the operation of this Article on the ground that the word 'right' taken away or abridged by virtue of the acts impugned is only confined to that defined in Article 31-A(2)(b) which says that the expression 'rights' in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue. This definition does not bear out the contention of the counsel for the appellants. It does not exclude the rights conferred upon the citizens by the Articles of the Constitution. It is also clear from the language of Article 31-B that it applies to any right conferred by Part III, a Chapter relating to the fundamental rights. In fact, it is the argument of the learned counsel that the material provision of Act 26 of 1948 takes away the right conferred by Article 14, namely, equality before the law and equal protection of the laws. Again, Article 31-B says that the constitutionality of Acts or any of the provisions thereof enumerated in Sch.9 cannot be attacked on the ground of inconsistency with any provision of Part III. It is the alleged repugnancy between Article 14 which forms part of Part III and Section 45(4) of the present Act that forms the basis of this contention and to give effect to this argument would amount inter alia, to overlook the words "is inconsistent". It follows that either Section

45(4) or the other provisions of the Act cannot be impeached by reason of Article 31-B of the Constitution, and therefore the argument founded upon Article 14 has to be rejected.

30. In the result all the appeals are dismissed.
S.T.A. Nos.85, 86, 87 and 88 of 1954.

31. We will now deal with the appeals filed by the Rajah against the judgment of the Tribunal allotting 1/5th of the compensation to the maintenance-holders. The judgment of the Tribunal is assailed on behalf of the Rajah on the contention that effect is not given to Section 44 which directs the Tribunal to apportion the compensation amongst the principal land-holder and other persons referred to in that section as far as possible in accordance with the value of their respective interests in the estate. According to the appellants, this section enjoins the Tribunal to distribute the compensation in the ratio of the income from the estate enjoyed by each of the groups - the principal landholder and his descendants as one category and all the maintenance-holders as another. What is argued is that the three branches of the maintenance-holders were paid an annual maintenance of Rs. 36,000/- out of a net income of Rs. 6,00,000/- derived from the estate and the balance enjoyed by the zamindar and his sons and grandsons. It is in this proportion that the compensation deposited by the Government has to be divided. It is further submitted by Mr. Vedanthachari that it is not in every case that 1/5th of the contention should be set apart for the maintenance holders. What is envisaged by Section 45(4) is only cutting down the amount to a 1/5th in cases where the calculation on the basis suggested by him exceeds 1/5th and does not empower the Tribunal to set apart 1/5th if the valuation of the maintenance-holders in the manner indicated above falls far short of the 1/5th. Any mode other than the one suggested by him for determining the value of the principal-holder on the one hand and that of the maintenance-holders on the other is repugnant, argues the learned counsel, to the principle embodied in Section 44. We do not think we can assent to this contention. Section 44(2) enacts that the values of the interests of the various groups enumerated in sub-section (1) have to be ascertained in the manner specified in Section 45. So, the machinery for working out the rights of the group is provided in Section 45.

32. Mr, Vedanthachari placed before us three rulings, namely, - *'Hirde Narain v. Mrs. M.J. Powell*[18]*',* - '*Surendranath Sarkar v. Pyari Charan*[19]*',* and - *'Bhageeruth Moodee v. Rajah Jabur Jummah Khan*[20]*',* to support his argument. All these cases relate to the division of compensation paid under the Land Acquisition Act and they laid down that the amount should be divided between persons interested therein in proportion to the value of the interests enjoyed by them. These rulings would have been of some guide if the method of valuation of the respective interests of each of the groups enumerated in the Act is not indicated therein. As the manner of computation is specified in Section 45, it is not open to us to look to other methods of evaluating the interests of those persons. In the circumstances, these cases cannot have much of bearing on the decision of the point involved in these cases.

33. If the meaning attributed by Mr. Vedanthachari to the clause "as far as possible in accordance with the value of their respective interests in the estate" is to be accepted as correct, the Legislature would not have enacted Section 45(a) which reads :

> "The Tribunal shall, in determining the amount of the compensation payable to the maintenance holders and apportioning the same among them, have regard, as far as

possible, to the following considerations, namely :

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(i) the compensation payable in respect of the estate;
(ii) the number of persons to be maintained out of the estate;
(iii) the nearness of relationship of the person claiming to be maintained;
(iv) the other sources of income of the claimant; and
(v) the circumstances of the family of the claimants.'

The last three considerations bear on the principle to he adopted in working out the rights of the maintenance-holders inter se while the first two apply to the aggregate to be set aside for the group of maintenance-holders as a whole. If really the criterion to be adopted in evaluating the interests of the maintenance-holders is the mathematical formula suggested by Mr. Vedanthachari, there can be no place for the considerations embodied in Section 45(5) (a). Mr. Vedanthachary argued that Section 45(5) came into play in cases of maintenance-holders whose maintenance has not been fixed prior to this enactment and he sought support for his argument from Section 10, Impartible Estates Act. We are unable to see what assistance Section 10 of the latter Act can render us in construing Section 45 (5). We do not think there is any warrant for reading a restriction to Section 45(5). There can be little doubt on the language employed in the sub-section that it is general in terms and will apply to all the maintenance-holders irrespective of whether their maintenance has already been fixed either under the revisions of the Impartible Estates Act or otherwise or has not been fixed. Section 45(5) covers the group of maintenance-holders envisaged in Section 45(2)(b). Further sub-clause (2) of clause (a) of sub-section (5) talks of a number of persons to be maintained out of the estate and thus, can leave us in no doubt that it is all the maintenance-holders that are grouped in the sub-section and can not be confied to persons whose maintenance has to be fixed in future. This need not be elaborated as in our opinion, the import of the sub-section is wide enough to include every class of maintenance-holders. If Section 45(5) applies to all the maintenance-holders, then it is difficult to give effect to the theory ought to be evolved by Mr. Vedanthachary.
His formula which is a mechanical one is consistent with the conceptions underlying Sections 3 to 5 which direct the Tribunal to bear in mind the considerations pointed above. How could they be reconciled to the mode of apportionment suggested by Mr. Vedanthachary. Under sub-section (5) of Section 45, some discretion is vested in the Tribunal-of course, a judicial one-in determining the amount payable to each of the maintenance-holders and it is not cut and dry process which according to the counsel for the appellants is enacted in Section 44(1) of the Act. We do not therefore think the Tribunal has violated any of the mandatory provisions of either Section 44 or Section 45 of the Act. We think the principle followed by it is a sound one.

34. It was lastly urged by the counsel for the appellants that in any event the maximum of 1/5th should not have been given to the maintenance-holders on equitable considerations. We fail to see what equity there is in reducing the amount given to each of the branches of the maintenance-holders. There can be no justification to vary the amount as what is got by each of the branches has to be further sub-divided amongst the branches of that family. For instance, Krishna Bahadur has three sons, and each one of them has several children, we are told, and the sum of Rs. 75,000/- directed to be paid to that branch has to be distributed amongst the various persons, thus

each branch getting only Rs. 18,775/-. We do not think it just to cut down the amount to a smaller figure and deprive them of bare maintenance. We think the Tribunal exercised a sound judicial discretion and it does not call for interference .

35. These appeals are therefore rejected.

36. There remains Appeals Nos.90 and 91 of 1954 which relate to interim payments to Krishna Bahadur's branch for Faslis 1359 and 1360. Under Section 50 of the Act, some payments are made by the Government from the income derived from the estate after the date of the notification. The amount is divisible again between the land-holder and his sons and grand-sons on the one hand and the maintenance-holders on the other. With regard to those payments, the Tribunal applied the same principle as in the case of advance compensation and directed l/5th of these payments to the maintenance-holders as a group. This part of the judgment is attacked by Mr. Vedanthachary, on behalf of the Rajah on the ground that at least so far as these interim payments are concerned the doctrine of Section 45(5) could not be extended and in this regard at least his theory referred to already in the other appeals should be given effect to.

37. In order to appreciate his contention it is useful to refer to the relevant terms of Section 50:

> "S.50(1):.....
> (2) After the notified date and before the compensation has been finally determined and paid in pursuance of this Act, interim payments shall be made by the Government every fasli year, to the principal land-holder and to the other persons referred to in Section 44, sub-section (1) as follows:
> (3) In respect of the fasli year in which the estate is notified, they shall together be entitled to such amount as the Government may on a rough calculation determine etc.,
> * * *
> (5) The Government shall deposit all such amounts in the office of the Tribunal and the Tribunal after such enquiry if any, as it thinks fit, apportion the amounts amongst the principal land-hold and the other persons referred to in sub-section (2) in accordance with the value of their respective interests.
> * * *
> (7) After compensation has been finally determined and apportioned among the persons referred to in sub-section (2) all interim payments made under this section to each of them shall be adjusted on the basis that together they are entitled in respect of each of the fasli years, to the basic annual sum as finally determined and that each of them separately is entitled to the same share of the basic annual sum as the share of the compensation to which he is finally held to be entitled under Section 44".

In support of his case, the counsel for the appellants called in aid sub-section (5) which directs the apportionment of the amounts paid in accordance with the value of the respective interests of the two categories as far as possible. It is argued that the rule to govern the determination of the share of each group in this behalf is not the same as in regard to advance compensation in the ratio of the annual allowance received by him to the net income of the estate. We do not think

that the contention can be maintained. We cannot give different meanings to same words in this section. It is a well-settled canon of interpretation of statutes that the identical expressions used in an enactment will ordinarily carry the same meaning. That no different principle could be applied in regard to the apportionment of the interim payments is clear from sub-section (7) which lays down that the basis to be adopted in this regard is the same as for the purpose of Section 45 (sic). Therefore, the conclusions of the Tribunal on this part of the case have to be affirmed and the appeals dismissed.

38. In the circumstances of the case, all the appeals are dismissed without costs.
Appeals dismissed.