**ANDHRA PRADESH HIGH COURT**

Rani Bhagya Laxmamma

Vs

Commissioner of Wealth-Tax

(Jaganmohan Reddy, J.)

22.09.1965

**JUDGMENT**

**Jaganmohan Reddy, J**.

1. The Income-tax Appellate Tribunal has stated a case, in respect to the assessment year 1957-58, for which the relevant valuation date is March 31, 1957, under section 27(1) of the Wealth-tax Act, 1957, on the following questions for the opinion of this court, namely :

"(1) Whether the assessee has been correctly assessed in the status of an individual ? and (2) Whether the amount receivable by the assessee from the jagir administrator as compensation on the abolition of the jagir constitutes the wealth of the assessee and is assessable under the Wealth-tax Act ?The facts out of which the above two questions arise are that the assessee, Rani Bhagya Laxmamma, was the holder of Samasthan Amarchinta prior to the abolition of the jagirs. She was the jagirdar and, in respect of the income from the jagir, she was being assessed as an individual. On the abolition of the jagirs, the Government determined a certain sum as payable to her for taking over her rights in the jagir, namely, the commutation amount paid to the assessee in instalments spread over a period of 20 years. It may be stated that the last holder of the jagir was Raja Sriram Bhupal, the husband of the assessee, who died on 23rd Thir, 1339F. (May, 1930). The assessee, after the death of her husband, applied to the Atiyat court for the grant of a virasat (succession) to the samasthan of the late Raja and succession was granted in her name on the 15th Thir 1342F. (May, 1933). Thereafter she applied for permission to adopt a son, on 23rd Amardad, 1344F. (June, 1934), which was granted to her on 17th Jamadi L., 1355 F. (October, 1934). In May, 1939, she adopted a son to her late husband and intimated the same to the Government. The Government approved the adoption, under the Firman of H. E. H. the Nizam on 13th Khurdad, 1352 F. (April, 1942). Before the Wealth-tax Officer, the assessee made a claim that the assessment should be made in the status of a Hindu undivided family, as the income was primarily meant to ensure for the benefit of the family. The Wealth-tax Officer rejected the claim of the assessee on the ground that jagir, being Atiyat property, is the personal property of the holder. After the abolition of the jagirs the commutation amounts was being paid to the assessee only, and as such he made the assessment on the assessee in the status of an individual.On the valuation date, the assessee had to receive a sum of Rs. 8,99,650 from the Government for taking over her rights in the jagir. The assessee objected to the inclusion of the commutation amount in her assessment on the ground that it did not constitute wealth. The

Wealth-tax Officer repelled the contention of the assessee and determined the value of the amounts receivable by the assessee in future at Rs. 7,20,000 and included the same in the assessment of the assessee. The assessee appealed to the Appellate Assistant Commissioner of Wealth-tax, before whom she objected to the assessment being made on her in the status of an individual. She also contended that the Wealth-tax Officer was wrong in including in the assessment the sum of Rs. 7,20,000, being the value of the commutation amounts receivable in future by the assessee on account of the abolition of the jagirs. It was urged that, as on the date on the valuation, assessee had no right over the amount of future commutation instalments and, as those amounts did not fall due on the valuation date, the inclusion thereof was not proper. The Appellate Assistant Commissioner repelled both these contentions. He, however, redetermined the value of the future instalments of the commutation amounts, which resulted in a slight relief to the assessee. It was also noticed by the Appellate Assistant Commissioner that the conferment of the jagir on the assessee being of a personal nature, the assessment made on her in the status of an individual was right, and that, even after the adoption of the son, she remained in her own right as the holder of the Samasthan Amarchinta and, as the jagir was treated as a personal Crown grant to the holder, the assessee was holding the same in her personal right. He also stated that the right to receive the commutation amount was not in any way different from the right of a beneficiary to receive periodically specified amounts or annuity from a trust in which the beneficiary had no other interest whatsoever and, to receive these payments or the right thereof, the beneficiary was precluded from negotiating, encumbering or disposing of in any manner and that, in computing the net wealth, the value of all assets which included rights to receive any annuity or any amount had to be included.As against this order, an appeal was filed before the Appellate Tribunal, before which it was contended that, since the samasthan was granted to the assessee for the benefit of the family and was for perpetuity, the assessment should have been made in the status of a Hindu undivided family. It was further contended that it was wrong to think that the future amounts receivable by the assessee from the jagir administrator towards compensation for the acquisition of the jagir by the Government constituted wealth, and as such its value might be deleted from the total wealth of the assessee. The Tribunal rejected these contentions.At the very outset, Mr. Subbarayudu, the learned counsel for the applicant, stated that, inasmuch as some relief was granted to the applicant, he is not going to press the second question to be answered in his favour. That apart, in a judgment of a Bench of this court in Mir Imdad Ali Khan v. Commissioner of Wealth-tax, to which one of us was a party, it was held that commutation amount sanctioned by the Government under the Hyderabad Jagirs Abolition Regulation and the Hyderabad Jagirs Commutation Regulation is an "asset" within the meaning of section 2(e) of the Wealth-tax Act and, where the amount awarded is payable in instalments, wealth-tax is payable not only on the amounts actually paid to the jagirdar before the valuation date but on the total amount of compensation payable to him under the award. In the result, therefore, question No. 2 should be answered in the affirmative and in favour of the department.Now coming to the first question, the answer to this must necessarily depend upon the nature of the jagir tenures and the right to succeed thereto. It is a well established proposition of law relating to the Atiyat or Crown grants that the grantor, namely, H. E. H. the Nizam, had absolute discretion to grant a jagir in whosoever name the pleases and that all such grants ensure for the lifetime of the holder only, and that every grant is a fresh grant. Further, it is an equally well-established principle that, under the firmans of H. E. H. the Nizam, those grants were inalienable, i.e., they could not be transferred, mortgaged, charged, sold or in anywise dealt with, without the permission of the Nizam. While this is so, the Nizam had generally made it known in sub-clause (1) of paragraph 15 of Inam Dastur-ul-amal (Regulation) 1293 H. (1285F.) that in the

case of Hindu jagirdars, the succession was to be determined according to the rules of dharma Sastras and the maash would be continued in the name of the heir entitled to succeed under the said law subject to the provision detailed therein. The proviso to section 15 (b) of the said Regulation however makes it clear that it will always rest entirely on the discretion and power of the Government to order the confirmation or resumption of such masshes, according to the individual exigencies of each case at the time. In Gasti 17 of 1312 F., issued by the sanction of H. E. H. the Nizam on 14th Ramzan-ul-Mubarak 1319 H., he reiterated the above principle in the following words :
"Although my inclinations have always been more towards the preservation and support of old families... still it depends entirely on my wish to confirm or refuse from doing so any State grant possessed by the deceased jagirdar on any person, whether he be an heir of the deceased jagirdar not. It always pleased me to open out in some way or the other, means of livelihood for the surviving members of old families. Such sympathetic consideration however cannot permit :

(1) The sale or mortgage in any shape, or the division and mutual distribution of any jagir or inam granted by the State unless with the due sanction of the Government;

(2) any adoption or will by a jagirdar made without the special sanction of Government and with the object of ensuring transfer of the State-grant into the possession of some person after the said jagirdars death;

(3) the action of a jagirdar in leaving after him the jagir encumbered with debts borrowed during his lifetime without the knowledge and specific sanction of Government..."
In *Sikandar Jehan Begum v. Andhra Pradesh State Government, Gajendragadkar J.* (as he then was), speaking for the court, observed at page 227 thus :"The legal nature of the jagir estate has been considered by the High Court in dealing with the writ petition filed by the widows of the late Nawab. Several firmans to which reference has been made by the High Court indicate that, on the death of the holder of the jagir, the estate devolved upon the State and though it was usually regranted to the person who was found to be the successor on enquiry, in theory, jagirs were resumed on the death of the holder of the jagir and their heirs did not automatically succeed to them. It is also clear that in their lifetime the jagirdars were not permitted to alienate the property and that it was not necessary that on the death of the jagirdar the estate should be granted to all his heirs either. It also appears that no suit relating to jagir could be instituted in the civil court without the prior special permission of the Nizam. The firman issued on 16th December, 1901, to which the judgment refers, shows that the heirs of the deceased holders of jagirs could not insist upon their right to succeed to the estate because no Atiyat grant was heritable. Another firman issued on 28th September, 1928, showed that the powers of the grantor of the jagir could not be curtailed by the rules framed for the guidance of the Atiyat courts and that the grantor had an absolute right either to regrant the estate to the successor or not."Again dealing with the contention that inasmuch as elaborate procedure for enquiry and the appointment of the Tribunals to conduct those enquiries and provision for appeals against their decisions, etc., and the fact that generally succession was granted to the heirs, their Lordships held that it does not affect the true legal character of the jagir and that, even under the circulars issued by the Nizam for holding enquiries into the question of succession to jagirs, the position appears to be clear that jagirs were not heritable and, on the death of the jagirdar, on principle and in theory, it was always a case of resumption and regrant. The observation of the High Court that the jagirs were inalienable and terminable on the death of the grantee, and each jagirdar,

though an heir to the deceased holder, was deemed to be a fresh grantee of the estate, the right to confer such estate being uncontrolled and absolute and beyond the jurisdiction of civil courts was approved. It is in our view unnecessary to refer to any other authorities or circulars, for, as we have said earlier, the position admits of no doubt.The next question mooted is that the Nizam having permitted the adoption and having sanctioned the adoption of Raja Sombhupal, he must be deemed to be the karta of the joint family to which the asset belongs. It is also contended by Mr. Subbarayudu that, since the Nizam, when he granted succession, granted it in the case of Hindu families to benefit the joint families, Raja Sombhupal must be deemed to be the recipient of the asset as belonging to the joint family of himself and his mother, Bhagya Laxmamma. It may be of interest to note that the return by the assessee was made by Sri Raja Sombhupal as karta of the undivided family of Rani Bhagya Laxmamma of Amarchinta Samsthan. It is difficult to understand how an adopted son who, if the nations of ordinary Hindu law are applied, is actually the head and karta of the joint family, is said to be the head and karta of the joint family of his mother. A mother can never be a coparcener of a Hindu joint family. Their Lordships of the Supreme Court in Commissioner of income-tax v. Seth Govindram Sugar Mills resolved a conflict of decisions of the High Courts of this country by accepting the view expressed by the Madras High Court, which is that a woman cannot be the manager of a joint Hindu family because she is not a coparcener. Subba Rao J., and Viswanatha Sastri J. in V. M. N. Radha Ammal v. Commissioner of Income-tax as follows :

> "The right to become a manager depends upon the fundamental fact that the person on whom the right devolved was a coparcener of the joint family... Further, the right is confined to the male members of the family as the female members were not treated as coparceners though they may be members of the joint family...
> The managership of a joint Hindu family is a creature of law and, in certain circumstances, could be created by an agreement among the coparceners of the joint family. Coparcenership is a necessary qualification for managership of a joint Hindu family."

Their Lordships of the Supreme Court observed that the view expressed by the Madras High Court is in accordance with the well settled principles of Hindu law, while that expressed by the Nagpur High Court is in direct conflict with them, and that their Lordships are clearly of the opinion that the Madras view is correct.In view of this authoritative pronouncement, there is absolutely no doubt that there can be no Hindu joint family of Bhagya Laxmamma. If at all, there could be a joint family of Raja Sombhupal, of which Rani Bhagya Laxmamma could not be a coparcener or manager. When the succession was granted to Rani Bhagya Laxmamma, the grantor accepted her as the holder of the samasthan, entitled to the benefits therefrom without any regard to any adoption she may make with the therefrom without any regard to any adoption she may make with the permission of the Nizam. Even after Sombhupals adoption was recognised, it means nothing more nor less than a recognition for the purposes of treating him as an heir of Rani Bhagya Laxmamma at the time when the succession opens.
On the confirmation of a jagir, a takvirasat is prepared, in which the name of the holder is mentioned, and it is the person shown in that statement (takta) who is entitled to claim the jagir and the benefits thereof and, as long as there is no mistake or it is not prepared against the sanction, no question of amendment would arise, merely on the widow adopting a boy. Even though the adopted son is deemed to have come into existence on the date of the death of the husband, though the adoption was made by the widow long after his death, and divests his

adoptive mother of the estate, it is only in respect of non-Atiyat property; in so far as the Atiyat property is concerned, unless the widow surrenders any jagir and asks for and obtains sanction for the grant to be made in favour of her adopted son, the adopted son has no right to the jagir.Mr. Subarayudu sought to put forward the analogy of the succession of Wanaparthy Samasthan, forgetting that in that case on the death of the father leaving two sons and while succession proceedings were pending, the eldest son died, leaving a minor son, so that the contest for succession was between the uncle and the nephew. It was sought to be contended in that case that the principle of lineal primogeniture adopted in impartible zamindaris applied to the jagirs in Hyderabad and that the son of the eldest son of the late Rajah should succeed to the exclusion of the uncle. The Nizam, besides giving a quietus to the theory of application of the principle of lineal primogeniture, sanctioned the estate in the name of the nephew as the holder with a grant of haq-e-inthezam of 4 annas and dividing the other 12 annas equally between the two, the uncle and the nephew. That case has, therefore, nor relevance to the facts of this case. If instead of the female holder there was a male holder, but so subsequently being issueless he makes an adoption, it could never be contended that, immediately on the adoption, the adopted son would become entitled to a half share in the jagir, without the specific recognition by the grantor of his right. No civil coparceners or any one claiming a right of maintenance from out of the jagir against the jagirdar. Circular 35 of 23-6-1306F. makes this also clear. It says : "The decision of a civil court can have no effect on Crown grants contrary to the intent of the competent authority who has got control over its protection and continuance unless the competent authority directs a party to obtain a decree from the civil court or finds that it will not be contrary to the intent of the Ruler X to allow a party to assert a title in the maash on the basis of the civil court or finds that it will not be contrary to the intent of the Ruler X to allow a party to assert a title in maash on the basis of the civil court decision." The Judicial Secretariat Circular No. 7 of 1328F. further reinforces this position. It says : "In compliance with the Firman Mubarak all the Nazims of civil courts, H. E. H. the Nizams Government are hereby informed that before entertaining any suit relating to State grants, the court should carefully ascertain as to whether or not permission has expressly been granted on the revenue side." There are also a number of other circulars approved by the Nizam in this behalf.Mr. Subbarayudu relies on circular No. 17 of 1312F. for the proposition that jagirs are not matruka or personal properties, and, therefore, contends that the jagir which the Rani Bhagya Laxmamma holds is a joint family jagir. We have already referred to this circular; it does not assist him. The circular is to the effect that, on the death of a jagirdar or an inamdar, it depends entirely on the Nizams will whether to continue or refuse to continue the Crown grant property held by him in the name of any person (be he the heir of the deceased or not). It was further stated that the intention of the Nizam was that he likes providing some sources or other for the subsistence of the surviving members of old families in some way or other, but he does not countenance the jagir being mortgaged, transferred or sold, etc., not permit the jagirdar to make an adoption or execute a will, thereby making a particular person to get beneficial possession of the Crown grant without the sanction of the Government or to permit the jagirdar to incur debts without knowledge and specific sanction of the Government. The learned counsel also cited two other cases, Ramachandar Narayana v. Bhagvan Saheb and Dattatric Rao v. Dhoode Pant, the English translations of which have been furnished to us. The first of the decisions does not narrate the full facts as to how the question arose; whether at the opening of the succession or after the jagir has been granted to any particular person that the other members of the family claimed a share therein. At any rate, this by decision holds categorically that to make two persons in a single jagir to be the holders will not be correct in principle under the existing rules and circulars. Again it says : "When the succession of Vithal Narayan is under our

consideration, then we cannot be affected to any extent by the intermediate arrangements as the proceeding of the succession were as a matter of the fact to be started in 1319F. These are the arrangements of 1320F." In the second of the cases, all that was decided therein was that the Government has decided that in matters of succession the provisions of Hindu law and Mahommedan law shall also be taken into consideration and unless there is sufficient reason, the specific provisions of the personal law cannot be ignored. Again in Mudamba Narasimhachari v. Tellani Ranganayakamma it was held that since the provisions of the Hindu law are binding on the Atiyat department, where a maash has been partitioned, the daughter of the last owner cannot be deprived of the estate in the absence of a male heir entitled to succeed. It may be observed that all these cases indicate that the question of a coparcener or a heir of a deceased Hindu being entitled to a share or succeed to the estate of the deceased Hindu being entitled to a share or succeed to the estate of the deceased has arisen at the time when the succession opened. That is however not the case here. We cannot, therefore, hold that the adopted son gets any interest in an Atiyat maash which has been granted to the assessee without the grantor revoking the grant in the name of the assessee and grant it in favour of the adopted son or granting a part of the maash along with the assessee. The mere fact that the grant is for the benefit of the joint family does not mean that all the members of the joint family, who have not been recognised as shares by the grantor, have a claim to the jagir; they cannot enforce this right either in any civil court. What it does mean is that these members of the family will be entitled, at the time the succession opens, to have the maash sanctioned in their names, either as holders or sharers, or even as maintenance holders. We are unable, therefore, to accept the contention of the learned advocate that the assessee must have been assessed in the status of a Hindu undivided family.In the result, our answer to the first question is in the affirmative and in favour of the department. The applicant will pay the costs of the department. Advocates fee Rs. 250.