ANDHRA PRADESH HIGH COURT

P.V.G. Raju

Vs

Commissioner of Wealth-Tax

(Gopal.Rai. Ekbote and R Raju, JJ.)

19.09.1969

JUDGMENT

Gopal Rao Ekbote, J.

1. This reference is made under Section 27 (1) of the Wealth-tax Act of 1957, whereby answers are sought to the two following questions :

> "Whether, on the facts and circumstances of the case, the department is correct in law in determining the status of the assessee as an individual and not as joint family ?

2. "Whether, on the facts and circumstances of the case, the department is correct in including 4/5th of Rs. 16,96,470.63, the compensation amount payable to the assessee in computing the 'net wealth' on the valuation dates June 30, 1956, and June 30, 1957, for the relevant assessment years 1957-58 and 1958-59 ?"

2. The material facts are : the assessee is Shri P.V.G. Raju, the Rajah Saheb of Vizianagaram. It is common ground that the assessee has two sons and all the three constitute a Hindu undivided family. The assessee claimed that he represented the assets not as individual but as Hindu undivided family in regard to properties which form the corpus of the impartible estate of Vizianagaram and which had devolved on the assessee under the rule of primogeniture but also other properties to be partible properties. For the assessment year 1957-58, the claim of the assessee was that all these properties belonged to the Hindu undivided family of himself and his two minor sons. He made a similar claim for the assessment year 1958-59. The Wealth-tax Officer rejected this claim for both the said years. The Wealth-tax Officer opined that the properties formed the corpus of the impartible estate and devolved on the assessee as his separate property. It was further found that the assessee had treated these properties solely as belonging to himself. He, therefore, treated the assessee as an individual instead of as a Hindu undivided family as was claimed by the assessee.

3. The assessee was the landholder in respect of the Zamindari of Vizianagaram. By virtue of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, the said estate was abolished and was taken over by the Government on September 7, 1949. According to the provisions of the said Act, advance compensation was determined at a sum of Rs. 40,66,242. One-half of the said compensation was paid to the assessee through the Estates Abolition Tribunal. The other compensation due was not paid by the Government to the assessee as it was not by then determined during the assessment years. The Wealth-tax Officer was of the opinion that the amount of compensation, although not determined, is payable to the assessee and, since it was an ascertainable amount, it was a debt, and, consequently, included it in the assessee's wealth. He included an amount of Rs. 20,33,121.

4. The assessee carried the matter in appeals to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner proceeded to consider whether the ownership of the corpus as distinct from the income of the impartible estate was different and reached the conclusion that the same principle would govern prior and subsequent to the abolition of the estate for wealth-tax purposes. He considered that the Abolition Act did not remove the impartible character of the estate. In regard to the compensation amount, the Appellate Assistant Commissioner agreed with the conclusion of the Wealth-tax Officer that, since the amount of compensation is ascertainable, it was a debt and ought to be included in the net wealth of the assessee.

5. Further appeals were carried to the Appellate Tribunal. The Tribunal agreed with the Wealth-tax Officer and the Appellate Assistant Commissioner that the status of the assessee is that of an individual and that the corpus as well as the compensation of the impartible estate was his individual property. In regard to the compensation, the Tribunal held that the right to receive compensation vested in the assessee and constituted an estate. It was pointed out that by the time the Appellate Tribunal had heard the appeal, final determination of the compensation due for the Vizianagaram estate was made on June 21, 1963, and the data sheet was despatched to the assessee on July 12, 1963, according to which the total compensation to the assessee as a whole was determined at Rs. 44,86,430, The assessee had already been paid advance compensation to the tune of Rs. 27,89,959. The balance amounting to Rs. 16,96,470 was payable in five equal instalments. The Tribunal held that one-fifth of the amount has to go to the maintenance-holders and only four-fifths was assessable in the hands of the assessee. The two sons were not born by the time the notification was issued.

6. The assessee wanted the Tribunal to refer the above-said two questions for determination by the High Court and that is how the reference has come to us.

7. Now, taking up the first question for consideration, one thing which immediately leaps to the

eye is that the question makes no reference to the nature of property in regard to which the statuts of the assessee is required to be decided. From the order of reference, it is clear that this question "is rather inaccurately phrased". The real, question is whether the assets, which have been shown by the assessee in his return, constitute the assets of the individual or do they constitute the assets of the joint family. The contention of the assesee in the reference application was that the properties shown include both partible as well as impartible properties. In the reference it is further conceded that the full details of the different assets, however, do not appear to be clear from the various orders. The assessee stated that the nature of the property can be ascertained from the judgment of the Supreme Court in Pushpavathi Vijayaram v. Push-pavathi Visweswar, A.I.R. 1964 S.C. 118. To the Tribunal it appeared as if the entire matter proceeded on the footing that all the assets returned by the assessee are to be assessed in his hands either as an individual or as a joint family. No such question, it is admitted, can be answered in an abstract way. The question has a necessary bearing upon the nature of the properties returned by the assessee. It cannot be in doubt that in computing the net wealth of an assessee, the value of assets available for taxation has to be determined. While some assets are subject to wealth-tax, certain assets are exempted. While certain assets are taxed as belonging to an individual, others can be taxed as belonging to the joint family. Different considerations weigh in such cases. It was, therefore, necessary for the Tribunal, even though the Wealth-tax Officer or the Appellate Assistant Commissioner had not decided that question, to decide as to what properties are liable to be taxed as individual and what others are so liable to be taxed as Hindu undivided family. The contention of the assessee is that except two items which comprise of (1) Prince of Wales Market, and (2) 38 items of jewellery which by custom are considered as regalia, alone are impartible properties, the-other items of properties shown by the assessee are partible. It was, therefore, contended by the assessee that, in so far as partible properties are concerned, since it was common case that the assessee with his two sons constitute a joint Hindu family, these partible assets would belong to the joint family and these items, therefore, cannot be computed as properties belonging to the assessee as individual. The contention of the revenue before us on the other hand was that since the assessee was the owner of the estate and was getting the income of the estate of the other properties they must be considered as part and parcel of the impartible properties and should be computed as property belonging to an individual. It is, however, clear, as has been pointed out even in the order of reference, that this dispute was not considered and decided either by the Wealth-tax Officer or by the Appellate Assistant Commissioner. The Tribunal also in its order did not decide this dispute.

8. Since the question referred to us is couched in wide language and is broad enough to include consideration of the question now raised before us, we propose to keep in view the two admitted items of impartible property, that is to say, the Prince of Wales Market and the 38 items of

jewellery, regalia, and consider the main question relating to these two items. In regard to all other items about which there is dispute as to whether they are partible properties and therefore belong to the joint family or they are impartible properties and, therefore, belong to the assessee as individual has obviously to be decided by the Tribunal after the question is properly investigated. The opinion which we are expressing is in relation to the impartible properties consisting of the above-said two items and it is obvious that the same opinion will hold good if the Tribunal after investigation find that the other items of properties returned by the assessee are impartible properties. If, on the other hand, it is found that some or all the other items of properties are of partible character and belong to the joint family consisting of the father and the two sons, then it is evident that such an asset cannot be included in the assessment of the assessee as individual. The said question therefore has to be inquired into by the Tribunal in the light of the opinion which we are expressing in regard to the two admitted items of impartible properties.

9. Now it is common ground that the Vizianagaram estate, out of which the said two items were carved out, was by custom an ancestral impartible estate.

10. Before the Estates Abolition Act, the law in regard to impartible estates has been laid down by the Privy Council in *Shiba Prasad Singh v. Prayag Kumari Debi*[1], as follows :

"Impartiality is essentially a creature of custom. In the case of ordinary joint family property, the members of the 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 am impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility as laid down in *Satraj Kuari's case*[2], and the *first Pittappur case*[3], and so also the third as held in the *second Pittapur case*[4], To this extent the 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's case*[5], To this extent the estate still retains its character of joint family property, and its devolution is governed by the general Mitakshara law applicable to such property."

11. It will thus be plain that an impartible estate is not held in coparcenary though it may be considered as joint family property for the purpose of succession. But at times it is referred to as coparcenary and a distinction is drawn between rights in praesenti, that is the right to demand a partition and the right to the enjoyment and the rights in futuro. In the case of an impartible estate, the right to partition and the right to joint enjoyment are from the very nature of property incapable of existence, and, consequently, there can be no coparcenary to that extent. As a result,

no coparcener can prevent alienation of the estate by the holder for the time being except perhaps in a case where it is contrary to Section 4 of the Madras impartible Estates Act, 1904. Nor is he entitled to maintenance out of the estate except as it is provided under the provisions of the said Act. The holder of the estate is also held to be the absolute owner of the income from such an estate. But as regards future rights, that is the right to survivorship, the property is to be treated as coparcenary property, so that on the death intestate of the last holder it will devolve by survivorship according to certain well-accepted rules in regard to such ancestral impartible estates into which we need not go here. It is, however, plain that the right of the junior member to succeed to the estate by survivorship is not a mere spes successions but a right of property which can he transferred. Where the impartible estate is ancestral but the last holder was separated, the estate in cases governed by the Mitakshara will descend according to the ordinary rules of succession applicable to partible property. In this case, however, admittedly, the holder of the estate is not separated but continues to be joint with his two sons. In all such cases, the estate passes by survivorship from one line to another according to the rule of primogeniture and devolves not on the member nearest in blood, but on the eldest member of the senior branch. The result, therefore, is that most of the essential attributes of a coparcenary joint Hindu family are absent in the impartible estate. It is recognised as a joint family property only for the purpose of ascertaining as to who should succeed on the death of the last holder. In this respect also, the law of survivorship as understood in the Mitakshara is not wholly followed. The succession, as already seen, is governed although by rule of survivorship, yet subject to the principles of primogeniture.

12. This conclusion of ours is supported by the decision of the Supreme Court in Kamalammal v. Venkatalakshmi Ammal, .

13. That being the general feature of an impartible estate as it stood before the 1940 Act, we have to see how far these features were affected by the Madras Impartible Estates Act, 1904. Section 2 of the said Act defines the term "impartible estate" to mean "an estate descendible to a single their and subject to the other incidents of impartible estates in Southern India". Section 3 relates to estates which are included in the Schedule, These estates are deemed to be impartible estates. Vizianagaram estate is included in the Schedule. Section 4 sets out certain restrictions on alienation of impartible estates. Ordinarily, the proprietor shall be incapable of alienating such an estate beyond his own lifetime unless the alienation is made under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather to make an alienation of the joint property binding other coparceners independently of their consent. Sub-section (2) of that section expressly authorises certain alienations. Section 9 then provides for the maintenance out of the impartible estate of certain persons who include a son.

14. It will be clear that except putting certain restrictions on alienations and providing for maintenance out of the estate of certain persons, the other features of the impartible estate of Vizianagaram continued even after the Impartible Estates Act of 1904.

15. While the matter stood thus, the Vizianagaram estate was abolished. I vested in the State Government under Section 3(b) of the Estates Abolition Act. The two items with which we are concerned, however, did not vest in the Government. The assessee continued to hold them as impartible properties.

16. Now the question is whether after the abolition of the estates what would be the character of the two items left with the assessee-holder. Do they partake of the same character as was of the abolished estate or because of Section 45 their character has undergone a change, and if so, does that property belong to the assessee-holder, as an individual. It is conceded by all concerned that whatever is ultimately found to be the character of the compensation in the hands of those who have received them under Section 45, the fate of the two items in question will be decided accordingly. In view of this concession expressly made before us, we will proceed to consider the question as to what is the character of the compensation amount paid for the impartible estate abolished and apportioned among the sharers.

17. If Section 45 of the Abolition Act were not to be there, then the money equivalent of the impartible estate abolished and taken over would have been admittedly, impressed with the same character as was of the impartible estate for which compensation has been paid: see Gopalakrishna v. Sarvagnakrishna, . We will proceed to consider as to whether Section 45 of the Abolition Act has brought about any change in this concept.

18. In order to find out the true situation which arises because of Section 45 of the Abolition Act, we must read Section 45 in so far as it is relevant for our purposes:

"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 pro visions 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 12 of the 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"):

Provided that no such maintenance-holder shall be entitled to any portion or the aggregate compensation aforesaid, if, before the notified date, his claim for maintenance, or the claim of his branch of the family for maintenance, has been settled or discharged in full. . .

(6) The balance of the aggregate compensation shall be divided among the sharers, as if they owned such balance as a joint Hindu family and a partition thereof had been effected among them on the notified date."

19. Before we analyse critically these provisions, it is well to state that section 3 (b) of the Estates Abolition Act, after the notification contemplated is issued, vest the totality of the interest of the estate in the Government free from all encumbrances. Under Section 3 (c) of the Act, all rights and interests created in or over the estate before the notified date by the principal or any other landholder ceases as against the Government as they stand determined. The principal landholder or any other person, whose rights thus stand transferred and determined, are entitled only to such rights and privileges as are conferred on them by the Abolition Act.

20. Section 66 (1) declares that with effect on and from the notified date the Madras Impartible Estates Act, 1904, shall be deemed to have been repealed in its application, to the estate, if the estate, as here, is governed by that Act immediately before the date of the notification.

21. A careful reading of Section 45 would reveal that in essence it regulates the apportionment of compensation in the case of impartible estates to which that section applies. Sub-section (1) enjoins that the subsequent provision of that section shall apply to "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". What Sub-section (1) discloses is that there are several kinds of impartible estates out of which the section is applicable only to such impartible estates which fall, within the purview of Sub-section (1). The words "which had to be regarded" are taken to mean which impartible estates have been regarded by judicial decisions as the property of a joint Hindu family for the purpose of ascertaining its succession. We have already noticed that although most of the substantial features of a joint Hindu family are conspicuously absent in the case of impartible estates in so far as succession thereto is concerned, the impartible estate is treated as the property of a joint Hindu family for that purpose alone. We

have also notified that even in regard to succession the principle of survivorship, an essentiality of a joint Hindu family in case of Mitakshara, is not accepted in its entirety, but is made applicable subject to the rule of primogeniture, as we have already stated above, that being the customary law. It would not be correct to infer from Sub-section (1) that its effect is to treat such impartible estates thereafter as joint Hindu family prof erty with all its implications. Nor will it be proper to infer from that sub-section that in any case it treats the compensation awarded under that section as a property belonging to the joint Hindu family as is commonly understood in the Hindu law. Any such understanding of that sub-section is totally belied not only by Sub-section (1) but by the subsequent provision also.

22. What must follow is that nothing more should be read in Sub-section (1) than what actually appears therein and a plain reading of that sub-section would disclose that it only states that the subsequent provisions of that section shall apply to the impartible estates referred to in Sub-section (1). It nowhere states the character of such impartible estate.

23. Sub-section (2) empowers the Tribunal to determine the aggreate compensation payable to all the persons mentioned in Clauses (a) and (b) of that sub-section considering them as a single group. Clause (a) relates to the persons who are the principal landholder and the sons, grandsons and great-grandsons in the male line living or in the womb on the notified date, whether legitimate or adopted before the notified date. These persons are called sharers.

24. Clause (b) refers to other persons who immediately prior to the notified date were entitled to maintenance out of the estate and its income. This right of maintenance may have accrued to them either under Section 9 or Section 12 of the 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. These persons are called maintenance-holders.

25. Sub-section (3) empowers the tribunal to determine the debts which have to be paid out of the assets of the impartible estates, and the creditors to whom they are payable. It is expressly declared that the creditors shall first be paid out of the aggregate compensation and it is only the remainder that shall be available for division amongst the maintenance-holders and the sharers.

26. Sub-section (4) empowers the tribunal to determine the amount of maintenance which shall be paid to the maintenance-holders, but stipulates that such payment shall not exceed one-fifth of the remainder of the aggregate compensation except in cases to which Section 47 (2), proviso, is applicable.

27. Sub-section (5) then proceeds to empower the tribunal to determine the apportionment of the

payment of compensation found payable to maintenance-holders and directs the tribunal to keep in view the considerations mentioned in that sub-section at the time of determination.

28. We then come to Sub-section (6) which is more important. It enjoins that the balance of the aggregate compensation then shall be divided among the sharers. We have already seen who those sharers are. It further directs as to how the said division shall take place among the sharers. It then proceeds to lay down the principles upon which the division among the sharers shall take place. It states that "it shall be divided among the sharers as if they owned such balance as a joint Hindu family and a partition thereof had been effected among them on the notified date". What is brought immediately to the surface is that a formula is provided in this sub-section by and under which the single group consisting of sharers, that is to say, the principal landholder, his legitimate or adopted sons, grandsons and great-grandsons living or in the womb on the notified date, is treated as if they were the owners of such balance of compensation as members of the joint Hindu family and which family stood divided on the notified date. In other words, under this sub-section, the sharers alone are treated as members of a joint Hindu family. They are declared as the owners of the balance of the compensation. It further treats as if these members of joint Hindu family were divided on the date of the notification. It is by this process division of the amount will take place and each sharer will get the amount according to the said formula directly paid to him. The entire formula is a fiction and a creation of law having nothing to do with reality. It provides only a mode of division and for that purpose adopts the said formula as a fiction. It has first assumed, although it may not be a reality, that the sharers alone were members of a joint Hindu family. It has further assumed, although again it may not be a reality, that a partition had been effected among them. Both these assumptions have been made as if that was the position on the notified date. It will be plain that even under this fiction the only sharers, who are living or are in the womb, alone are treated as the members of the joint Hindu family excluding not only other coparceners then existing and even those who are subsequently born and who have a share in the family property as the other properties do not stand divided nor their status broken.

29. It is now well settled that a legal fiction has to be confined to its own scope and although may be pursued to its logical end, that is to say, the necessary result of the fiction, it cannot be extended beyond the limits of its scope, nor can it be allowed to be treated as a reality except for the purpose for which the fiction is created. It is in that limited field that the fiction is treated by law as reality and it has to operate within that field and not transgress the limits. It would, therefore, not be proper to take as reality that the sharers alone were the members of the joint Hindu family on the notified date and they alone were actually divided for all intents and purposes on that date. It must always be borne in mind that, firstly, it is only a formula or a mode

adopted for the purpose of dividing; the compensation; and, secondly, the mode of division is based on a pure fiction limiting its scope for the purpose of ascertaining the amount which each sharer then living could get. This fiction cannot be extended so as to effect a division even between the shares who are treated as members of the joint Hindu family or between those corparceners who exist but are not treated as sharers or maintenance-holders in regard to other properties, for neither the status of the family nor its properties other than the compensation are within the operation of that section. What must follow from what is stated above is that whatever may have been the character of the impartible estate referred to in Sub-section (1) before the notified date or whoever may have been entitled to its enjoyment or succession thereto or whoever may have been entitled to maintenance, on and from the notified date, the compensation of such impartible estate is not statutorily permitted to bear or to be impressed with the same character as it had prior to the-notified date, which compensation but for Section 45 would have been impressed with the same character as that of the impartible estate. The compensation is thus given altogether a different treatment than was given hitherto to the impartible estate not only in regard to the principal landholder but also in regard to the members of the joint family or in regard to the maintenance-holders who were entitled to it prior to the notified date. The section then gives altogether a different treatment. Therefore, whatever might be the rights of the principal landholder or his sons and other members of the joint family in the impartible estate living on the date of the notification, the compensation amount is directed by Section 45 to be divided between the maintenance-holders and sharers in the proportion mentioned therein, after defraying the debts of the creditors. After the maintenance holders are paid, the balance is directed to be divided amongst the sharers according to the formula which under the legal fiction has been evolved in Sub-section (6) of that section. In our view, it would not be correct to say that the following two results follow from the statutory provision, viz., Section 45(1), that the compensation amount is joint family property of the sharers; and (2) that there had been a partition of that asset on the date of the notification between them. Any such interpretation of Section 45(1)(2) or (6) would not only amount to flying in the face of these provisions themselves but would amount to raising the fiction to a reality at least in so far as the compensation amount is taken as joint family property of the sharers. It should not be forgotten that it is only a fiction, and if it is raised to the status of the reality and compensation amount is considered as joint family property of the sharers, then the rights of the other coparceners or members of the joint Hindu family apart from the sharers in such compensation cannot be ignored. The fiction however confines its scope only to the extent of division of the compensation among the sharers and excludes all other coparceners whether they get. maintenance out of the compensation amount or not. It must be remembered that a legal assumption that a thing is true which is either not true or which is as probably false as true, is called a legal fiction : An. assumption in law that does not accord with the actual facts and which

may be contradicted for every purpose except to defeat the beneficial end for which the fiction is invented and allowed. As is said by Lord Mansfield : "A fiction of law shall never be contradicted so as to defeat the end for which it was invented but for every other purpose it may be contradicted." If this is true, then as the fiction cannot be extended so as to effect a division between the members of the family in regard to other properties, so also the fiction cannot be extended so as to treat the compensation in the hands of those who get it as sharers as joint family property in their hands vis-a-vis their after-born sons or his son or other coparceners. Section 45 treats the four generations as a single unit and brings about the distribution of the compensation amongst them here and now. It only means that between the father and the two sons, if they were living on the notified date in the present case, the balance would have been divided into three equal shares. If the two sons had their own sons, then their shares also would have been divided between them and their sons respectively, and if grandsons and great-grandsons also were to exist, the distribution between them also would have taken effect. This process adopted by Section 45 eventually effects payment to the sharers directly as they existed on the notified date.

30. We are, however, clear in our minds that the amount of compensation paid to the sharers in implementation of the formula adopted by way of fiction under Section 45(6) is the absolute property of the sharer and cannot be treated as joint family property in his hands vis-a-vis his other coparceners. The sharers can transfer or part with this compensation in any way they like. It is their self-acquired property which, upon their death, will devolve upon heirs under the Hindu Succession Act.

31. It is in this respect that Section 66(1) becomes relevant. That section repeals the Impartible Estates Act simultaneously with the issue of the notification in regard to the concerned estate. The effect of that section is that after the notification is issued, the compensation shall not bear the same character as that of the impartible estate but would belong to the sharers in the proportion laid down and will be divided between them not as an asset of joint Hindu family but by virtue of Section 45, the effect of which is that it becomes the sharer's individual and self-acquired property. If along with this, Section 5 of the Hindu Succession Act is read, it will be clear that it has brought about a radical change in the concept of impartible properties. According to that section, the Hindu Succession Act applies to all property of a deceased Hindu which is not expressly excluded from its operation. The section excludes "any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of an Indian State with the Government of India or by the terms of any enactment passed before the commencement of the said Act." The effect of Section 5 is to abolish impartible estates except those which are expressly saved by Section 5(ii). The effect of applying the Hindu Succession

Act even to impartible estates not saved by Section 5 is that their succession will, thereafter, be governed by the provisions of the Hindu Succession Act and not by the customary rule of survivorship subject to the principles of primogeniture. If the impartible estates themselves are made to shed their little attachment with the principle of survivorship in regard to succession, it should present no difficulty in reaching the conclusion that the compensation paid for such estates under Section 45 is property coming within the ambit of the Hindu succession Act, and being the absolute or the self-acquired property of the shares, succession to it will be governed by the relevant provisions of the Hindu Succession Act.

32. The question of descent arises on the death of the owner after the passing of the Hindu Succession Act. Since the incidents of impartiality does not consists solely of its devolution but also its incapacity to be partitioned, two questions after the Hindu Succession Act has come into force would arise. Firstly, whether a customary impartible estate would be liable to partition after the passing of the said Act. The question assumes, that the customary impartible estate is joint family property. And secondly, whether the devolution of a customary impartible estate would be governed by Section 6 of the Hindu Succession Act which relates to devolution of interest in coparcenary property or would it be governed by Section 8 of the said Act.

33. While we are not concerned in this case with the first question, the answer to the second question, in our opinion, is that devolution would be governed by Section 8 and not by Section 6.

34. Although it was held that impartible estate is a joint Hindu family property in so far as its devolution by succession is concerned, but for all other purposes and in all other respects the impartible estate was treated as the holder's absolute property with which he can deal in any manner he likes subject of course to the provisions of the Madras Impartible Estates Act. It was, however, never treated as a coparcenary property for all intents and purposes and the landholder was never considered as "having" at the time of his death an interest in the Mitakshara coparcenary property." Nor any of his junior members were taken to have such an interest in the impartible estate. Section 6, therefore, would be inapplicable to a case of impartible estate of the kind with which we are concerned. Since the effect of. Section 5 is to abolish the customary impartible estate, the result is that the impartible estate, which was treated during the holder's lifetime as his absolute property and since the devolution under the customary rule is abolished, and since Section 6 is inapplicable, the inevitable result is that the devolution of impartible estate thereafter would take place in accordance with Section 8 alone.

35. In this connection, it is quite relevant to remember that in 1948, by Act 48 of 1948, perhaps to get over the decision of the Privy Council given in 1941, Section 9(4) of the Income-tax Act was introduced. The effect was that, for the purposes of Section 9 of the Income-tax Act, 1922,

the holder of an impartible estate was deemed to be the individual owner of all the properties comprised in the estate. After this provision was introduced in the Income-tax Act, the owner was taxed under the said Act as individual and the controversy as to whether the impartible estate is joint Hindu family property or is an absolute or self-acquired property of the holder ended at least in regard to the Income-tax Act.

36. The Wealth-tax Act came into force only in 1957. It is true that there was originally no provision in the Wealth-tax Act on the lines of Section 9(4) of the Income-tax Act. But an identical provision was introduced in the form of Section 4(6). This amendment, because of Notification No. S.O. 709 dated February 24, 1965, came into force with effect from April l, 1965. The said provision reads as follows;

"For the purposes of this Act, the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate."

37. From these two provisions, the intention of the legislature becomes abundantly clear. The legislature wanted impartible estates to be treated as individual property of the holder and not as his joint family property for the purposes of the tax. It is true that in the assessment years under consideration, Section 4(6) was not in force. Nevertheless, the intention of the legislature becomes apparent.

38. It is a well recognised principle of construction of status that whenever there is an ambiguity in an Act, as here, it is a proper to refer to an earlier Act in pari materia or an Act of analogous character. Assistance in ascertaining the meaning of an enactment may-be obtained by comparing its language with that used in an earlier statue relevant to the same or analogous subject. As is observed comprehensively by *Lord Mansfield in R. v. Loxdale*[6]*,*

> "Where there are different statutes in part materia, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other." (See Maxwell on the Interpretation of Statutes, at page 33).

39. At the same page, referring to In re Orbit Trust Ltd.'s Leases, [1943] Ch. 144 (Ch.D), it is quoted:

"I see no reason for thinking that there is not implicit in the legislation of 1939 the principle .... which Parliament proclaimed as just in 1666."

40. On the same principle, while considering the question whether an impartible estate is the individual property of the owner under the Wealth-tax Act, in view of the ambiguity existing in that Act at the time of the assessment, it becomes permissible to take assistance from Section 9(4) of the Income-tax Act, which Act is an analogous Act and on the same subject, and apply the same principle to the Wealth-tax Act in so far as the question relates to the understanding of the character of the impartible estate. The subsequent legislation, which is more or less a declaratory or explanatory one, would further strengthen such an approach. The irresistible conclusion is that from these provisions also it becomes abundantly plain that impartible estate is an individual property of the holder and not a joint Hindu family property for the purposes of income-tax as well as wealth-tax. That is the opinion which we have expressed above.

41. Our attention was drawn to *Subramama Iyer v. Sangili Veerappa Subramania Pandian*[7], The facts of the case in brief are : On the date of the notification under the Estates Abolition Act, the zamindar of the impartible estate had two wives, 3 sons, a concubine and two illegitimate sons, himself being thus entitled to an one-fourth in the remaining share after providing one-fifth to the maintenance-holders out of the compensation amount, that is, 1/4 x 4/5 equal to 1/5. After the date of the notification, another was born to him. The zamindar died in 1955. Claims were preferred to the estates abolition tribunal for the interim payment which was deposited before them. The Madras High Court held :

> "By reason of Section 45(6) of the Abolition Act, there has been a partition quoad the compensation amount, though there has been no partition in regard to other properties. The devolution or succession to the share obtained in such a partition would be on the basis of its being a divided item of property. Therefore, the one-fifth share of the compensation amount, to which the deceased zamindar became entitled under the provisions of Section 45(6), should be held to be divided property in his hands, and the persons entitled to take it on his death would be his undivided son, his two widows and his two illegitimate sons, the other sons, being treated as divided in respect of that item of property. The first three sons of the zamindar will have no interest in the one-fifth share, to which the deceased zamindar became entitled under the provisions of Section 45(6)."

42. It will immediately be plain that the one-fifth share of the zamindar was treated as if it was a divided joint family property in his hands and the subsequent born son being a coparcener was declared entitled to it under the principle of survivorship, which is modified by the Hindu Succession Act along with the widows and the illegitimate sons of the zamindar. Their Lordships further observed at page 374 :

> "Therefore, whatever might be the rights of the principal landholder or his sons in the

> impartible estate before the date of the notification, the compensation amount is treated as, (1) property owned by the sharers as if they constituted members of the joint Hindu family, and (2) the share of each of the sharers determined as if there had been partition between them on the notified date. In other words, two results follow from the statutory provision, (1) that the compensation amount is joint family property of the shares, and (2) that there had been a partition of that asset on the date of notification between them."

43. With great respect to the learned judges, we are unable to agree with the last limb of the observation wherein their Lordships considered that the two results follow from the statutory provisions. To treat the compensation amount as the joint family property of the sharers on the date of the notification may be valid in so far as the fiction goes, and the mode of dividing the compensation between the sharers is concerned. But to extend this fiction beyond its logical conclusion, that is to say, to hold that the compensation amount is joint family property of the sharer vis-a-vis his after-born son or other coparcener is to widen the scope of the fiction for which there is no justification. Section 45(6) does not bring out this result at all. The formula adopted as fiction is the basis for division and nothing more. What character the amount in the hands of a sharer bears after it is divided has not been the concern of Section 45, and nowhere, either expressly or by necessary implication, the section states that the compensation amount is joint family property of the sharer. The learned judge at the same page observed :

> "Section 45 which enacts a fiction cannot, however, be extended so as to effect a division between the members of the family in regard to other properties, for neither the status of the family nor its other properties are within its operation."

44. If the fiction is not and cannot be extended so as to effect a division between the members of the family in regard to their other properties, we fail to see how that fiction is and can be extended so as to declare that the compensation amount in the hands of a sharer is his joint family property.

45. At one stage of the judgment, viz., at page 375, the learned judges observed :

> "In such a case, the devolution on the death of a member quoad the undivided property would be by the rule of survivorship, and quoad the divided property, by succession."

46. That would disclose that the divided share of compensation in the hands of the sharer was held to be his individual property which would devolve by succession and not by rule of survivorship. In spite of this clear observation, the learned judges have ultimately held that the one-fifth of the share of the zamindar in regard to his divided share of compensation would devolve on his death on his undivided sons, his two widows and his two illegitimate sons, the

other sons being treated as divided in respect of that item of property.

47. This decision was considered by a Bench of this court in R. C. No. 15 of 1965, an unreported judgment dated 19th November, 1968. The facts of that case were : The assessee, Rajah of Challapalli, was assessed to expenditure-tax for certain years. While so assessing the expenditure-tax, the officer included certain sums being expenses incurred by one of the assessee's sons as expenditure of the assessee's joint family. The contention of the assessee was that the son spent the amount out of his own source of income which included the share which he got out of the compensation fetched under Section 45(6) of the Abolition Act. It was, however, contended by the department that the share in the compensation constituted joint family property. The learned judges, after finding as to what impartible estate means and imports, observed ;

> "This concept as established by the case law has been recognised by the Estates Abolition Act in Section 45(1) while making certain provisions relating to the compensation payable to the holders of an impartible zamindari and also to those who have an interest in that property."

48. At another place, it is observed :

> "It is clear from a reading of Sub-section (1), (2)(a) and (6) that while the legislature recognised the nature and the rights of the members of the joint family in an impartible estate which vested in the Government under the Abolition Act, it intended to deal with the compensation in a manner different to that which would have been dealt with under the law prior to the notification under the Abolition Act."

49. This later observation accords with our view. We have already observed that Sub-section (1) of Section 45 merely applies that section to those estates that are referred to in Sub-section (1) and to no other estate. This sub-section does not do anything more than that. Likewise, subsections (2)(a) and (6) also do not accept that the impartible estate which is abolished or the compensation paid for it is treated as joint family property.

50. Referring then to Subramania Iyer v. Kutti Raja, their Lordships observed:

> "These observations are, with respect, in accord with the view we have taken, namely, that whatever might have been the position earlier, the sharers specified in Section 45(2) (a) of the Abolition Act, have been given a right in the compensation as if that compensation is joint family property and that partition has taken place in respect of that property and each of the sharers is entitled to a specific share therein, to which they are entitled individually and absolutely."

51. Their Lordships, after repelling the contention of the department, concluded thus :

> "On the other hand, that provision would only be consistent with an absolute interest in respect of his share of the compensation which he could before receiving it, bequeath, made a gift or" dispose it of in any way he liked, and where he did not so deal with it, that share would devolve under law to his legal heirs and not vest, in the other coparceners by survivor-ship. In the view we have taken on this aspect of the matter, the share of the compensation is the separate property of the son, Mallikarjuna Prasad, and he is entitled to spend from that amount the expenses towards his education, which cannot be said to have been incurred by the joint family."

52. From the above, it would be seen that although their Lordships thought that the Madras decision, observations from which are extracted, is in accord with the view taken by them, that does not seem to us to be wholly correct. The Madras decision, as has already been noticed, although treated the amount at one stage as if it was a self-acquired property of the sharer which would have devolved by succession, the result of the decision is that the divided compensation in the hands of the assessee is a divided share of joint Hindu family property in his hands and to such an amount the rule of survivorship would apply and that is why the undivided son together with illegitimate sons and widows were given share in that property depriving the other sons. The conclusion drawn by this court in the above said decision is quite contrary to the Madras decision. Nevertheless, the emphatic conclusion to which their Lordships of this court had reached is in complete accord with the view which we are taking in this case, and we respectfully follow that conclusion, although we find ourselves unable to share the view of the Madras High Court expressed in the abovesaid decision.

53. What must follow from the abovesaid discussion is that not only the impartible estate before it was abolished was individual property of the assessee-holder for the purposes of income-tax as well as wealth-tax, but the compensation in the hands of the sharers which they got by virtue of Section 45 of the Abolition Act is their individual property and not joint family property.

54. In this case, we are concerned with two items of property which partake the character of impartible estate. These properties which are not vested in the Government still continue to be the individual property of the assessee. Both from the standpoint of law applicable to such estates prior to their abolition or from the standpoint of the result of Section 45 of the Abolition Act, they are the individual properties of the assessee and not his joint family property. The assessee, therefore, in our view, has been rightly taxed as an individual in reference to these two items of impartible properties.

55. The next question is whether the compensation, which was not determined during the assessment years, is a debt and as such a property which can be computed towards his net wealth. The contention in this behalf was that according to the scheme of the Abolition Act, the compensation is an indefinite sum which has to be determined according to the provisions of the Act. It was argued that after the payment of half of the compensation amount it was not possible to say definitely that the assessee would get any amount by way of final determination. In such a case, it was contended that the compensation amount which may or may not be received cannot be treated as debt' and, consequently, not computed as his net wealth. It is, in our view, unnecessary to go elaborately into this question as the point now is covered by the following Bench decision of this court with which we are in respectful agreement. *Chandramanipattamaha Devi v. Commissioner of Wealth-tax*[8], holds:

> "That the amount of compensation paid in respect of Chemudu estate taken over by the Government and the balance amount of compensation which is to be ascertained in future under Section 39 of the Abolition Act and paid to the assessee, are assets of the assessee to be included in the total wealth of the assessee for the purposes of the Wealth-tax Act.A present liability to pay a sum of money which is ascertainable only in the future constitutes a debt in law. A payment to be made in the future on account of an existing obligation is as much a debt as a payment to be made in present on account of a liability in praesenti. The balance amount of compensation which is to be ascertained in future under Section 39 and paid to the assessee is a debt owing to the assessee."

56. The same view is reiterated in *Vadrevu Venkappa Rao v. Commissioner of Wealth-tax*[9],

57. The following decisions of the other High Courts also take the same view : *Maharajakumar Kamal Sing v. Commissioner of Wealth-tax*[10], and *Sardar C.S. Angre v. Commissioner of Wealth-tax*[11], Standard Mills Co. Ltd. Commissioner of Wealth-tax, lends considerable support to this view.

58. In the view which we have taken, we do not consider it necessary to refer to the several decisions which were cited to us by the learned advocate appearing for the assessee, because either they are of general character or decide the questions arising out of particular facts of those cases. Not a single decision cited to us relates to the compensation amount in regard to the impartible estate abolished. In view of the direct authorities, particularly of this court, it is unnecessary to deal with that question in an abstract wav.

59. We are therefore satisfied that, although the compensation amount was not finally determined during the assessment years and was subsequently determined in June, 1963, it still was a debt

which can be computed towards the net wealth of the assessee. It is pertinent in this connection to note that by the time the assessment order was made by the Tribunal, the compensation amount was finally determined. The order of the Tribunal took cognizance of that determination and it is not denied that the assessment is made in accordance with that determination. It is clear that the compensation amount which the assessee gets can be treated as his property.

60. Our answer to the first question therefore is in the affirmative partly, that is to say, we hold that the department is correct in law in determining the status of the assessee as an individual and not as joint family in regard to the two items of the impartible properties, that is to say, (1) Prince of Wales Market and (2) 38 items of jewellery called regalia. But the Tribunal has to investigate in regard to other items of properties as to whether they are partible or impartible properties. If they or some of them are found to be impartible properties, then the status of the assessee would be determined as an individual in regard to those properties. But if, on the other hand, they or some of them are found to be partible properties and do not belong to the assessee as an individual but found to belong to the joint family, then the assessee cannot be taxed as individual in reference to such properties. We answer the first question accordingly.

61. Our answer to the second question is in the affirmative and in favour of the department and against the assessee. As the parties have partly succeeded and partly failed, we leave them to bear their own costs of this court.

Cases Referred.

1[1932] I.L.R. 59 Cal. 1399; A.I.R. 1932 P.C. 216, 222
2[1888] I.L.R. 10 All. 272 (P.C.)
3[1899] I.L.R. 22 Mad. 383 (P.C)
4[1918] I.L.R. 41 Mad. 778 (P.C)
5[192.1] I.L.R. 43 All. 228 ; A.I.R. 1921 P.C. 62
6[1758] 1 Burr. 447
7[1960] 2 M.L.J. 102, 108; [1960] 73 L.W. 369, 375 (Mad.)
8[19671 64 I.T.R. 147, 154; [1967] 1 An. W.R. 37
9(1968] 69 I.T.R, 552 (A.P)
10[1967] 65 I.T.R 460 (Pat)
11 [1968] 69 I.T.R. 336 (M.P)