

BOMBAY HIGH COURT

Mahavirprasad Badridas

Vs.

M.S. Yagnik

Misc. Appln. No. 401 of 1958

(Shah and S.T. Desai, JJ.)

27.07.1959

JUDGMENT

Shah, J.

1. By this petition the competence of the Union Parliament to enact the Wealth-Tax Act (Act XXVII) of 1957, in so far as that Act seeks to levy Wealth-tax on Hindu undivided families, is challenged. The petitioner, who is the karta of a Hindu undivided family and is being assessed to wealth-tax in the status of Hindu undivided family was, by notice dated 12-7-1958 issued in exercise of powers conferred by Section 14(2) of the Wealth-Tax Act, called upon by the Second Wealth-Tax Officer, C-II Ward, Bombay, to furnish a return of the net wealth of his undivided Hindu family. The petitioner claims that the notice is invalid because Section 3 of the Wealth-Tax Act is ultra vires the Union Parliament in so far as that section authorizes the levy of wealth-tax on the net wealth of a Hindu undivided family.

2. By Section 3 of Act 27 of 1957 liability to pay for every financial year commencing on and from the 1st day of April, 1957, a tax referred to as the wealth-tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule is imposed. The petitioner contends that to the extent the Union Parliament authorized the levy of wealth-tax on Hindu undivided families as units, the legislation is ultra vires, and in support of that contention reliance is placed upon entry No. 86 in List I of the Seventh Schedule to the Constitution of India. That entry reads as follows :

"Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; tax on the capital of companies."

It is submitted that legislation imposing taxes on the capital value of the assets only of individuals and of companies but not of Hindu undivided families can, under the authority of

entry No. 86, be enacted by the Union Parliament.

3. A Hindu undivided family in essence is an association of male Hindus lineally descended in the male line from a common ancestor and includes their wives and their unmarried daughters. The property belonging to the family is of the ownership of the co-parceners in that family, and whilst the family remains undivided no individual member of the family can predicate his share in the family property. A Hindu undivided family is not a corporation; it is not a juridical entity distinct from the members who constitute it; it cannot sue or be sued in the joint family name and cannot convey the property held by it in its joint character. The co-parceners who are members of the Hindu undivided family are undoubtedly owners of the property, and there is corporate enjoyment of the property; but a Hindu undivided family has no independent existence apart from the individuals who constitute the same. Statements sometimes made in decided cases and text books that a Hindu joint family is a "sort of corporation" in dealing with questions relating to enjoyment of the property of the family (see for instance *Apaji Narhar Kulkarni v. Ramchandra Ravji Kulkarni*¹, at pp. 39 and 78, and Mayne's Hindu Law, 11th Edition, Article 243, at page 305) do not justify the view that a Hindu undivided family is a corporation. In a Hindu undivided family there is community of interest and unity of possession between all the members of the family, and until partition takes place there is common enjoyment and common possession of the family property. The family property is the property of the coparceners who for the time being constitute the Hindu undivided family. We are, therefore, unable to agree with the contention of Sir Nasserwanji Engineer that a Hindu undivided family is a corporation.

4. Entry No. 86 in List I of the Seventh Schedule to the Constitution confers authority upon the Union Parliament to enact legislation for levy of taxes on the capital value of assets of individuals : and if a Hindu undivided family is in substance a body of individuals, the Parliament will unquestionably be competent to legislate in respect of levy of wealth-tax upon Hindu undivided families. It is a cardinal rule of interpretation that the words used in a statute should be read in their ordinary, natural and grammatical meaning, subject to the rule that the words in a constitutional enactment conferring legislative powers should be construed most liberally and in their widest amplitude (see *Navinchandra Mafatlal v. Commissioner of Income-tax, Bombay City*², The Lists in the Seventh Schedule to the Constitution have been so framed that subject to the distribution of powers they cover, as far as possible, the entire field of legislation. By entry No. 86 it was intended to confer upon the Union Parliament power to impose tax on the capital value of the assets, exclusive of agricultural land, belonging to individuals and companies. If the expression "individual" includes an association or body of individuals, there is nothing in the context in which entry No. 86 occurs to justify the view that within the connotation of the expression "individuals" a body of Individuals which is known as a Hindu undivided family was not intended to be included.

5. Referring to entries Nos. S2 to 89 in List I of the Seventh Schedule to the Constitution by which authority is conferred upon the Union Parliament to impose taxes and duties of diverse

descriptions. Counsel for the petitioner pointed out that whereas entries Nos. 82 to 85 and 87 to 89 do not refer to the persons on whom the tax is to be imposed, entry No. 86 expressly provides that the levy of taxes on the capital value of the assets is to be on the assets of individuals and companies. This, it is urged, is a limitation upon the power conferred by the topic of taxation which cannot be ignored by implications. By entry No. 86 power to tax capital assets is undoubtedly conferred : and even assuming that the assets to be taxed must be of individuals or of companies before they could be taxed

¹ ILR 16 Bom 29

² 1955-1 SCR 829

under a law enacted in exercise of the power under that entry the assets of a Hindu joint family will still be liable to be taxed.

6. Counsel for the petitioner submits that the word "individuals" must be read, in the light of what he calls a settled legislative practice in enacting taxing statutes, as meaning individual human beings only. By the Indian Income-tax Act. by Section 3 which is the charging section income-tax, it is true, is made chargeable in respect of the total income of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually. But the use of this form of legislation does not justify the inference that in taxing statutes a Hindu undivided family is distinct from the individuals who constitute the same. Our attention has not been invited, apart from the use in juxtaposition of the expressions "individuals" and "Hindu undivided family" in Section 3 of the Income-tax Act, to any settled legislative practice, supporting the contention that the word "individual" used in a taxing statute means only a single human being.

7. Even on the interpretation of the expression "individual" as used in the Indian Income-tax Act there is no consensus of judicial opinion. In *Commissioner of Income-tax v. Currimbhoy Ebrahim*³ Sir.John Beaumont, C. J., in delivering the judgment of the Court, held that a corporation constituted by a special Act was an "individual" within the meaning of Section 3 of the Indian Income-tax Act. But in a later judgment the learned Chief Justice appeared to express a somewhat different view. In *Commissioner of Income-tax, Bombay v. Ahmedabad Millowners' Association*⁴, he expressed the view that the expression "association of individuals" as used in Section 3 of the Indian Income-tax Act, 1922, (before it was amended by the Indian Income-tax (Amendment) Act (Act VII) of 1939) meant an association of human beings and not an association of companies. In that case, it was held that an association which consisted of limited companies and one natural person was not an "association of individuals" within the meaning of Section 3 of the Income-tax Act. In *Commissioner of Income-tax, Madras v. Salem District Urban Bank Ltd., Salem*⁵ a Full Bench of the Madras High Court held that a co-operative Society registered under the Indian Co-operative Societies Act was an "individual" within the meaning of the Indian Income-tax Act. Evidently there is not only no settled legislative practice as to the meaning of the expression "individual" in taxing statutes, but there is not even unanimity of

judicial opinion as to the meaning of that expression in the Indian Income-tax Act. I am, therefore, unable to hold that the expression "individuals" used in defining the topic of legislation in the Constitution does not include an association of individuals such as a Hindu undivided family.

8. The learned Attorney-General appearing on behalf of the Union of India contended that even assuming that by the 86th entry in List I of the Seventh Schedule the Union Parliament was not invested with power to legislate for levying wealth-tax on the assets of Hindu undivided families, the Union Parliament was still invested with that authority by Article 248 of the Constitution and entry No. 97 in List I of the Seventh Schedule to the Constitution. By Article 248 it is declared that the Union Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List

³³³ Bom LR 1549

⁵ ILR (1940) Mad 627

⁴¹ Bom. LR 656

or State List, and that such power includes power to make any law imposing a tax not mentioned in either of those Lists. Relying upon the amplitude of the residual powers conferred upon the Parliament to make any law imposing a tax, it was urged that the power to tax the capital value of the assets of Hindu undivided families was, if not derived from entry No. 86, exercisable by entry No. 97 which confers upon the Union Parliament power to legislate in respect of "any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists." There being no matter enumerated in List II or List III whereby power to legislate in respect of wealth-tax to be levied on the capital value of the assets of Hindu undivided families is invested relying upon the powers conferred by Article 248 and upon the amplitude of the powers conferred by entry No. 97, the validity of the Wealth-Tax Act, even on the argument advanced by Counsel for the assessee, was sought to be upheld by the learned Attorney-General. For the assessee it was submitted that where the Constitution, in defining powers to legislate on a topic, has by incorporating words of limitation expressly placed a restriction, upon the competence of the Union Parliament to enact legislation, relying upon the residuary powers contained in Article 248 and entry No. 97 in List I of the Seventh Schedule the restriction cannot be ignored. On the view I have taken on the interpretation of the expression "individuals" in entry No. 86, I do not think it necessary to express any opinion on the question whether in the residuary powers of the Union Parliament, power to legislature on a topic which is partially dealt with by a specific entry in the first List may be regarded as included.

9. On the view we have taken, this petition must fail and it is dismissed with costs. Costs to be taxed on Long Cause scale; two Counsel certified.

S. T. Desai, J.

10. This is a Rule obtained at the instance of the petitioner, calling upon the Respondent, a Wealth Tax Officer under the Wealth Tax Act 1957 (to be referred to by me as the Act), to show cause why a writ of Certiorari should not issue quashing a notice issued by him under Section 14

of that Act and further to show cause why a writ of Prohibition should not issue restraining him from taking any steps against the petitioner by way of assessment or otherwise in pursuance of that notice. The Petitioner is the Karta and manager of a Hindu Undivided Family which is being assessed under the Income-tax Act in the status of Hindu Undivided Family. In July 1958 the Petitioner received a notice from the Respondent requiring him to furnish a return of net wealth of his Hindu Undivided Family, as on valuation date. The Petitioner has thereupon moved this Court for relief by issuance of appropriate writ or writs under Article 226 of the Constitution. The Petitioner challenges the competence of the Union legislature to charge tax on the net wealth of a joint Hindu family on the ground that Section 3 of the Act is ultra vires the Union Legislature in so far as it purports to levy tax on net wealth of the Petitioner in his capacity as the Karta of his joint family.

11. In opposition to the Rule the Respondent has filed an affidavit resisting the contentions of law pleaded by the Petitioner. His case is that the Union Legislature is fully competent to levy the impugned tax on the net wealth of a joint Hindu family under Entry 86 of List 1 to the Seventh Schedule to the Constitution. It is also his case that in any event the tax is covered by Entry 97 of that List. No facts are in dispute and I shall, therefore, immediately set out the relevant provisions of the Act in respect of which the contention of ultra vires has been raised.

12. Section 3, which is the charging section in the Act, is as follows :

"Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule".

13. Section 14 deals with Return of wealth. Sub-sec. (1) of that section imposes a duty on every person liable to pay tax under the Act to furnish a return in prescribed form. Section 14(2) is as follows :

"If the Wealth-tax Officer is of the opinion that the net wealth of any person is of such an amount as to render him liable to wealth tax under this Act, then, notwithstanding anything contained in subsection (1), he may serve a notice upon such person requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be required in the notice, the net wealth of such person as on the valuation date mentioned in the notice."

14. It will be convenient to state here the relevant provisions of the Constitution, the interpretation of which has been debated before us by learned Counsel on either side.

Article 248 of the Constitution is as under :

"(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists."

15. Entry 86 in List I (Union List) of the Seventh Schedule to the Constitution is as follows :

"Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies." Entry 97 in List I of that Schedule is as follows :

"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

16. It has been contended before us by Sir Noshirwan Engineer, learned counsel for the petitioner, that Section 3 of the Act, which levies the tax upon every individual, Hindu Undivided Family and Company is ultra vires the Union Legislature in so far as it charges the Hindu Undivided Family with this tax and the argument has been that Entry 86 in List I authorizes the Union Legislature to impose a tax of the nature under consideration only upon individuals and companies. The pivotal point of the argument was that the expression "individuals" cannot include a joint Hindu Family because a joint Hindu Family is not in the eye of law a group of individuals. It was urged that a Hindu coparcenary is a sort of a corporation and coparcenary property belongs to a unit having corporate existence and not to the individual coparceners or members of the joint family. It will be necessary to examine this argument in some detail but before doing so I shall turn to the other aspects of this question of interpretation of Entry 86 on which arguments were advanced before us by learned counsel for the Petitioner.

17. Our attention was drawn to a number of Entries in List I of the Seventh Schedule to the Constitution. It was said that while Entries 82, 83, 84, 87 and 88 which relate to taxation and levy of duties upon commodities and goods were all in such general terms as made them applicable to every person such as individual or individuals, Hindu Undivided family, company, local authority, partnership firm and other association or group of persons, Entry 86 was quite differently worded. The archstone of this contention was that there was a contrast in the language used in those Entries on the one hand and Entry 86 on the other which latter Entry while empowering the Union Legislature to levy tax on capital value of assets expressly confined such imposition to "individuals" and "companies". It was said that if it was intended to empower the Union Legislature to impose wealth tax on a Hindu Undivided Family, the simplest thing to do would have been to say so categorically as was done in Section 3 of the Income-tax Act. The argument proceeded that the makers of the Constitution must be regarded as fully aware of the legislative practice of the country and the legislative practice relied upon was that in Section 3 of

the Income-tax Act (XI of 1922) the units of taxation had categorically been stated to be every individual, Hindu undivided family, company and local authority, every firm and other association of persons or the partners of the firm or the members of the association individually.

18. The argument of the learned Attorney-General on this aspect of the case was that the word "individual" had been interpreted in cases arising under the Income-tax Act and been given wide amplitude and it was said that the word "individuals" in Entry 86 must be read so as to include a body or group of individuals. It was also argued that no legislative practice as contended by the Petitioner had been established.

19. This topic of legislative practice as an aid to construction was keenly debated before a division bench of this court consisting of Chagla C. J. and Tendolkar J. in the case of *Col. Sir J. N. Duggan v. Commissioner of Income-tax*⁶, and there was some cleavage of opinion on this point but it is not necessary for me to refer to the judgments in that case on this point and I shall restrict myself to a few observations on the subject.

20. Where the language of an enactment is plain and clear upon its face and of itself fairly susceptible of one meaning the task of interpretation can hardly be said to have arisen. *Absoluta sententia expositore non indigent*. But language at best is not a perfect medium of expression and a variety of significations often lie in a word or expression. Any examination of cases involving construction of statutes must reveal that "few words are so plain that the context or the occasion is without capacity to enlarge or narrow their extension." So if the Legislature of a country has been accustomed to use any word or expression with a more restricted or extended meaning than might be commonly

⁶Bom City 54 Bom LR 184

attributed to it in its ordinary sense the Court should not blandly shut out that consideration but should avail of that assistance, albeit limited, in the process of interpretation. Legislative practice is one of the accepted aids to construction and furnishes extrinsic evidence to which resort may legitimately be had when the Court has to construe a word or phrase and the task of preferring one meaning to another can really be said to have arisen.

21. What then is this legislative practice so much sought to be relied upon by Sir Noshirwan Engineer? It was said that the units of assessments enumerated in Section 3 of the Income-tax Act (XI of 1922) categorically mentioned the Hindu Undivided Family. It was pointed out that prior to its amendment in 1939 also that section expressly enumerated inter alia as units of assessment "every individual" and "Hindu undivided family". The argument was stressed in the form of an interrogation : "Where was the necessity of doing so unless the Legislature took the view that the expression individual which of necessity meant 'individual' in the singular or plural did not embrace a Hindu Undivided Family?" Therefore, the legislative practice relied upon on behalf of the petitioner is none other than that to be gathered from section 3 which is the charging section in the Income-tax of 1922 and which expressly mentions Hindu undivided family as a

unit of taxation along with other units such as individual, company, firm and association of persons.

22. In course of his argument I asked learned counsel for the petitioner if the legislative expression "individuals" which would apply both to an individual or group of individuals was to be found in any enactment, preferably a taxing enactment, and understood to exclude a Hindu Undivided family on the ground that it had a corporate existence distinct from its members. The answer was that he was unable to say so and that he relied on the language of Section 3 of the Income-tax Act. I have examined the relevant provisions of the Indian Income-tax Acts of 1860, 1886, 1918 and 1922 and the amendments incorporated from time to time in Section 3 of the Act of 1922. It appears from Schedule 2 to the Act of 1860 that that unit of assessment under it was any "person." The expression "person" in that enactment obviously embraced inter alia any association, or body or group of persons by virtue of the definition in Section 3 (42) of the General Clauses Act.

23. The position under the Act of 1886 was similar. There was nothing in the language of the relevant provisions of the Act of 1918 which can support the present contention of the Petitioner, Section 3 of the Act of 1922 has been amended from time to time and one thing is clear that the expressions "individual" and "Hindu Undivided Family" have at all time been expressly mentioned in it along with other units of taxation such for instance as "company", "firm" and "associations of individuals." Therefore, it is on the tenuous basis, that in Section 3 of the Income-tax Act of 1922 there is express mention of "Hindu Undivided Family" after the expression "individual" has been expressly stated as a unit of taxation, that this argument wholly rests. There can be more than one answer to it but only one will suffice. An obvious answer is that there is no principle of taxation law or general law which prevents income-tax being charged on a group of individuals like members of a joint Hindu family as a unit of taxation. The Hindu undivided family, though not a juridical person, is intended to be taxed as a unit and the tax on the income of the joint family is not intended to be levied separately on each member or coparcener for that would raise considerable difficulty and give scope for legal ingenuity and disputations. It does not at all follow from this that the Hindu undivided family is by legislative practice understood to be a legal persona or an artificial person distinct from the individuals who are its members or coparceners. No legislative practice as argued has been established and the contention is not well founded.

24. To turn to the contention of the Petitioner that a joint Hindu family is not a group of individuals but a distinct unit which is a sort of a corporation and, therefore, not within the scope of the expression "individuals" to be found in Entry 86. Learned counsel for the Petitioner drew our attention to the following statement in Paragraph 243 in Mayne's Hindu law :

"Three forms of the corporate system of property exist in India : The Patriarchal family, the joint family and the village community. The two former, in one shape or other, may be

said to prevail throughout the length and breadth of India The joint family is a corporate body, of which the members are individuals." It will suffice to note that this statement was made by the learned author in tracing the history of early Hindu law of property and was obviously intended as a background to the proper understanding of the nature and incidents of joint family property and for the purpose of drawing attention to misleading effect of English analogies from previous notions drawn from English law relating to joint tenancy. Reliance was also placed on behalf of the Petitioner on the following observations of Telang J. in ILR 16 Bom. 29 at pages 39 and 77-78 :

" 'The Family property', to borrow the language of Mr. Mayne, 'is owned by the whole coparcenary as a sort of corporation'."

"The Mitakshara joint property scarcely presents any points upon which a comparison between it and joint tenancy could be instituted. No doubt the joint family is a corporate body, a sort of corporation, but a corporation in which there are shareholders but no shares. It is, therefore, not correct to suppose that when the joint ownership of father and son was established the joint family ceased to be a corporation with perpetual succession, and became a mere partnership terminable at will. The right of the sons as against their father does not change the fundamental nature of the corporate body. It does not become a partnership formed by volition." Reliance was also placed by learned Counsel on the following observations in *Chukun Lall v. Poran Chunder*⁷ at p. 484 :

"It appears to me that the joint family is, as regards the enjoyment of the joint property, a single entity. As long as the members, who have, what may be termed, vested interests in the property, choose to continue in a state of commensality and in joint fruition and enjoyment of the profits of the property, they cannot be said to possess individually any several proprietary right other than the right to call for partition - a right which they may alienate. For proprietary purposes, they exist as a whole, somewhat in the character of a corporation. They manage the property together, and the Karta is but the mouthpiece of the body, chosen and capable of being changed by themselves."

25. I agree that in a sense it is permissible and sometimes even helpful to speak of the joint Hindu family as a sort of a corporate body but that is in no manner decisive of or

⁷⁹ Suth W. R. 483

even of particular cogency to the crucial point which arises for our determination. Since, however, so much reliance is placed on the statement from Mayne's Hindu law and the observations from decisions of Courts quoted above, it becomes necessary to examine the question whether a Hindu Undivided Family is a corporate unit by itself and not a group of individuals or to put the question slightly differently does coparcenary property of a joint Hindu family vest in the Hindu coparcenary as a corporate unit distinct from the individual coparceners who constitute the coparcenary. I shall do so as succinctly as possible.

26. In Hindu law the joint family system comes first in historical order. The law of inheritance was of later growth and, in general, applied only to property held in absolute severally as

distinguished from property held by the joint family. The joint and undivided Hindu family is the normal condition of Hindu Society and the fundamental conception of the Hindu joint family is a common male ancestor with his lineal descendants in the male line and so long as that family is in its normal condition, that is, its undivided state, it forms a corporate unit, though not a juridical person. The joint family traces its original to the ancient patriarchal system and the transition from that system to the joint family was a natural and logical development. In the joint family also the partner families was the unquestioned ruler and the authority of the father of the family and some of his exclusive privileges are even now traceable in the rights of the father as the Karta of the joint family, though the principle of patria potestas has long ceased to be recognized. The earlier concept of the joint family was somewhat analogous to that of a corporate body and the tendency was to sink the individual in the family. Social conditions, however, underwent considerable transformation and there grew up a body of rules of inheritance under the title of dayavibhaga which as explained by Vijananeshwara means division of property which becomes the property of another solely by reason of his relation to the owner. Even under early Hindu law rights of sons (as junior members of the family) were recognised and they acquired equal interest with the father in the ancestral property as coparceners. I had to refer to this historical aspect of the matter on another occasion and have only recapitulated what I then stated.

27. The rights of sons to equal interest with the father in the ancestral property being recognized by early Hindu law the inevitable corollary that emerged was the recognition and establishment of that right by birth and the right to claim partition. It is not necessary to burden this brief conspectu with reference to the texts of the smritikars and the commentators which show how the law on the subject was developed in what came to be described later on as the Mitakshara and the Dayabhaga Schools. The nature and incidents of coparcenary property under the Mitakshara and the rights and extent of interest of the members of such coparcenary and the basic principles of this branch of the law have been examined in numerous decisions of the High Courts and the Privy Council and now also by the Supreme Court. The principles, now firmly established, which are relevant for the purpose of the examination of the present contention of the petitioner need no elaborate discussion. They will be found in the following statement of the law in Article 216 of Sir Dinshah Mulla's Hindu Law :

"The essence of a coparcenary under the mitakshara law is unity of ownership The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by the Mitakshara law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share, one-third or one-fourth. His interest is a fluctuating interest, capable of being enlarged by deaths in the family, and liable to be diminished by births in the family. It is only on a partition that he becomes entitled to a definite share. Then most appropriate term to describe the interest of a coparcener in coparcenary property is "undivided coparcenary interest". . . The right of each coparcener until a partition takes place consists in a common possession and

common enjoyment of the coparcenary property. As observed by the Privy Council in *Katama Natchiar v. Rajah of Shivagunga*⁸, at pp. 543 611 (PC) 'there is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession.'

28. Now, the contention of the Petitioner that a Hindu Undivided Family is outside the scope and ambit of the expression "individuals" and therefore of Entry 86 can possibly succeed only if the property of such family can be shown to vest not in the individuals who are members or coparceners of the family but in a jural entity which is in the eye of law distinct from its members or coparceners. The incidents of joint family or coparcenary property do not in the present context in the least affect the vesting of the property. When it is said that the ownership of the coparcenary property is in the whole body of coparceners, it does not mean that it vests in any corporate legal entity apart from the coparceners. The property vests in all the coparceners. The interest of a coparcener is "undivided coparcenary interest." It is interest which vests in him and with which, subject to certain limitations, which are not relevant for the present purpose, he is entitled to deal as he likes. Joint family or coparcenary property, therefore, is that in which, every coparcener has a vested joint interest and joint possession. Cadit question it is not property which is of the ownership of any jural person or entity distinct from individual coparceners who as a group constitute the joint family. A joint Hindu family, it may be observed, is not entitled to sue as such nor can the joint family be sued as a legal person in respect of any joint family property.

29. The argument that a Hindu Undivided family is owner of the joint family property as a corporate body was evidently presented by learned counsel only in the context of a Mitakshara family and on the footing that the joint family of the Petitioner is governed by the Mitakshara school. Since, however, the argument can apply to members of a joint family governed by the Dayabhaga law and members of a tarwad, tavazhi, illom, kutumba or kavaru governed by the Marumakkattayam, Aliyasantana or Nambudri law it becomes necessary to consider whether the expression "individuals" in Entry 86 can embrace members of such joint Hindu families. The contention of the Petitioner would, of course, derive support if the property of any such joint Hindu family can be said to belong not to the members but to the family as a corporate legal entity. If the expression "individuals" in Entry 86 could not embrace the members of any such joint Hindu Family it would be extremely difficult to attribute to the makers of the Constitution the intention to empower the Parliament to impose capital levy on members of some joint Hindu families as a unit of taxation and not in case of members of some other joint Hindu families. I would have

⁸⁹ Moo Ind App 539

found myself faced with some difficulty in examining the contention from this angle since this aspect of the matter was not mooted by learned counsel for the Petitioner and the learned Attorney General was not called upon to present any argument on the same. I confess this aspect of the matter did not strike me at the time but it is not absolutely necessary to invite further

arguments on the same. No difficulty arises since, as I shall very briefly point out, the position seems clear that the property of any such joint Hindu family vests in individuals who are members of the joint family and not in the family as a juridical person apart from its members.

30. The conception of a coparcenary and of coparcenary property according to the Dayabhaga law is entirely distinct from that according to the Mitakshara law. The essence of a coparcenary under the Dayabhaga law is unity of possession and it is not possible even in a general manner to say that under that system the ownership of the coparcenary property is in the whole body of coparceners. Every coparcener takes a defined share in such property and he is the owner of that share. Even before partition any coparcener can say that he is entitled to a particular share. Therefore, there is not even scope for the argument that the Dayabhaga joint family can own property as a jural person distinct from its members.

31. The existence of a system founded on matriarchy in certain parts of Southern India in contradistinction to that in the rest of the country which is patriarchal having the common ancestor as the founder of the family and in which relationship is primarily by agnation has been well established and judicially recognized for a long time. The joint family in one form or another does exist under the systems prevalent in Southern India known as Marumakkattayam, Aliyasantana and Nambudri Laws. While the incidents of the joint family property under the laws of those who favour the matriarchate must in certain respects be different it is abundantly clear that the members of any tarwad, tavazhi, illom, kutumba or kavaru have vested interest in the joint family property. Although it is not unusual to refer to these families as family corporations, it cannot be said that ownership of the joint family property vests in a corporate body as a juridical person as distinct from the members of the joint family. On an aspect of the matter not argued before us it is unnecessary, however, to pursue this point any further.

32. The conclusion, therefore, seems inescapable that the property of a Hindu Undivided family is within the ambit of Entry 86. It is property of the "individuals who are members or coparceners of the joint family. It must follow, therefore, that it was within the competence of the Union Legislature to impose wealth tax on the Hindu undivided Family as a unit of taxation and that the impugned legislation in Section 3 of the Wealth Tax Act, 1957, affecting a Hindu Undivided Family cannot be struck down on the score of vires. The Court will not declare any enactment as unconstitutional or ultra vires unless the repugnance to the Constitution is clear and beyond doubt and in case of the legislation challenged before us, I do not see any repugnance.

33. A further point was stated by Sir Noshirwan Engineer, rather as an apprehension of the Respondent's counsel than as an argument actually advanced for the petitioner, that if the word "individuals" in Entry 86 be interpreted in the restricted sense urged on behalf of the Petitioner, the Respondent cannot seek to uphold the impugned legislation by resorting to Entry 97 which is the residuary Entry in List 1. The learned Attorney General strongly relied on this residuary Entry and Article 248 and pressed for our acceptance the contention of the Respondent founded

on the same. The argument was that the three Lists in the Seventh Schedule embraced the entire gamut of legislation and that it was Article 248 to which the court must in the first instance turn for ascertainment of the residuary powers of the Parliament when any question arises in the field of the exclusive powers of the Union Legislature to make any law and particularly the power of making any law imposing a tax not mentioned in the Concurrent List or the State List. Article 248, it was said, gave unfettered power of taxation to the Union Legislature in its own domain of legislation and could not be controlled by the language of Article 86. The rejoinder to this on behalf of the Petitioner was that the scope of Entry 86 cannot be expanded by recourse to the residuary Entry. The argument, of course, was on the footing that the expression "individuals" in Entry 86 did not include a Hindu Undivided Family. It was said that if the construction of Entry 86 pressed on behalf of the Petitioner is accepted the word "individuals" must be read as laying down a restriction upon the powers of the Union Legislature to impose capital levy by confining it to individuals and companies. Now it would appear that the entries in the Lists are legislative heads primarily designed to demarcate the areas of legislative competence of the Union and the State Legislatures. They give simplex enumeration of categories of legislation and are not designed to circumscribe or logically define the ambit of Article 248. It would be difficult, therefore, to read in any Entry in List 1 any restrictions by implication or otherwise on the residuary legislative power conferred on the Union Legislature by Article 248. But in the view I have already taken on the interpretation and effect of Entry 86 it is not necessary to decide this interesting question.

34. For reasons I have already stated, I agree with my learned brother that this petition fails and must be dismissed with costs.

Petition dismissed.