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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on:20.09.2018

% Judgment Pronounced on:05.10.2018

\+ **GTR 2/1981, C.M. APPL. 5764/2013 & 45861/2016 (lead case)**

COMMISSIONER OF INCOME TAX ..... Petitioner

versus

BHAWANI SINGHJI ..... Respondent

\+ **ITA 152/2001**

COMMISSIONER OF I.T. DELHI-V ..... Appellant

versus

RAJ MATA GAYATRI DEV ..... Respondent

\+ **ITA 218/2002, C.M. APPL.5766/2013**

CIT ..... Appellant

versus

RAJ MATA GYATRI DEVI OF JAIPUR ..... Respondent

\+ **ITA 679/2004, C.M. APPL.5757/2013**

COMMISSIONER OF INCOME TAX ..... Appellant

versus

RAJMATA GYATRI DEVI ..... Respondent

\+ **ITA 163/2005**

COMMISSIONER OF INCOME TAX DELHI ..... Appellant

versus

RAJMATA GAYATRI DEVI OF JAIPUR ..... Respondent

+ **ITA 750/2007**

THE COMMISSIONER OF INCOME TAX V ..... Appellant

versus

MAHARAJA JAI SINGH ..... Respondent

+ **ITA 752/2007**

THE COMMISSIONER OF INCOME TAX ..... Appellant

versus

MAHARAJA JAI SINGH INDL. ..... Respondent

+ **ITA 751/2007 & ITA 763/2007**

THE COMMISSIONER OF INCOME TAX-V ..... Appellant

versus

MAHARAJA PRITHVI RAJ ..... Respondent

+ **ITR 137/1983, ITR 78/1981 & ITR 397/1983**

CIT ..... Petitioner

versus

JAI SINGH ..... Respondent

+ **ITR 297-98/1981**

COMMISSIONER OF INCOME TAX ..... Petitioner

versus

BHAWANI SINGHJI ..... Respondent

+ **ITR 9/1982 & C.M. APPL.5772/2013**

CIT ..... Petitioner

versus

BHAWANI SINGH ..... Respondent

\+ **ITR 46-47/1982**

CIT ..... Petitioner

versus

GAYATRI DEVI ..... Respondent

\+ **ITR 95-98/1983 & ITR 221/1984**

C.I.T ..... Petitioner

versus

PRITHVI RAJ ..... Respondent

\+ **ITR 137-39/1983**

CIT ..... Petitioner

versus

JAI SINGH ..... Respondent

\+ **C.M. APPL.5770/2013 IN ITR 151/1983 (disposed off case), ITR 152-53/1983, ITR 271/1983 & ITR 438/1983, C.M. APPL.5775/2013**

C.I.T ..... Petitioner

versus

JAGAT SINGH ..... Respondent

\+ **ITR 170-71/1985**

RAJMATA GAYATRI DEVI OF JAIPUR ..... Petitioner

versus

COMMR.OF INCOME TAX ..... Respondent

\+ **ITR 221-24/1985**

MAHARAJ PRITHVI RAJ(HUF) ..... Petitioner

versus

CIT, DELHI-VIII ..... Respondent

\+ **ITR 18/2000, C.M. APPL.5762/2013**

COMMR.OF INCOME TAX ..... Petitioner

versus

LT.COL.BHAWANI SINGH ..... Respondent

\+ **WTA 2/1999**

C.I.T. ..... Petitioner

versus

MAHARAJA JAI SINGH ..... Respondent

\+ **WTR 328-34/1984 & C.M. APPL.5773/2013**

C.W.T. ..... Petitioner

versus

BHAWANI SINGH JI OF JAIPUR ..... Respondent

\+ **ITR 283-88/1985**

C.I.T. ..... Petitioner

versus

MAHARAJ JAGAT SINGH ..... Respondent

\+ **WTR 300/1987, C.M. APPL.5759/2013; WTR 40-42/1987 & WTR 106-08/1990,C.M. APPL.5767/2013**

CWT ..... Petitioner

versus

LT.COL BHAWANI SINGH ..... Respondent

\+ **WTR 3/1992 & C.M. APPL.5765/2013**

CWT ..... Petitioner

versus

SMT GAYATRI DEVI OF JAIPUR ..... Respondent

\+ **WTR 4/1992 & C.M. APPL.5763/2013**

CWT ..... Petitioner

versus

RAJMATA GAYATRI DEVI ..... Respondent

\+ **WTR 24/1995 & C.M. APPL.5758/2013**

CWT ..... Petitioner

versus

RAJMATA GAYATRI DEVI OF JAIPUR ..... Respondent

\+ **WTR 28-32/1995 & C.M. APPL.5768/2013**

CWT ..... Petitioner

versus

LT COL BHAWANI SINGH ..... Respondent

\+ **WTR 4/1997 & C.M. APPL.5771/2013**

C.W.T. ..... Petitioner

versus

RAJMATA GAYATRI DEVI OF JAIPUR ..... Respondent

\+ **C.M. APPL.5769/2013 IN ITR 297/1981**

C.I.T ..... Petitioner

versus

BHAWANI SINGH ..... Respondent

\+ **C.M. APPL.5760/2013 IN ITR 46/1982**

C.I.T ..... Petitioner

versus

GAYATRI DEVI ..... Respondent

\+ **ITR 95/1983**

C.I.T ..... Petitioner

versus

PRITHVI RAJ ..... Respondent

\+ **ITR 170/1985**

RAJMATA GAYATRI DEVI OF JAIPUR ..... Petitioner

versus

CIT ..... Respondent

\+ **ITR 283/1985**

C.I.T ..... Petitioner

versus

MAHARAJ JAGAT SINGH ..... Respondent

\+ **ITR 185-88/1989**

MAHARAJ PRITHVI RAJ(HUF) ..... Petitioner

versus

C.I.T. ..... Respondent

\+ **C.M. APPL.5774/2013 IN WTR 40/1987**

CWT ..... Petitioner

versus

LT COL BHAWANI SINGH ..... Respondent

Through : Sh. Ajay Vohra, Sr. Advocate with Sh. D.D. Singh, Ms.Seerat Deep Singh, Ms. Kavita Jha and Sh. Aditya Vohra, Advocates, for Maharaja Prithvi Raj and Maharaja Jai Singh, in ITA 152/2001.

Sh. Deepak Anand and Sh. Puneet Rai, Advocates, for appellant, in ITA 152/2001, ITA 218/2002, ITA 679/2004, ITA 163/2005, ITA 750/2007, ITA 751/2007, ITA 752/2007, ITA 763/2007, ITR 78/1981, ITR 297-98/1981, ITR 9/1982, ITR 46-47/1982, ITR 95-98/1983, ITR 137-39/1983, ITR 271/1983, ITR 221/1984, ITR 397/1983, ITR 438/1983, ITR 170-71/1985, ITR 221-24/1985 & ITR 18/2000.

Sh. Prateesh Kumar and Ms. Meera Mathur, Advocates, for assessee, in ITA 152/2001, ITA 218/2002, ITA 679/2004, ITA 163/2005, ITA 750/2007, ITA 751/2007, ITA 752/2007, ITA 763/2007, ITR 78/1981, ITR 297-98/1981, ITR 9/1982, ITR 46-47/1982, ITR 95-98/1983, ITR 137-39/1983, ITR 271/1983, ITR 221/1984, ITR 397/1983, ITR 438/1983, ITR 170-71/1985, ITR 221-24/1985 & ITR 18/2000, GTR 2/981, WTA 2/1999, WTR 328-34/1984, WTR 300/1987, WTR 40-42/1987, WTR 106-08/1990, WTR 3/1992 ,WTR 4/1992 ,WTR 24/1995,WTR 28-32/1995,WTR4/1997, ITR297/1981, ITR46/1982, ITR 95/1983, ITR 151/1983, ITR 283/1985, ITR 185-88/1989 & WTR 40/1987.

Sh. Manish Kumar, Sh. Yudhister Singh, Sh. Piyush Kaushik and Sh. Y. Sarat Chandra, Advocates, for applicant, in GTR 2/981.

Sh. D.D. Singh and Ms. Seerat Deep Singh, Advocates, for Respondent Nos. 8, 10, 15, 21, 23 and 52, in ITA 152/2001, ITA 218/2002, ITA 679/2004, ITA 163/2005, ITA 750/2007, ITA 751/2007, ITA 752/2007, ITA 63/2007, ITR 78/1981, ITR 297-98/1981, ITR 9/1982, ITR 46-47/1982, ITR 95-98/1983, ITR 137-39/1983, ITR 151-53/1983, ITR 271/1983, ITR 397/1983, ITR 438/1983, ITR 221/1984, ITR 170-71/1985, ITR 221-24/1985, ITR 185-88/1989, ITR 18/2000 & GTR 2/981.

Sh. Satyam Thareja, Advocate, for Respondent No.4, in ITR 18/2000.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J

1. The common questions of law, which arise for consideration in all these connected gift tax references, wealth tax references, income tax references and income tax appeals are as follows:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was not the holder of an impartible estate?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was the ·absolute Ruler, the King, the monarch, up to the merger and after the merger in 1949, he was reduced to the position of an ordinary citizen to whom the provisions of Personal Law applied, he being a Hindu, the Hindu Law?

3. Whether, on the facts, and in the circumstances of the case, the Tribunal was justified in holding that the filing of the returns in the status of an individual could not operate as Res judicata by conduct against the assessee from claiming his correct status as a Hindu Undivided Family ("H.U.F." hereafter) for income-tax purposes?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the status of the assessee was that of a H.U.F.?

2. Counsel for all the parties unanimously agreed that the questions be treated as the only ones requiring determination; they were heard on the paperbook and other materials by treating GTA 2/1981 as the lead case.

Facts of the case

3. Sawai Man Singh, a former ruler of Jaipur, was adopted on 24-03-1921; he ascended the throne (*"Gaddi"*) of the erstwhile princely state of Jaipur on 7-09-1922. He ruled the Jaipur State as the Maharaja of Jaipur till 1947. With India's independence, British Paramountcy lapsed. The State of Jaipur acceded to India by instrument of accession; the erstwhile state thereafter merged in the United State of Rajasthan on 30-3-1949. The covenant, dated 6-12-1949 with the Government of India recognised the terms of accession under the terms of accession/covenants. The properties of Jaipur State, of which Sawai Man Singh was an absolute owner up to the merger, were divided into two categories: State properties and private properties. Till assessment year (A.Y.) 1969-70, the late Sawai Man Singh filed his returns of income in the status of an individual. For the A.Y. 1970-71, a return of income was filed on 30-4-1970 in the status of an individual. Sawai Man Singh died on 24-6-1970.

4. The return filed by late Sawai Man Singh before his death was not available. A duplicate of that return was filed on 26-03-1970 declaring the status of an individual. A return dated 12-02-1971 was later filed (received in the AO's office on 19-02-1971). This was called as a revised return; it was signed by the late Sawai Man Singh's legal heir declaring the return to have been in the status of a HUF. The AO, keeping in view the ancestral history of the late Sawai Man Singh and that he was earlier the ruler of

Jaipur State, the quality of the property and the manner of its treatment by him, held the return to be filed by the late assessee, as an individual. In so holding, the AO took note of the history of the case, the ascension to the *gaddi*, the status of late Sawai Man Singh as ruler, lapse of paramountcy in 1947, merger (of the state of Jaipur) in 1949, and the covenants of the same year. The AO also considered the legal principles which applied, according to him, the alienation of properties (by the late Sawai Man Singh) which he held, showed his absolute right of disposition.

5. The status assigned by the AO and the assessment framed, was questioned in appeal, before the AAC. The AAC traced the history of the matter and relied on *State of U.P. v. Raj Kumar Rukmani Raman Brahma* (1970) 2 SCR 355 and held that after the merger, the assessee ceased to be the absolute ruler of the State and, therefore, the correct status was that of a HUF. This became the subject matter of the revenue's appeal to the ITAT.

6. The ITAT logically considered the submissions advanced before it and examined the meaning and concept of an impartible estate and whether the erstwhile ruler, who filed income tax returns, held one such estate, and whether the rule of primogeniture which applied to accession to the *gaddi* was in any manner determinative; if not, what was the rule of succession. The findings of the ITAT in this regard, *inter alia*, are as follows:

> *"The consensus of judicial opinion on this issue is that a holder of an impartible estate is an absolute owner of the estate and the mode of succession is determined by the custom being in favour of the rule of primogeniture. That being so, we have to decide as to how an impartible estate comes into existence. An impartible estate which is normally ancestral is conferred by a ruler on a person for meritorious services rendered by that person to the overlord, who*

is the ruler of the State. The holder of the impartible estate derives authority from the overlord and, if we may say so, the impartible estate is held under the pleasure of the overlord. That is why an impartible estate has been treated as Zamindari to which all the laws of the Government are applicable. The most famous Zamindari/impartible estate is that of Maharaja Adhiraj of Dharbhanga to which all the Indian laws were applicable even before the abolition of Zamindari. Bettiah Raj was another Zamindari in Bihar and an impartible estate but it was not immune from Indian laws as would be apparent from the innumerable litigations even on tax matters by both Zamindars and they being reported cases need not be referred to support the proposition that the Zamindari/impartible estate were amenable to the Indian laws. That being so, the question which arises for determination is whether the Maharaja of Jaipur was a holder of the impartible estate. The history of Jaipur lies deep in the hearty past which may be called medieval and it cannot be said that it was an impartible estate as understood in law. The rulers of Jaipur were absolute rulers, monarchs and, if we may call them, kings who made all laws, who were the fountains of all laws and administered them in the manner they wanted. Up to 1947, when India attained independence, no Indian law was applicable to the ruler including the Indian Penal Code and the tax laws. He administered the State as an absolute overland and the King was undisturbed by any laws of the British India, if we may call it so, before 1947. That being the position, though of course the characteristic of the impartible estate of being the absolute holder was there in case of the ruler, but the fact that he was not amenable to any Indian laws being the absolute owner lends different colour to the estate of the ruler. It was not an impartible estate but a kingdom.

Therefore, during days of his rulership, he being the King, no law including the personal law was applicable to him. But with the lapse of Paramountancy in 1947 and the merger/covenants in 1948, the position changed. The rulers ceased to be the rulers, he was given all the trappings of the ruler but actually he was reduced to the position of an ordinary citizen. He become amenable to all the laws of India as it came to be called after independence including the Indian Penal Code and the Taxation

laws. That is why he filed his returns of income under the Indian Income-tax Act, 1922, and, thereafter under Income-tax Act, 1961. Therefore, the first question which arises for consideration is as to the nature of the status of the ruler after the merger. When the King became an ordinary citizen after the merger and ceased to exercise all the powers of the King, the King being a Hindu, lapsed into the bosom of the personal laws. The ruler, therefore, came to be governed by the provisions of the Hindu law. Therefore, our finding is that before the merger he being the absolute ruler was not governed by the Hindu law but after the merger as he laped into the bosom of the personal law being a Hindu, he constituted a HUF with his legal heirs. In coming to that conclusion, we have taken note of the fact that the ruler did not have any self-acquired property but had only his ancestral property which had come to him through his ancestors and the origin of the ancestral nature of the property is buried in the remote past.

24. At this stage his filing of returns in the status of an individual and dabbling with the properties in the manner he liked without caring for his limitations under the personal law become relevant. It is undoubtedly true that the Ruler filed his returns of income up to the assessment year 1969-70 in the status of an individual and was assessed so. But the question is whether his declaring a status of an individual up to the assessment year 1969-70 could jeopardise claiming of the correct status as assignable under the law. It is also true that the conduct of the assessee is relevant for the purpose of determining the issue of the status but that is not the sole determining factor. An assessee may not be aware of his correct status in law but as and when he knows his correct status, he has the right to claim the correct status. There can be no dispute about the legal proposition. In respect of the fact that the assessee continued to dispose of properties by way of transfer, gifts, etc., even after the merger, that may be a conduct which may appear to go against the assessee to some extent but on a deeper thought it is not so. It is well settled that the karta of a HUF has a limited right of disposition of HUF property. If we were to look into the claim in terms of money in respect of the immovable properties disposed of by the ruler, the figure appear to be substantial. That may be so if the properties of an ordinary HUF

are taken as the touch stone. But if the huge dimension of the properties of the Jaipur State are taken to be account (the value of the properties running into crores and crores) the disposition so made by the ruler are reduced to an insignificant figure. We, therefore, hold that the disposition made by the ruler of Jaipur did not detract anything from the claim of the status of a HUF.

25. At this stage it would be fruitful to refer to the proposition of the revenue detailed above. The revenue had fairly conceded that after the death of the ruler the status was to be taken as that of a HUF. But the other proposition propounded by the revenue cannot be accepted because neither the assessee was the holder of an impartible estate nor the Indian laws were applicable to him before merger. At this stage we should refer to the decision of their Lordships of the Supreme Court in 1970 3 SCR 631 (sic) and H.H. Raja of Bhor's case (supra).”

Contentions of parties

7. Counsel for the revenue reiterated that succession to the *gaddi,* in the erstwhile state of Jaipur was, without any known or recorded exception, based on primogeniture. As before ITAT, the history of the ruling *Kachhawaha* clans was reiterated. It was highlighted that even during late Sawai Man Singh’s lifetime, Colonel Bhawani Singh was declared as heir apparent and that status was maintained even after merger. In support, the White Paper on Indian States, Article XII(3) of Merger Agreement and other historical archival material was relied on.

8. It was argued, on behalf of the revenue, by Mr. Deepak Anand, that the late assessee, Sawai Man Singh was an absolute monarch up to 1949; in his family, the royalty of erstwhile Jaipur state, primogeniture was accepted and practiced. Till the state acceded to the Dominion of India through a

Covenant entered into by the states of Rajasthan who formed the United States of Rajasthan (by a notification gazetted in the Rajasthan Gazette on 14-1-1950), the individual rulers held absolute powers. They personified sovereignty in their states. Succession to the *gaddi* and all properties attached to the sovereign were through primogeniture; there was no question of any member of the ruler's family laying any claim over such properties. Of course, as head of the family, he was bound to maintain and provide for them.

9. Mr. Anand argued that after the merger too, when the Act became applicable, and all laws of the Union applied to the estates of the erstwhile Maharaja of Jaipur, he continued to treat the assets as his sole assets. Consequently, the attributes of primogeniture applied and the property had to be assessed as individual properties, in keeping with the status claimed by the deceased assessee in his returns till the date of his death.

10. It was asserted that the properties of the ruler were impartible given the inviolate rule of primogeniture that applied to the erstwhile state of Rajasthan. Learned counsel submitted that this was in no manner altered or changed, and was in fact preserved, by virtue of Section 5 (ii) of the Hindu Succession Act, 1956 which otherwise governed the law of succession among Hindus after its enactment. Counsel stated that the preamble to the Hindu Succession Act, 1956, showed that Parliamentary intention was that the Act was only to govern succession. It had prospective effect, its object was not to affect existing rights of holders of property living on the date of which the Act came into force, namely, 16-6-1956. No interpretation of the Act should be given having the effect of affecting existing rights since such

an interpretation would result in the provisions of the Act contravening provisions of the Constitution of India.

11. Mr. Anand argued that right from 1922 after Sawai Man Singh's ascension to the *gaddi* till Rajasthan's merger into the Union of India, he was an independent sovereign of the native State of Jaipur with unquestioned authority of disposition of state and specified personal properties, which were stamped with the attribute of impartibility. Nothing in the history of the rulers of Jaipur revealed that any other member of the family of the ruler ever claimed share in the properties, on the ground of being member of a joint or Hindu Undivided Family. Clearly, the late assessee and his family members understood this to be so during his lifetime. Late Sawai Man Singh never made any distinction between his private properties and state properties. He also disposed of immovable property as well as gold and other movable properties in the same way as an absolute owner would have done.

12. Counsel underlined the position of the State that the ruler was not subject to obligations in relation either to ownership of his private properties or to income from it. The properties held by the Maharaja therefore, by the mere circumstance that he was a sovereign, were impartible. If the private properties held by the assessee during his lifetime were impartible in the sense that no other member of his family could lay claim to any right if ownership to these properties or to require the sovereign to apply the income therefrom in a particular manner, then the only status in which the assessee could have been assessed in relation to the income from these properties, irrespective of whether they were his personal property or ancestral

property, would be as an 'individual'. Reliance was placed on *Sahdeo Narain Deo v. Kusum Kumari* AIR 1923 PC 21, *Commissioner of Income Tax v. Dewan Bahadur Dewan Krishna Kishore* [1941] 9 ITR 695, (PC) *Raja of Bobbili v. Commissioner of Income Tax* [1937] 5 ITR 78 (Mad.) approved in *Dewan Bahadur Dewan Krishna Kishore's* case (supra).

13. Mr. Ajay Vohra, learned senior counsel, and Mr. Pratyush Kapoor, learned counsel, appearing on behalf of the assesses, urged that the impugned judgment is sound and does not call for interference. They argued that primogeniture is not an attribute that manifests a ruler's estate with the quality of impartibility, *per se*, but that impartibility is dependent upon custom. Counsel highlighted that right from the beginning, the well-recognized principle that governed succession amongst rulers in India was that they belonged to families that were joint or undivided; however, succession to the *gaddi* was by succession. Furthermore, if succession to the personal estate of the rulers too was governed by a custom that decreed primogeniture, then alone would that principle overbear the rights otherwise available to members of a Hindu undivided family. Counsel relied on *Anant Bhikappa Patil v Shankar Ramachandra Patil 70 M.I.A. 232* and argued that it is custom that defines whether particular properties or communities are governed by primogeniture. In *Anant Bhikappa Patil*, the Privy Council held that:

> *"14. Now an impartible estate is not held in coparcenary, (Rani Sartaj Kuari v. Rani Deoraj Kuari (1888) L.R. 15 I.A. 51), though it may be joint family property. It may devolve as joint family property or as separate property of the last male owner. In the former case it goes by survivorship to that individual, among those' male members who in fact and in law are undivided in*

respect of the estate, who is singled out by the special custom, e.g. lineal male primogeniture. In the latter case jointness and survivorship are not as such in point; the estate devolves by inheritance from the last male owner in the order, prescribed by the special custom or according to the ordinary law of inheritance as modified by the custom. The zemindari property claimed in Amarendra's case was adjudged to belong to the adopted son on this last mentioned principle-that is, as heir of the last male owner."

14. It was also argued that it is well settled that property though impartible may be the ancestral property of the HUF. The impartibility of the estate does not *ipso facto* destroy its nature as undivided family property. Also, it does not render the estate the separate property of the last holder, as to extinguish the right of survivorship. The estate continues to retain its nature and character as one belonging to joint family property. Its devolution is governed by the rule of survivorship. To prove that a family governed by the Mitakshara system in which there is an ancestral impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied, on the part of the junior members of the family.

15. It is argued that in the facts of this case, there was nothing on the record to show that the revenue ever established that primogeniture was a custom which extinguished succession to the Jaipur royal estates; it merely eclipsed the right to certain interests, including the *gaddi*. Once the right to *gaddi* - which originally had with it the inalienable sovereignty of the state, was extinguished in all but name (with accession to the Indian Union), the right to the share in the properties, of the other members of the family (which he alone asserted in the past) became available. In other words, the

eclipse of the joint family, ceased and the rights of other coparceners could be asserted. Reliance was also placed on *Sri Rajah Velugoti Kumara Krishna Yachendra Varu & Ors. vs. Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu & Ors* 1969 (3) SCC 281 where the Supreme Court stated that:

> *"The law regarding the nature and incidents of impartible estate is now well settled. Impartiality is essentially a creature of custom."*

16. Learned counsel also referred to *Commissioner of Income Tax, Poona vs. H.H. Raja of Bhor* (1967) 65 ITR 634 where the Supreme Court observed as follows:

> *"In our opinion, there is a fallacy lurking in this argument. It is true that for the purposes of income-tax the Hindu undivided family is assessed as a distinct entity or unit of assessment under the provisions of the Income-tax Act, 1922; in respect of the joint estate of the members the Hindu undivided family in taxed, though in respect of their separate income the members are separately taxed. But the question as to whether the present Raja of Bhor and his two brothers have proprietary right in the Government securities must be answered not with reference to the context and background of Hindu law. Merely because for the purpose of income-tax the Hindu undivided family is treated as a separate unit of assessment, it does not follow that in the eye of Hindu law the property of the Hindu undivided family belongs to its as a corporate unit with a separate legal personality as distinct from the individual family members composing it. In the present case, the Raja of Bhor and his two brothers constituted a Mitakshara coparcenary and it is well-established that 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. As observed by the Judicial Committee in Katama Natchiar v. Rajah of Shivagunga :*

"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 other may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession".

7. But it is also true that no individual members of a Hindu coparcenary, while it remains undivided, can predicate of the joint and undivided property, that he, that particular members, has a definite share, one- third or one-forth - (Lord Westbury in Appovier v. Rama Subba Aiyan). His interest in the coparcenary property is a fluctuating interest which is capable being enlarged by death in the family and liable to be diminished by birth in the family. It is only on partition that the coparcener is entitled to a definite share. But the important thing to notice is that the theory of ownership being acquired by birth has given rise to the doctrine of samudavikaswatwa or aggregate ownership in the Mitakshara school. Till partition therefore all the coparceners have got rights extending over the entirety of the coparcenary property. It is therefore manifest, in the present case, that the property is held by the assessee on behalf of the present Raja of Bhor and his two brothers and the assessee is therefore entitled to exemption from income-tax on the income from the securities."

Analysis and Reasoning

17. The most important question which needs to be decided in these appeals- which have remained pending on the file of this court, cumulatively for over 37 years, is whether Sawai Man Singh filed his income tax returns in his capacity as sole and exclusive owner of impartible properties, or he did so, for and on behalf of his joint family; if the latter is correct, the family can claim the status of HUF; if the former is correct, the properties were impartible and would have to devolve according to primogeniture- at least for income tax purposes and be treated as individual. The answers to these

questions are necessary not only to assess the returns filed at the time of the late Sawai Man Singh's death, but also treatment of the assets and income derived by those properties and other sources of income.

18. As to essential facts, there is no dispute; Sawai Man Singh (born Mor Mukut) was, on 24-3-1921 adopted by the then ruler, Sawai Madho Singh II to be his son and heir. He was named "Man Singh" upon his adoption. Madho Singh II died on 7-9-1922 and was succeeded by Man Singh as Maharaja of Jaipur and head of the Kachwaha clan of Rajputs. The new Maharaja was ten years old. At the time of India's Independence in 1947, the maharaja acceded Jaipur to the Dominion of India and on 30-3-1949, he merged the princely state with the new state of Rajasthan. Sawai Man Singh passed away on 24-6-1970. There is no dispute that till the time of his passing away, the income tax returns he filed under the Act and the old Indian Income Tax Act, 1922, were shown to be in his individual capacity. The returns for the accounting year in which his death occurred, however, showed that he was *karta* of the HUF.

19. The revenue seems to assert that since Sawai Man Singh was a ruler and succession to the *gaddi* was by application of the rule of primogeniture and given that during his life time, the late ruler had consistently filed his income and wealth tax returns claiming individual rather than joint family status, the estate was impartible; consequently, it was governed by lineal primogeniture; the impartibility characteristic did not change or alter upon his death.

20. The earliest decision cited at the Bar was the Privy Council ruling in *Shiba Prasad Singh vs. Rani Prayag Kumari Debi & Ors.* AIR 1932 PC 216 where it was held as follows:

> *"Impartibility 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 an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility as laid down in 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 A.I.R. 1921 P.C. 62. 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. Though the other rights which a co-parcener acquires by birth in joint family property no longer exist, the birthright of the senior member to take by survivorship still remains. No. is this right a mere spes succession is similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is a right which is capable of being renounced and surrendered. Such being their Lordships' view, it follows that in order to establish that a family governed by the Mitakshara in which there is an ancestral impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to renounce their right of succession to the estate. It is not sufficient to show a separation merely in food and worship. Admittedly there is no evidence in this case of any such intention. The plaintiffs therefore have failed to prove separation, and the defendant is entitled to succeed to the impartible estate. Being entitled to the estate, he is also entitled to the improvements on the estate, being the immovable properties*

specified in items 9 of Schedule Kha. These improvements, in fact, form part of the impartible estate."

Dewan Bahadur Dewan Krishna Kishore's case (supra) held as follows:

"Since the decision of the Board in Baijnath Prasad Singh v Tej Bali Singh, it has been settled law that property though impartible may be the ancestral property of a joint family and that in such cases the successor falls to be designated according to the ordinary rule of the Mitakshara. The concluding words of the judgment delivered on behalf of the Board by Lord Dunedin in Baijnath Prasad Singh v Tej Bali Singh are to that effect and in that case as well as in Shiba Prasad Singh v Rani Prayag Kumari Debi at page 345, which followed it, the keynote of the position is - not that property which is not joint property devolves by virtue of custom as though it had been joint - but that the general law regulates all beyond the custom, that the custom of impartibility does not touch the succession since the right of survivorship is not inconsistent with the custom; hence the estate retains its character of joint family property and devolves the general law upon that person who being in fact and in law joint in respect of the estate is also the senior member in the senior line.

The birth-right of the senior member to take by survivorship still remains. Nor is this right a mere spes succession is similar to that of a reversioner succeeding on the death of a Hindu widow to her husbands estate. It is a right which is capable of being renounced and surrendered.

The later cases are to the same effect. Though the co-ownership of the junior member may be in a sense only, carrying no present right to joint possession, if the question be whether the Hindu undivided family or the present holder is owner of the estate the answer of the Hindu law is that it is joint family property."

21. Again, the same principles were reiterated in *State of Uttar Pradesh vs. Rajkumar Rukmini Raman Brahma* (1970) 2 SCR 355:

"5. Since the decision of the Privy Council in Shiba Prasad Singh v. Rani Prayag Kumari Devi 59 I.A.331 it must be taken to be well settled that an estate which is impartible by custom cannot be said to be the separate or exclusive property of the holder of the estate. If the holder has got the estate as an ancestral estate and he has succeeded to it by primogeniture it will be a part of the joint estate of the undivided Hindu family. In the case of an ordinary joint family property the members of the family can claim four rights: (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. It is obvious from the very nature of the property which is impartible that the first of these rights cannot exist. The second is also incompatible with the custom of impartiality as was laid down by the Privy Council in the case of Rani Sartaj Kuari v. DeorajKuari 15 I.A.51 and the First Pittapur case 26 I.A.83 The right of maintenance and the right of survivorship, however, still remain and it is by reference to these rights that the property, though impartible has, in the eye of law, to be regarded as joint family property. The right of survivorship which can be claimed by the members of the undivided family which owns the impartible estate should not be confused with a mere spessuccessionis"

22. In *Nagesh Bisto Desai and Ors. vs. Khando Tirmal Desai and Ors* (1982) 2 SCC 79, the Supreme Court held as follows:

"Since the decision of the Privy Council in Shiba Prasad Singh's case (supra), it is well-settled that an estate is impartible does not make it the separate and exclusive property of the holder : where the property is ancestral and the holder has succeeded to it, it will be part of the joint estate of the undivided family.

20. The incidents of impartible estate laid down by the Privy Council in Shiba Prasad Singh's case, supra, and the law as there stated, have been reaffirmed in the subsequent decisions of the Privy Council and of this Court : Collector of Gorakhpur v. Ram Sundar Mai and Ors. I.L.R. (1934) 61 I. A. 286. Commissioner of Income Tax, Punjab, v. Krishna Kishore L.R. (1941) 68 I.A 155 Anant Bhikappa Patil v. Shankar Ramchandra Patil L.R. 1942 70

I.A 232 Chinnathavi Alias Veeralakshmi v. Kutasekara Pandiya Naicker and Anr. [1952]1SCR241. Mirza Raja Shri Pushavathi Viziaram Gajapathi Raj Manne Sultan Bahadur and Ors. v. Shri Pushavathi Viseswar Gajapathi Raj and Ors. [1964]2SCR403 Rajah Velugoti Kumara Krishna Yachendra Varu and Ors. v. Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu and Ors. [1970]3SCR88 and Bhaiya Ramanuj Pratap Deo v. Lalu Maheshanuj Pratap Deo and Ors. [1982]1SCR417.

21. In Collector of Gorakhpur v. Raw Sundar Mai's case, supra, it was observed that though the decision of the Board in Sartaj Kuari's case and the First Pittapur's case appeared to be destructive of the doctrine that an impartible zamindari could be in any sense joint family property, this view apparently implied in these cases was definitely negatived by Lord Dunedin when delivering the judgment of the Board in Baijnath Prasad Singh's case. In Commissioner of Income Tax, Punjab v. Krishna Kishore's case dealing with an impartible estate governed by the Madras Impartible Estates Act, 1904, it was held that the right of junior members of the family for maintenance was governed by custom and was not based on any joint right or interest in the property as co-owners. In Anant Bhikappa Patil's case supra, it was observed that an impartible estate is not held in coparcenary though it may be joint family property. It may develop as joint family property or as separate property of the last male holder. In the former case, it goes by survivorship to that individual, among those male members who in fact and in law are undivided in respect of the estate, who is singled out by the special custom e.g. lineal male primogeniture. In the latter case, jointness and survivorship are not as such in point the estate devolves by inheritance by the last male holder in the order prescribed by the special custom or according to the ordinary law of inheritance as modified by the custom.

22. In Chinnathavi's case, supra, it was observed that the dictum of the Privy Council in Shiba Prasad Singh case, supra, that to establish that an impartible estate has ceased to be joint family property for purposes of succession, it is necessary to prove an intention, express or implied, on the part of the junior members of

the family to give up their chance of succeeding to the estate. The test to be applied is whether the facts show a clear intention to renounce or surrender any interest in the impartible estate or a relinquishment of the right of succession and an intention to impress upon the zamindari the character of separate property. In Mirza Raja Gajapathi's case, supra, it was observed that an ancestral impartible estate to which the holder has succeeded by the custom of primogeniture is part of the joint estate of the undivided Hindu family. Though the other rights enjoyed by the members of a joint Hindu family are inconsistent in the case of an impartible estate, the right survivorship still remains. In Rajah VelugotiKumara Krishna's case, supra, it was observed that the only vestige of the incidents of joint family property, which still attaches to the joint family property is the right of survivorship which, of course, is not inconsistent with the custom of impartibility. In BhaiyaRamanuj Pratap Deo's case, supra, the principles laid down by the Privy Council in Shiba Prasad Singh's case were reiterated.

23. In the course of argument, great reliance was placed on the two decisions of this Court in Mirza Raja Ganapath Vs case, supra and Raja Velugoti Kumara Krishna's case, supra, for the proposition that the junior members of a joint family in the case of an ancient impartible joint family estate take no right in the property by birth and therefore have no right, of partition having regard to the very character of the estate that it is impartible. To our mind, the contention cannot be accepted. Both the decisions in Mirza Raja Ganapathi's case, supra, and Raja Velugoti Kumara Krishna's case, supra, turned on the provision of the Madras Estates (Abolition & Conversion into Ryotwari) Act, 1948 and the Madras Impartible Estates Act, 1904. There are express provisions made in Sections 45 to 47 of the Abolition Act for the apportionment of compensation to the junior members of zamindari estates and subs (2) of Section 45 thereof provides for payment of the capitalised value of the compensation amount to them on the basis of extinction of the estate. The scheme of the Abolition Act therefore contemplates the continued existence of the rights of the holder of an impartible estate vis-a-vis the junior

members of such an estate. The facts involved in those cases were also entirely different.

24. In Mirza Raja Ganapath's case, supra it was a suit for partition for Vizianagram Estate, an ancient impartible estate governed by the Madras Impartible Estates Act 1904. The claim of the junior members regarding buildings which had been incorporated in the impartible estate as also their claim with regard to jewels treated as state regalia and therefore impressed with the family custom of impartibility was negatived. It was held that despite the fact that Vizinagram Estate had been notified to be an estate within the meaning of Section 3 of the Madras Estate(Abolition and Conversion into Ryotwari) Act,1948, the extinguishment of the proprietary right, title and interest of the zamindar did not affect his right or title to the impartible properties outside the purview of that Act and governed by the Madras Impartible Estates Act, 1904, but as regards other properties falling within the zamin-dari including lands were held to be partible. With regard to the buildings, it was held that the buildings in question were not partible by virtue of Sub-section (4) of Section 18 of the Act as the buildings falling within the section vested in "the person who owned them immediately before the vesting". The expression "the person who owned" in Sub-section (4) of Section 18 of the Act was held to refer to the land-holder and not to any other person. Further, the buildings were outside the limits of the zamindari estate and therefore not covered by Section 3 of the Abolition Act. The claim with regard to jewels failed because they were part of the impartible estate.

25. In Raja Velugoti Kutnara Krishna's case, supra, it was a suit for partition by the junior members of Vankatgiri Estate, an ancient impartible estate governed by the Madras Impartible Estates Act, 1904. The suit was principally confined to the claim for a share to the Schedule B properties. The contention was that the impartibility was continued under that Act but ceased when the estate vested in the State Government under Section 3 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 and this had the effect of changing character of the properties in the B Schedule and making them partible. It was said

that the junior members had a present right in the impartible estate and were entitled to share in the properties once it lost its character of impartibility. The Court had to consider the effect of the Abolition Apt on the rights and obligations of the members of the family and held that the Abolition Act has no application to properties which are outside the territorial limit of the Venkatgiri Estate. The claim that failed was in relation to properties which did not form part of a 'zamindari estate' within the meaning of Section 1(16) and therefore did not come within the purview of Section 3 of the Abolition Act but continued to be governed by the Madras Impartible Estates Act, 1904."

23. Again, the same principles were approved and applied in *Anant Kibe and Ors. vs. Purushottam Rao and Ors.*1984 (Supp) SCC 175 where the court held that*" The incidents of impartible estate laid down in Shiba Prasad Singh's case and the law there stated have been reaffirmed in the subsequent decisions of the Privy Council and of this Court…"* Then, after quoting *Nagesh Bisto Desai* (supra) the Supreme Court held that

"Impartibility is essentially a creature of custom. Here it is a term of the grant. The junior members of a joint family in the case of ancient impartible joint family estate take no right in the property by birth and therefore have no right of partition having regard to the very nature of the estate that it is impartible…..The impartibility of the tenure governed by the Jagir Manual of the Holkar State and the rule of lineal primogeniture governed by the Jagir Manual, Chapter II, Rules 2 and 3 did not per se destroy its nature as joint family property or render it the separate property of the last holder so as to. destroy the right of survivorship ; the estate retained its character of joint family property and its devolution was governed by the rule of lineal primogeniture. To establish that a family governed by the Mitakshara in which there is an impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied on the part of the junior members of the family to renounce their succession to the estate."

24. The last decision in this series is *Revathinnal Balagopala Varma vs. Padmanabha Dasa Bala Rama Varma,* 1993 Supp (1) SCC 233, which held that:

> *"40. That respondent No. 1 was a sovereign and the properties in dispute as held by the sovereign rulers from time to time were impartible has not been disputed by the learned Counsel for the appellant before us. What has been urged by him, however, is that the properties in dispute belonged to a tarwad and were as such joint Hindu family properties and the attribute of impartibility applied to them because by custom only the eldest member of the family could be the ruler and to maintain his dignity and status it was necessary to make these properties impartible.*
>
> *41. In this connection it has to be kept in mind that the mode of succession of a sovereign ruler and the powers of such a ruler are two different concepts. Mode of succession regulates the process whereby one sovereign ruler is succeeded by the other. It may inter alia be governed by the rule of general primog(sic)iture or lineal primogeniture or any other established rule governing succession. This process ends with one sovereign succeeding another. Thereafter what powers, privileges and prerogatives are to be exercised by the sovereign is a question which is not relatable to the process of succession but relates to the legal incidents of sovereignty.*
>
> *42. If some-one asserts that to a particular property held by a sovereign the legal incidents of sovereignty do not apply, it will have to be pleaded and established by him that the said property was held by the sovereign not as a sovereign but in some other capacity. In the instant case apart from asserting that the properties in suit belonged to a joint family and Respondent No. 1 even though a sovereign ruler, held them as the head of the family to which the property belonged, the appellant has neither specifically pleaded nor produced any convincing evidence in support of such an assertion. It has been urged on behalf of the appellant that only the eldest male off-spring of the Attingal Ranis could, by custom, be the ruler and all the heirs of the Ranis who*

constituted joint Hindu family would be entitled to a share in the properties of the Ranis and the properties in suit were held by Respondent No. 1 as head of the tarwad even though impartible in his hands. This plea has been repelled by the trial court as well as by the High Court and nothing convincing has been brought to our notice on the basis of which the presumption canvassed on behalf of the appellant could be drawn and the findings of the courts below reversed."

25. There is no material on record to show that the *Kachwaha* clans (which the Jaipur royal house belonged to) was governed by the rule of lineal primogeniture, where the eldest male member of the family became the exclusive owner of all properties which were impartible. Nor was such special custom proved in relation to the Jaipur royal house. What could be and was established was that succession to the gaddi (the throne) was by lineal primogeniture. Consistent with the law declared by the Privy Council and the principles of those decisions, applied by the Supreme Court in several judgments, the only conclusion that could be drawn therefore, was that though succession to the *gaddi* was through lineal primogeniture at a time when the monarchy was absolute – which meant that such practice overlaid the right of other members to claim a share in the HUF, upon accession of the princely state of Jaipur, only those properties and privileges which the late Sawai Man Singh retained to himself, were saved. No custom of law, of the kind visualized by Section 5 of the Hindu Succession Act, in relation to lineal primogeniture or impartible properties in relation to these assets were saved. All else became subject to laws of the country. Thus, the late Maharaja had to and did file tax returns, declaring his wealth and income, in accordance with the laws of the land. He was governed by the ordinary rules of inheritance applicable to members of HUF.

26. Counsel for the assessee had produced the Covenant forming the United States of Rajasthan, which then acceded to the Union of India. The covenant, notified on 12-1-1950 (in the Gazette of Rajasthan) *inter alia*, provided that:

> *"ARTICLE XII*
>
> *(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Rajpramukh of the former Rajasthan State or as the case may be to the Raj Pramukh of the United State under this Covenant.*
> *(2) ....*
>
> *ARTICLE XIV*
>
> *(1) The succession according to the law and custom, to the gaddi, of each Covenanting state and to the personal rights, privileges, dignities, and titles of the Ruler thereof, is hereby guaranteed.*
> *(2) Every question of the disputed accession in regard to a Covenanting State shall be decided by a Council of Rulers after referring it to the High Court of the United State and in accordance with the opinion given by the High Court."*

27. From the materials on record, in these appeals, there is nothing to suggest that the succession to the estate of the ruler- or his family (other than succession to the *gaddi*) was governed by the principle of primogeniture. In these circumstances, the law on the subject is clear: *sans* evidence of a pre-existent custom with respect to primogeniture (as the overarching rule of succession, to the exclusion of all heirs) the general law of succession, i.e. the rules applicable to HUF, would apply.

28. *Calcutta Discount Co. Ltd*. v. *Income-Tax Officer, Companies (*1961) 041 ITR 0191 is a decision for the proposition that it is for the assessing

officer (AO) to draw the correct conclusions, regardless of the position of the assessee: *"It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee - to tell the assessing authority what inferences-whether of facts or law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences-whether of facts or law-he would draw from the primary facts…".* Therefore, it is now established that regardless of what an assessee claims, if the correct position deducible from primary facts is otherwise, the AO has to adopt that correct position. Consequently, it is held that merely because the late assessee (Sawai Man Singh) repeatedly claimed individual status while filing his returns, the correct legal status was as an individual and not HUF. Therefore, in the opinion of this court, there was no legal impediment for the legal representatives of the assessee to claim that the succession was of the HUF, upon the death of Sawai Man Singh.

29. *Jyeshthaadhikaar* (the rule of primogeniture) in the case of a ruler apparently was based on indivisibility of sovereignty (*samprabhuta*). That the revenue asserts such a rule, is anachronistic, to say the least. With the accession (to the Indian Republic) of the erstwhile state of Jaipur, the ruler ceased to have any "sovereign" rights. Coming into force of the Constitution – and Article 18 (which abolishes titles) the right to claim to be addressed as a Maharaja ceased, *legally*. Yet, the Indian Constitution guaranteed to erstwhile rulers, certain privileges and rights, through Article 291. These rights were repealed by the 26th Constitution Amendment Act, 1971. Therefore, the succession to the *gaddi* (of an erstwhile principality) has no

consequence, except as a social custom. In all respects, and for all intents and purposes the erstwhile royal family of the Jaipur state are citizens of the republic. An important facet: which needs to be considered at an appropriate stage is that in such situations, the provisions of the Hindu Succession Act, 1956 will apply; all classes of heirs- male and female, entitled to its benefits would be covered by it. To hold otherwise would be startling, because the incidents of a HUF, at least after the 2005 amendment would then be markedly denied *only on the ground of gender* (contrary to Article 15 (2) of the Constitution of India), to female heirs. Article 14 guarantees equality before law *and equal protection of law*. The sequitur to holding that not all members of the family of an erstwhile royal family, but only one class (i.e. male coparceners) would be entitled to share and other interests in the estate is anathema to the Constitution. These observations have been made given the passage of time that has occurred and the march in the understanding of the Constitution of India. There are no "dark corners" of the society or legal space which are immune to its reach and sweep.

30. The questions of law framed in all these appeals are accordingly answered against the revenue. The Revenue's appeals are therefore, dismissed and the appeals of the assesses are allowed, in the above terms.

S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
(JUDGE)

OCTOBER 05, 2018