

available to them. The challenge to the validity of this rule, therefore, fails.

(42) As regards the State of Punjab, the question of fixing the rate of fee by the Agricultural Marketing Board for all the committees in the State does not arise as the Legislature itself has fixed the rate to be charged.

(43) No other point has been argued.

(44) As a result of the above discussion, 127 writ petitions concerning the market committees of Haryana are dismissed but the parties are left to bear their own costs. 84 writ petitions with regard to the market committees of Punjab are accepted only to the extent that the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974), replaced by the Punjab Agricultural Produce Markets (Amendment) Act (13 of 1974), are struck down. In all other respects, the petitions are dismissed with no order as to costs.

**K. S. K.**

*Before B. R. Tuli and A. S. Bains JJ.*

SHRI HARI RAM,—*Petitioner.*

*versus*

ASSISTANT CONTROLLER OF ESTATE DUTY-CUM-  
INCOME-TAX CIRCLE AND OTHERS,—*Respondents.*

C. W. No. 4633 of 1973.

November 21, 1974.

*Constitution of India (1950)—Article 14—Estate Duty Act (XXXIV of 1953)—Section 34 (1)(c)—Whether discriminatory and ultra vires Article 14 of the Constitution.*

*Held*, that the provisions of section 34(1)(c) of the Estate Duty Act, 1953 are not in any way discriminatory. A coparcener dying without lineal descendants and a co-parcener leaving lineal descendants are not equals nor is a coparcener dying leaving lineal descendants equal to other persons whose estate is liable to estate duty. They form different classes of persons and it is for the

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legislature to select, the objects of taxation and the rate of taxes to be charged from them. The estates of all coparceners leaving lineal descendants will be brought to a charge of estate duty in the same manner and not differently. There is no discrimination between two coparceners of this class, and hence section 34(1)(c) of the Act is not *ultra vires* article 14 of the Constitution of India.

(Para 12)

CASES DISSENTED FROM

(1) V. Davaki Ammal v. Assistant Controller of Estate Duty, Madras (1973)91 I.T.R. 24.

CASES APPROVED

(1) T. R. Jayasankar v. Assistant Controller of Estate Duty (1973)83 I.T.R. 445 page 448.

(2) N. Krishna Prasad v. Assistant Controller of Estate Duty Guntur (1972) I.T.R. 332.

(3) Smt. Komanduri Seshamme v. Appellate Controller of Estate Duty (1973)88 I.T.R. 82.

(4) N. V. Somaraju v. Government of India and others (1973) Tax L.R. 1084.

*Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued declaring section 34(1)(c) of the Estate Duty Act, 1953, as ultra vires of Article 14 of the Constitution of India and holding that the section 34(1)(c) has nothing to do with section 5, the charging section and with sections 6 to 15, which deal with property deemed to pass on death insofar as the interest of the lineal descendants in the joint family is concerned and that there is no other provision in the Act which deems the interest of lineal descendants in the joint family on whom on the death of the deceased the property devolves so as to attract the charging section and also setting aside the order of the Respondent No. 2, dated November 1, 1973, contained in Annexure 'A' to the writ petition in so far as the inclusion of sum of Rs. 2,23,096 (including the sum of Rs. 10,000 being the value of the lineal descendants' share in the residential house) being the share of the lineal descendants, has been included in the principal value of the estate of deceased Shri Sadhu Ram, and refund the excess amount of estate duty realised.*

Bhagirath Dass, Advocate with S. K. Hirajee Advocate, for the petitioner.

D. N. Awasthy, Advocate, for respondents 1 and 3 with S. S. Mahajan, Advocate, for the respondents.

JUDGMENT

TULI, J.—(1) Sadhu Ram died on July 3, 1969, leaving behind his widow, Smt. Pisto Devi and four sons, out of whom, Hari Ram, petitioner, is the eldest. They constituted a joint Hindu family and

on the death of Sadhu Ram, proceedings for the levy of estate duty were taken against his estate. Hari Ram filed a return as the accountable person under section 53(3) of the Estate Duty Act, 1953, (hereinafter called the 'Act'). According to the return filed by Hari Ram, Shri Sadhu Ram had left movable property valued at Rs. 1,67,564, had 1/6th share of the value of Rs. 58,206 in the joint Hindu family property and a similar share in a residential house of value of Rs. 15,000 which was claimed to be exempt from payment of estate duty under section 33(1) (n) of the Act.

(2) The Assistant Controller of Estate Duty, by his order dated February 22, 1971, assessed the accountable person (Shri Hari Ram) by adding a sum of Rs. 2,32,824 representing 4/6th share of the lineal descendants of the deceased Sadhu Ram to the principal value of his estate for the purposes of rate in accordance with section 34(1) (e) of the Act. He also added a sum of Rs. 10,000 representing 4/6th share of the lineal descendants in the residential house. The assessment, however, is said to have been made on the principal value of the estate left by Sadhu Ram excluding the share of his lineal descendants and the widow. Against that order, the petitioner appealed to the Zonal Appellate Controller of Estate Duty, Delhi, under section 62 of the Act which was dismissed. The petitioner then filed an appeal before the Income-tax Appellate Tribunal under section 63 of the Act which was allowed in part on November 1, 1973. The appellate Tribunal allowed a sum of Rs. 10,000 on account of medical expenses incurred on the illness of Shri Sadhu Ram before his death which had been disallowed by the lower authorities, but held that the value of 4/6th share in the joint Hindu family property and the residential house had been rightly included in the aggregate value of the estate for purposes of rate. Before the Tribunal, permission was sought to raise the following grounds of appeal:—

“The Assistant Controller of Estate Duty erred in law including in the value of the property passing on the death of the deceased a sum of Rs. 2,32,824 being the value of the share of the lineal descendants for rate purposes under section 34(1) (c). The Appellate Controller also erred in confirming the said inclusion. Section 34(1) (c) of the Estate Duty Act is unconstitutional and, therefore, illegal and void as held by the Madras High Court in *V. Davaki*

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*Ammal v. Assistant Controller of Estate Duty, Madras*  
(1).”

(3) The learned Tribunal did not entertain that ground of appeal for the reason that the constitutional validity of any provision of the Act could not be challenged in proceedings before the authorities constituted under it. For this proposition, reliance was placed on the Supreme Court's judgment in *K. S. Venkataraman and Co. (P) Ltd. v. State of Madras* (2), and a judgment of the Mysore High Court in *Rastapur Sharanappa v. Controller of Estate Duty* (3). Instead of filing an application for reference of the questions of law, arising from the order of the Tribunal, to this Court for decision, the petitioner filed the present petition on the ground that the constitutional validity of section 34(1) (c) could only be challenged by way of writ petition and not in reference proceedings for the same reason as was given by the Appellate Tribunal. The petition has been contested by the respondents on whose behalf it has been strenuously urged that section 34(1) (c) of the Act is constitutionally valid and the judgment of the Madras High Court, to the contrary, in *V. Devaki Ammal v. Assistant Controller of Estate Duty, Coimbatore* (1), does not lay down the correct law.

(4) The principal argument of the learned counsel for the petitioner is that under section 5 of the Act, the estate duty is to be levied and paid upon the principal value, ascertained as provided in various provisions of the Act, of all property, settled or not settled, which passes on the death of the deceased at the rates fixed in accordance with section 35 of the Act and the value of no other property can be included therein even for determining the rate to be applied.

(5) “Property passing on the death” has been defined in section 2(16) of the Act to include “property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation” and “on the death” includes “at a period ascertainable only by reference to the death”. Section 3(3) of the Act declares that references in the Act to property passing on the death of a person shall be construed as including references to property deemed to pass on the death of such

(1) (1973) 91 I.T.R. 24.

(2) (1966) 60 I.T.R. 112.

(3) (1970) 77 I.T.R. 800.

person. "Property which is deemed to pass" has been described in sections 6 to 16 of the Act, out of which, for our purposes, only sections 6 and 7(1) are relevant. According to section 6 property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. Section 7(1) is in the following words:—

"Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law."

Section 34 of the Act prescribes the cases in which the values of the properties are to be aggregated for the purposes of determining the rates of duty as under:—

"34. Aggregation.—(1) For the purposes of determining the rate of the estate duty to be paid on any property passing on the death of the deceased,—

- (a) all property so passing other than property exempted from estate duty under clauses (c), (d), (e), (i), (j), (l), (m), (mm), (n), (o) and (p) of sub-section (1) of section 33;
- (b) agricultural land so passing, if any, in any State not specified in the First Schedule; and
- (c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayan or Aliyasantana law, also the interests in the joint family property of all the lineal descendants of the deceased member;

shall be aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof.

- (2) Where any such estate as is referred to in sub-section (1) includes any property exempt from estate duty, the estate duty leviable on the property not so exempt shall be an

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amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been so exempt, the same proportion as the value of the property not so exempt bears to the value of the whole estate.

*Explanation.*—For the purposes of this sub-section, “property exempt from estate duty” means—

- (i) any property which is exempt from estate duty under section 33;
  - (ii) any agricultural land situate in any State not specified in the First Schedule;
  - (iii) the interests of all coparceners other than the deceased in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), any property passing in which the deceased never had an interest, not being a right or debt or benefit that is treated as property by virtue of the Explanations to clause (15) of section 2, shall not be aggregated with any property, but shall be an estate by itself, and the estate duty shall be levied at the rate or rates applicable in respect of the principal value thereof.
  - (4) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of death of the deceased.
  - (5) For the purposes of this section, no property shall be aggregated more than once nor shall estate duty in respect thereof be levied more than once on the same death.”

(6) Section 39 is also relevant for the purposes of determining valuation of interest in coparcenary property ceasing on death. Sub-sections (1) and (3) of this section only are relevant for the purposes of the instant case and read as under:—

“39. (1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family

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property governed by the Mitakshara School of Hindu Law which ceases on the death of a member thereof shall be the principal value of the share in the joint family which would have been allotted to the deceased had there been a partition immediate before his death.

- (3) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediate before his death, the provisions of this Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased."

(7) According to these provisions of the Act, the estate duty is leviable and is to be paid on the principal value of the estate which passes or is deemed to pass on the death of a person at the rate prescribed in section 35 of the Act and the value of the chargeable estate has to be determined in accordance with sections 34 and 39 *ibid*. In the instant case, Sadhu Ram was admittedly governed by Mitakshara School of Hindu Law and formed a joint Hindu family with his wife and sons. There was coparcenary of the father and his four sons within the joint family and for the purpose of determining the value of the estate which passed on his death, only the value of 1/6th share of the joint Hindu family property had to be taken into account in accordance with the provisions of section 7 and 39 of the Act. For the purpose of determining the rate of duty, action was to be taken under section 34(1) (c) of the Act, that is, the value of the shares of the lineal descendants had to be aggregated with the properties mentioned in clause (a) of sub-section (1) of section 34. Thereafter, the estate duty payable was to be assessed on the chargeable estate of Sadhu Ram deceased in accordance with the provisions of sub-section (2) of section 34. I may point out that neither party has produced the calculation sheet showing how the estate duty was assessed, but Mr. Awasthy, the learned counsel for the Department, categorically stated that the assessment had been made in accordance with section 34 and if not, the Estate Duty Officer shall calculate the duty payable in the manner provided in

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that section. It has to be pointed out that the estate duty has to be assessed on the chargeable estate and in the manner provided in section 34(1) and (2) of the Act and not on the entire estate including the shares of the lineal descendants. The shares of the lineal descendants have to be excluded under sub-section (2) of section 34 of the Act.

(8) The learned counsel for the petitioner has argued that the provisions of section 34(1) (c) of the Act are *ultra vires* Article 14 of the Constitution, as has been held by a Division Bench of the Madras High Court in *V. Devaki Ammal's case* (supra). On behalf of the Revenue, reliance has been placed on an earlier judgment of the Madras High Court in *Pl. S. Rm. Ramanathan Chettiar v. Assistant Controller of Estate Duty, Coimbatore* (4), which was noticed by Bench deciding *V. Devaki Ammal's case* (supra), but without any comment. However, on the basis of wider interpretation, which was projected by the Revenue, the learned Judges proceeded to determine the question of validity of section 34(1) (c) and gave their own reasons in support of the contrary view. Mr. D. N. Awasthy has also relied on the judgment of a learned Single Judge of the Kerala High Court in *T. R. Jayasankar v. Assistant Controller of Estate Duty* (5), three Division Bench judgments of the Andhra Pradesh High Court in *N. Krishna Prasad v. Assistant Controller of Estate Duty, Guntur* (6), *Smt. Komanduri Seshamma v. Appellate Controller of Estate Duty* (7), and *N. V. Somaraju v. Government of India and others* (8), for the contrary view canvassed by him.

(9) In *Pl. S. Rm. Ramanathan Chettiar's case* (supra), it was contended that section 34(1) (c) of the Act was violative of Article 14 of the Constitution and was, therefore, void inasmuch as its provisions were applicable only to cases of joint family governed by

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(4) (1970) 76 I.T.R. 402.

(5) (1973) 83 I.T.R. 445 page 448.

(6) (1972) I.T.R. 332.

(7) (1973) 88 I.T.R. 82.

(8) 1973 Tax L.R. 1084.



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Mitakshara law and not to the families governed by Dayabhaga law. The contention was repelled with the following observations:—

“Though there is a basic difference in the concept of the Dayabhaga law and the Mitakshara law in relation to a joint Hindu Family, nevertheless, so it is argued, the difference has been removed by reason of the proviso to section 6 of the Hindu Succession Act, and that being the case, the principle of aggregation is applied only to cases of joint family governed by Mitakshara law and not to families governed by the Dayabhaga law. It seems to us that the entire argument is misconceived. In the case of a member of a Dayabhaga family dying, no question of aggregation can arise at all, for, the member of such a family dying possessed by reason of his personal law a defined share in the assets of the family, unlike a deceased member belonging to a joint Hindu family governed by the Mitakshara law. It is precisely for that reason that in the case of a member belonging to a joint Hindu family governed by the Mitakshara law dying, the principle of aggregation has been embodied in section 34(1) (c). But for the principle of aggregation, the rate applicable to such a case will be the rate corresponding to the value of the benefit that can be regarded as having accrued to each of the lineal descendants of the deceased. Whereas, in the case of a Dayabhaga family, in view of the fact that the share of the deceased member is a crystallised one, the rate applicable in that case would be a rate corresponding to the value of the share of the deceased member. It may, be seen, therefore, that, but for the principle of aggregation envisaged by section 34(1) (c), there would be discrimination. In fact, section 34(1) (c) avoids such a discrimination. To illustrate, suppose, there is a Hindu Joint family governed by the Mitakshara law consisting of two brothers and one of them dies leaving two sons. Had it not been for section 34(1) (c), each of the sons would be entitled to insist that the rate applicable to the value of the benefit accrued to him would be that corresponding to such value. But, in view of section 34(1) (c), the value of the benefit accruing to each of the two sons would be aggregated and the rate applicable to the aggregated value as

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ascertained under section 39 would be applied to the value of the benefit accruing to one of the sons of the deceased. By this process precisely the same result is achieved as in the case of a member of a Dayabhaga Hindu family dying, assuming that the family consisted of members as we have assumed in the case of the Mitakshara Hindu joint family.

It would follow, therefore, that there is no discrimination whatever brought about by section 34(1)(c) between members of a Mitakshara joint Hindu family and of a Dayabhaga family in the matter of application of rates of taxation."

The learned Single Judge of the Kerala High Court in *T. R. Jayasankar's case* (supra), repelled the contention of discrimination with the following observations:—

"It is true that Article 14 of the Constitution applies also to taxation law; but in view of the inherent complexity of fiscal adjustment of diverse elements in the matter of taxation, the legislature has a large discretion in picking and choosing the districts, objects, persons, methods and even the rates of taxation, so long as it adheres to the fundamental principles underlying the doctrine of equality before law and equal protection of the laws enshrined in Article 14 of the Constitution. If a taxation law is based on a general classification, it cannot be attacked on the ground that it would affect discriminately on some persons or group of persons who would fall into a class on a further sub-classification, on account of certain special features attached to them. The principle underlying the provision for aggregation contained in sub-section (1)(c) of section 34 is that the rate of duty payable on the property passing on the death of a Hindu, whether governed by the Mitakshara, Marumakkattayam or Aliyasantana law, is fixed on a common basis, namely, the interest in the joint property of all lineal descendants of the deceased member would be aggregated with the property of the deceased passing on his death. The fact that the interest of a deceased person following the Marumakkattayam law

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in the family property may be comparatively small, when compared to that of a person following the Mitakshara law in a family, both having the same number of members and assets, due to the different personal laws applicable to them and the number of children they have got, is not the result of any discriminatory treatment by law, but it is the result of operation of the same law on the differing facts of the particular cases."

Before the Andhra Pradesh High Court in *N. Krishna Prasad's case* (supra), it was urged that:—

- (1) section 34(1) (c) of the Act was beyond the competence of the legislative power of Parliament as, instead of levying estate duty on the value of the interest of the deceased in the estate that passed on his death, it made an inroad into the property of the lineal descendant of the deceased although such property did not pass on the death of the deceased; and
- (2) that applynig the principle of aggregation to the case of the death of a coparcener in a Hindu undivided family of Mitakshara school and not to a member of a Hindu undivided family in Dayabhaga school of law, amounts to an invidious discrimination, repugnant to Article 14 of the Constitution.

Repelling the arguments, it was held:—

- (1) that the power given to Parliament under entry No. 87 of the Union List to make laws with regard to estate duty necessarily includes power to fix the rates of estate duty. When Parliament is competent to make law on estate duty, it can and should make the laws regarding the rate of tax and the manner in which such tax is to be computed. Section 34(1) (c) of the Act does not make an inroad into the property of the lineal descendant but only takes it into consideration for the purpose of fixing the rate of estate duty, on the value of the property passing on the death of the coparcener by aggregating it with the value of the property of the share of the lineal descendant;

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- (2) that by reason of the basic difference in the incidents attached to joint Hindu family under Mitakshara and Dayabhaga schools, a father in a Hindu undivided family in Mitakshara school of law belongs to a class different from the father in the Hindu undivided family under Dayabhaga school of law; that the classification is based upon intelligible differentia which distinguishes one group of fathers from another group of fathers under the two schools of Hindu law and that the classification has also a nexus and reasonable relationship with the object for which the Estate Duty Act has been enacted. Therefore, section 34(1) (c) of the Act is not repugnant to Article 14 of the Constitution (as per the head-notes).

The learned counsel for the petitioner in *Smt. Komanduri Seshama's case* (supra), contended that:—

- “(1) Entry 87 of List I of the 7th Schedule to the Constitution of India read with Article 360(9), permits only the estate of the deceased to be taken into consideration for the purpose of assessment, including the levy of estate duty, ascertainment of the rate and also for the collection of the estate duty. It did not permit the estate of the lineal descendants to be aggregated for rate purposes. The power to aggregate the lineal descendant's share with the property that passed on the death of the deceased was neither incidental nor ancillary to the power to legislate in respect of levy of estate duty. Hence, section 34(1) (c) of the Act is *ultra vires* of the Constitution of India.
- (2) Even assuming that section 34(1) (c) of the Act is *intra vires* of the Constitution, still it violates Articles 14 and 19(1) (f) of the Constitution of India and is, therefore, invalid.
- (3) The Government could not levy any duty on the estate of the lineal descendants of the deceased under the Act. What the Government could not achieve directly by making a law levying estate duty on the lineal descendants' share, it wanted to achieve by an indirect method by aggregating the lineal descendants' share with the share of

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the deceased in the joint family properties, for the purposes of rate. Parliament was not competent to do so.

- (4) Section 34(1) (c) of the Act makes an invidious classification amongst the members of the Mitakshara Hindu undivided family into a member of the Hindu undivided family dying leaving a lineal descendant and a member of a Hindu undivided family dying without leaving a lineal descendant. This is an unreasonable classification which is violative of Article 14 of the Constitution of India.
- (5) The right of the heirs of the deceased to get the properties of the deceased is unreasonably curtailed by section 34(1) (c) of the Act. Therefore, section 34(1) (c) offends the fundamental right guaranteed to a person under Article 19(1) (f) of the Constitution of India.”

Repelling these contentions, it was held:—

- (1) Section 34(1) (c) of the Act is within the legislative competence of Parliament, and is within the power granted to it by entry 87 in List 1 of the 7th Schedule to the Constitution read with Article 366(9) of the Constitution.
- (2) The power to make law, as to how and at what rate tax is to be levied on the property passing on the death of a deceased, is a power incidental and ancillary to the power conferred on Parliament under entry 87 in List I of the 7th Schedule to the Constitution.
- (3) Neither the Estate Duty Act nor section 34(1) (c) levies any duty on the share of the lineal descendant which does not pass on the death of a deceased. What it does is that it levies estate duty on the property passing on death. Only for the purpose of determining the rate at which the property passing on the death of the deceased has to be taxed, section 34(1) (c) has been enacted. For that purpose it says that the shares of the lineal descendants have to be aggregated with the property passing on the

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death of a deceased. How and at what rate tax is to be levied on the property of a deceased passing on death, is a matter which must be left to the legislature. Power to determine the rate of tax with reference to the property passing on the death of a deceased directly comes within Article 366(9) of the Constitution and is included in the power to legislate on estate duty, under entry 87, in List I, of the 7th Schedule to the Constitution.

- (4) Merely on the ground that in a class, one gets an advantage over another in special and uncommon circumstances, a taxing statute cannot be struck down as offending Article 14 of the Constitution, unless the law has singled out such person for a special treatment. The Estate Duty Act has neither singled out a father nor a son in a Mitakshara Hindu undivided family for a special treatment. The Act neither makes unreasonable classification nor an invidious discrimination between one and the other and, therefore, does not violate or infringe the freedom of equality before law enshrined in Article 14 of the Constitution.
- (5) The Act does not violate Article 19(1) (f) of the Constitution as section 34(1) (c) does not make an inroad into the property of the lineal descendants by aggregating their shares with the share of the deceased and subjecting the share of the deceased to a rate of tax applicable to the whole of the aggregated property. The argument that by reason of aggregation, the property passing on death of the deceased is subjected to a higher rate of taxation and to that extent deprives the lineal descendants of their right to acquire the full share of their father is not sound. Whether the share of the father was subjected to one rate or the other, the lineal descendants only get their father's share minus the tax levied. If this argument is extended, it may mean that the act, even without the principle of aggregation, is violative of Article 19(1) (f) of the Constitution. The estate duty is levied on the property passing on the death of the deceased, before it becomes the share of the lineal descendants. The

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law imposes an obligation on the property passing on death. It is only after the payment of estate duty that is payable on it, that the balance of the properties will be shared by the lineal descendants. There is thus no force in the contention that section 34(1) (c) of the Act violates Article 19(1) (f) of the Constitution.

In *N. V. Somaraju's case* (supra), it was held:—

- (1) The provisions of section 34(1) and (2) read together make it clear that while for the purpose of finding out at what rate the interest which is deemed to have passed from the father to the son after the death of the father, both the interests are aggregated, nevertheless the estate duty is levied only on the interest which is deemed to have passed from the father to the son after the father's death. Parliament is competent not only to prescribe the rule as to how the principle value is to be determined but also to evolve a formula for determining the rate, at which the aggregate principle value is to be charged. It is equally competent to levy estate duty on the property or interest deemed to have passed after the death of the father to the son. It is wrong to read anything in section 34 to mean that at the rate thus found out the entire estate including the property or interest of the son living is charged with estate duty. What is charged ultimately is the precise property or interest left by the father and which is deemed to have passed to the son.
- (2) The deeming provision in the definition of estate duty in Article 366(9) of the Constitution is intended to cover property or interest which passes by the rule of survivorship under the Mitakshara Hindu Law.
- (3) Section 34(1) (c) is not in any manner discriminatory between the Mitakshara father as against brother or his sons. Between the same class there being no discriminatory treatment, Article 14 cannot be said to have been attracted. The Mitakshara father has been placed on a somewhat advantageous position than a father under the

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Dayabhaga law. If that is so, then no Mitakshara father or Mitakshara son, to whose advantage the provision appears to be, can question the validity of section 34(1) (c) on the ground of discriminatory treatment attracting the provisions of Article 14 of the Constitution.

- (4) While considering the provisions of Article 14 of the Constitution, no precise or mathematical accuracy is contemplated and what is to be seen is overall equality given to the same class. The classification is reasonable and rational and has necessary nexus with the object which the provisions of the Estate Duty Act are seeking to achieve.
- (5) In the matter of taxation the legislature has greater freedom not only to classify the different persons or objects in regard to whom or which tax is to be levied but different modes of taxation can also be adopted. Keeping these principles in view, section 34(1) (c) cannot be held to be violative of Article 14 of the Constitution.

(10) These judgments were not cited before the Division Bench of the Madras High Court which decided *v. Devaki Ammal's case* (supra) presumably for the reason that they had not been reported till October 10, 1972, when the judgment was delivered in that case. The learned Judges of the Division Bench only considered the judgment in *Pl. S. Rm. Ram^nathan Chettiar's case* (supra) and without expressing disagreement with that judgment, they proceeded to consider the question of the validity of section 34(1) (c) of the Act on the basis of the wider interpretation which the Revenue adopted. It was contended on behalf of the Revenue in *V. Devaki Ammal's case* (supra) that—

“x x x the object of section 34(1) (c) is to club the coparcenary interest of lineal descendant also with the coparcenary interest of the deceased so as to form one whole estate and that the validity of the section has to be considered in that light.”

(11) In that case, the Assistant Controller of Estate Duty had clubbed the half share of the son with the half share of his deceased



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father so as to form one estate and had applied the rate applicable to such combined estate to the half share of the deceased father in his assessment order and it was that order which was being challenged before the Bench. Reference was made to the observations of the Supreme Court in *Ameerunnissa Begum and others v. Mahboob Begum and others* (9), and *Shri Ram Krishna Dalmia and others v. Justice S. R. Tendolkar and others* (10), in support of the proposition that the mandate of Article 14 is that the State shall not deny to any person equality before the law or the equal protection of the law within the territory of India, provided that nothing contained in that Article shall prevent the State from making a law based on reasonable classification founded on intelligible differentia having a rational relation to the objects sought to be achieved by the law. The following quotation was then reproduced from the judgment of the Supreme Court in *Venugopala Ravi Varma Rajah v. Union of India* (11), in order to bring out the principles laid down for determining in what cases a provision of a taxing statute violates Article 14 of the Constitution:—

“Equal protection clause of the Constitution does not enjoin equal protection of the laws as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The Courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways; the legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete

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(9) A.I.R. 1953 S.C. 91 page 94.

(10) A.I.R. 1958 S.C. 538.

(11) (1969) 74 I.T.R. 49 page 54.

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or symmetrical classification: it is not a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classification is rational, the legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. A taxing statute may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions or occupations similarly situate, incidence of taxation which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects.

It is for legislature to determine the objects on which tax shall be levied and the rates thereof. The Courts will not strike down an Act as denying the equal protection of laws merely because other objects could have been, but are not, taxed, by the legislature .....

In the light of these observations, the provisions of section 34 (1) (c) of the Act were analysed, and it was pointed out that it made a classification between coparceners leaving lineal descendants and other persons which was unreasonable and could not be sustained. It will be better to set out in extenso the observations of the Bench in this behalf which are as under (pages 37—41):—

“In the case of the coparcener dying leaving lineal descendants, the interest of his lineal descendants in the joint family property is clubbed with the interest of the deceased which passes on his death so as to form one estate for the purpose of levy of estate duty, while in the case of others the actual property passing on death alone is taken as the subject-matter of the levy. It is not in dispute that in the former case there is a higher tax burden. Admittedly, section 34 (1) (c) singles out a coparcener having lineal descendants and imposes a higher burden by applying a higher rate of

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tax on the property passing on his death. The question is whether such differentiation between coparceners having lineal descendants and others in general in the imposition of estate duty has a reasonable relation to the object sought to be achieved by the Act. According to the revenue the said differentiation has such a reasonable relation to the objects of Act. It is stated that one of the objects of the Act is to remove the inequalities in the concentration of wealth and to ensure a proper distribution of the same and the objects and reasons set out in the original Bill are referred to in this connection. It is also pointed out by Mr. Balasubrahmanyam for the revenue that the provision is mainly intended to remove the disparity in the levy of estate duty between the members of a Dayabhaga family and those of a Mitakshara family, that when a member of a Dayabhaga family dies, the property that passes on his death is that which belonged to his branch, but when a coparcener of a Mitakshara family dies leaving lineal descendants, the deceased's interest alone passes on death and the estate duty levied is considerably less than what would have been levied if he had been a member of a Dayabhaga family. It is said that it is with a view to remove this inequality and make the tax burden equitable between persons governed by the Mitakshara law and those governed by the Dayabhaga law that the provision in section 34(1) (c) has been introduced.

We are not able to see how the classification can be sustained on the ground pointed out by the revenue. Such a classification to be upheld has to be based on an intelligible differentia having reasonable relation to the object of the law. The differentia adopted in this case is existence of lineal descendants of the deceased coparcener. This has nothing to do with the object of the Act which is to levy a graded tax on the property passing on death. As pointed out by the Judicial Committee in *Alberta Provincial Treasurer v. Kerr* (12), the scope and object of the legislation has to be gathered from the charging section. The charging section confines the levy of estate duty only

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on the property passing on death and not to any other property which does not pass on death. In this case section 5 which is the charging section specifically provides that the charge is on the 'property passing on death of the deceased'. The provisions in sections 6 to 15 which deal with properties deemed to pass on death do not cover the interests of lineal descendants of the deceased in a joint family property, and there is no other provision in the Act which deems the interests of the lineal descendants in the joint family to pass on the death of the deceased so as to attract the charging section. Section 34 is only a machinery section and that cannot enlarge the scope of the charging section. If there had been a deeming provision that the interest of the lineal descendants in the joint family property is deemed to pass on the death of the deceased, then it is possible to say that Parliament has positively intended to tax the lineal descendants' share also along with the coparcenary interest of the deceased passing on death. While the charging section does not bring the lineal descendants' share in the joint family to charge, the machinery section in section 34(1) (c) brings the same to charge in the guise of aggregation for rate purposes. It is well established that machinery sections cannot enlarge the scope of the charging section. It is true that though section 34(1) (c) clubs the interest of the lineal descendants in the joint family property with the interest of the deceased passing on death, tax is actually levied only on the interest of the deceased passing on death, as rebate is given under sub-section (2) of that section for the tax referable to the interests of lineal descendants. But, it cannot be disputed that section 34(1) (c) by including the lineal descendants' share also in the estate of the deceased brings about a different tax and imposes a higher tax burden on the property passing on death in case the deceased had left lineal descendants, notwithstanding the provisions in sub-section (2). This position is more apparent when the value of the interest of the deceased passing on death

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is less than Rs. 50,000. In such a case by the operation of section 34(1) (c), the lineal descendants' share is included with that of the deceased and estate duty becomes payable, while but for such inclusion no estate duty would become payable.

Section 34(1) (c) virtually brings in property belonging to the lineal descendants to charge along with the interest of the deceased passing on death. We are at a loss to find any provision in the Act which enables the levy of a charge on any property not passing on death of the deceased. When the object of the Act is to levy a graded rate of estate duty on property passing on the death of the deceased, how can the properties passing on death of certain individuals alone be made to bear higher tax burden merely because they happened to leave certain lineal descendants. Admittedly, under the Mitakshara system of Hindu law the deceased cannot have any right or interest in the shares of his lineal descendants in the joint family property which they had acquired as a result of their right by birth, and such interest of the lineal descendants cannot be brought under the charging section by the process of aggregation said to be for rate purposes. We are, therefore, of the view that section 34(1) (c) goes far beyond the charging section and it makes a discrimination between the coparceners who die leaving lineal descendants and others in the imposition of tax burden and provides for a higher incidence of tax on the property passing on the death of the former.

As already stated, the revenue concedes that there is differentiation between coparceners leaving lineal descendants and others and the property passing on the death of the former is subjected to a higher duty but seeks to sustain that differentiation on the ground that it is intended to place the incidence of taxation equitably on all persons. It is pointed out that, if such an aggregation as is provided in section 34(1) (c) is not adopted, it results in the members of the Dayabhaga family being put to a higher burden of tax than the members of the Mitakshara

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famiy if the death of a member occurs. It may be true that the tax effect is different depending upon the school of Hindu law by which the deceased was governed at the time of his death. If he was a member of the Dayabhaga family, the extent and value of the property passing on his death would be considerably more than what it would be if he had been a member of the Mitakshara family and, naturally, there is a higher burden of tax. But, that difference was entirely due to the fact that the personal law governing the deceased was different. The persons belonging to the Dayabhaga law are not persons similarly situate as members belonging to the Mitakshara law, for the right of inheritance and devolution under their personal law is entirely different, and to compare them with the members of a Mitakshara family who are governed by different rules of inheritance and devolution is to ignore a difference when there is one. As pointed out by the Supreme Court in *State of Andhra Pradesh v. Nalla Raja Reddy* (13), a statutory provision may offend Article 14 both by finding differences where there are none and by finding no difference where there is one. When the share or extent of the coparcenary property passing on death is different, the tax burden also has to differ. A member of a Dayabhaga family on whose death a larger extent or share of joint family property passes on death cannot be treated alike with a member of the Mitakshara family on whose death comparatively a lesser share of joint family property passes on death, and the liability for estate duty, which is an impost on the property passing on death, cannot be made equitable between the two without reference to the actual extent of property passing. If Parliament had intended to treat them alike, it would have made a provision that, on the death of a member of a Mitakshara joint Hindu family, not only his interest in the joint family property but also the interest of his lineal descendants should be deemed to have passed on such death, as it has introduced deeming provisions in other circumstances. In section 9 property taken under a disposition

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(13) (1967) 2 I.T.J. 777.

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made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass on death. Even though the title might have passed from the deceased to the donee by way of gift inter vivos and there is no actual passing of property on the death of the deceased in that case. Parliament deems that there has been a passing of property in respect of those properties at the time of the death of the deceased. We are not, however, expressing our opinion as to whether such a deeming provision if made will be valid or not. We are only pointing out that without such a deeming provision it is not possible to bring the interests of the lineal descendants also to charge under section 5. We are also of the view that though the ultimate object or the policy behind the Act is to see that there is a fair distribution of wealth, and to remove inequalities in the concentration of wealth, it is only the specific object of the Act, that is, to provide for a levy and collection of estate duty on a graded scale on the property passing on death, that can be taken into account for finding out as to whether the differentiation has got any reasonable nexus. Otherwise, every statutory provision can be sustained on the ground that it is intended to remove inequalities in the distribution of wealth. The intention, scope and object of the Act has only to be gathered from the provisions of the Act.

'Estate duty' has been defined under Article 366(9) of the Constitution as 'a duty to be assessed on or by reference to the principle value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass'. As we have already stated, the interest of the lineal descendants of the deceased in the joint family property has not been treated anywhere in the Act as the property passing or deemed to pass on death. The distinction between coparceners

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dying leaving lineal descendants and others in the matter of levy of estate duty and subjecting the lineal descendants of the Mitakshara joint family to a higher levy than to which they would normally be liable under the charging section clearly infringes Article 14 of the Constitution and it is unreasonable to fix the rate of tax with reference to the interest of the lineal descendants of the deceased in the case of Mitakshara family especially when that interest does not pass on death. We are quite aware of the fact that Parliament has got a wider discretion in the field of taxation to pick and choose persons or things and adopt different rates of taxation or to impose a varying tax burden. However, we are of the view that the legislature cannot overlook the definition of 'estate duty' occurring in Article 366(9) of the Constitution and the charging section as well as the deeming provisions contained in sections 6 to 16, and subject only the members of a Mitakshara family to a higher tax burden by aggregating the shares of the lineal descendants of the deceased which did not pass on his death with that of the deceased which alone passes on death. It would have been a different matter if the charging section treated the lineal descendants' share also as property passing on death, but that share had been exempted under some other provision of the Act, in which case the totality of the shares could be taken into account for rate purposes. When a particular interest or property does not come within the purview of the charge, it cannot be treated as a property exempt from estate duty for purpose of inclusion in the principal value of the estate of the deceased. We are aware that the legislature is entitled to take into account items which it had specially exempted from tax for purposes of determining the rate of tax. But, that principle will not extend to bring in as an item not contemplated by the charging section even for rate purpose. To illustrate, in the Indian Income-tax Act, income which may be exempt from tax may yet form part of the assessee's 'total income' which determines the rate of tax to the chargeable income. But, that is done on the



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basis that but for the exemption provided in the Act, it would have been chargeable to tax. So even for rate purposes, items which are not 'income' cannot form part of the 'total income'. We, therefore, declare section 34(1) (c) of the Estate Duty Act as being discriminatory and violative of Article 14 of the Constitution."

(12) After carefully reading these observations, I am not convinced that the provisions of section 34(1) (c) of the Act are in any way discriminatory. A coparcener dying without lineal descendants and a coparcener dying leaving lineal descendants are not equals nor is a coparcener dying leaving lineal descendants equal to other persons whose estate is liable to estate duty. They form different classes of persons and it is for the Legislature to select the objects of taxation and the rate of taxes to be charged from them. The estates of all coparceners leaving lineal descendants will be brought to a charge of estate duty in the same manner and not differently. There is no discrimination between two coparceners of this class. The other arguments in support of the conclusion of the Division Bench have been answered in various judgments referred to above and I need not burden this judgment by reproducing them in my own language. With great respect to the learned Judges of the Madras High Court, I find myself unable to agree with the arguments and conclusions arrived at by them.

(13) After a careful reading of the judgments of the Andhra Pradesh and the Kerala High Courts, I find myself, with respect, in complete agreement with the reasoning and the conclusions thereof and differing with the view taken by the Madras High Court in *V. Devaki Ammal's case* (supra), I hold that section 34(1) (c) of the Constitution is not *ultra vires* Article 14 or 9 (1) (f) of the Constitution.

(14) For the reasons given above, there is no merit in this petition which is dismissed. The parties are, however, left to bear their own costs. The dismissal of this petition is on the basis that the assessment has been made in accordance with section 34 of the Act, that is, the value of the shares of the lineal descendants of Sadhu Ram was aggregated with the other estate of the deceased for the purpose of determining the rate of estate duty only and that no

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estate duty has been levied thereon and that the estate duty has been levied on the estate which passed or was deemed to pass on the death of Sadhu Ram. If the order of assessment is not in accordance with this rule, it shall have to be revised so as to bring it in accord therewith.

BAINS, J.—I agree.

N. K. S.

FULL BENCH

Before R. S. Narula, C. J., P. C. Jain, M. S. Gujral, S. C; Mital and B. S. Dhillon, JJ.

ATMA SINGH—*Petitioner.*

*versus*

STATE OF PUNJAB AND OTHERS.—*Respondents.*

Cr. W. 97 of 1975.

December 24, 1975.

*Constitution of India (1950)—Articles 14, 19, 21, 22, 226, 352 and 359—Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (52 of 1974 as amended by 35 of 1975)—Sections 3, 5-A and 12-A—Maintenance of Internal Security Act (26 of 1971) Sections 8 and 16-A—Detention of a person under either of the said Acts—Whether can be challenged under Article 226 of the Constitution, in spite of the Presidential Order under Article 359(1) and clause 1(A) of the Article—Permissible pleas open to such detenu—Stated—Preventive detention law—Whether invalid without providing safeguards under Article 22(5)—Such Law itself providing the supply of the ground of detention to a detenu—Contravention of the provision—Whether makes the order of detention under the law invalid—section 8, Maintenance of Security Act—Whether in abeyance during the effectiveness of the declaration under section 16-A of the Act—Expression “For the purpose of clause (5) of Article 22 of the Constitution” in section 3(3), Conservation of Foreign Exchange Act—No declaration under section 12-A—Right contained in the section 3(3)—Whether suspended by the Presidential Order—Detenu—Whether can show the invalidity of the satisfaction of the detaining authority on the basis of the grounds supplied—Order of detention under Maintenance of Security Act revoked—Another order under the Conservation of Foreign Exchange Act passed on the same grounds—Period of detention suffered under the earlier order of detention—Whether can be taken into account for the purpose of the latter*