

Sirigeri Thippamma Vs. Appellate Controller of Estate Duty and ors.

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Court : Karnataka

Decided On : Nov-22-1984

Reported in : (1985)48CTR(Kar)31; ILR1985KAR786; [1986]158ITR548(KAR); [1986]158ITR548(Karn)

Judge : K.S. Puttaswamy and ;N.R. Kudoor, JJ.

Acts : Esate Duty Act, 1953 - Secton 34(1); [Constitution of India](#) - Article 14

Appeal No. : Civil Writ Petition Nos. 1462, 1683, 2004, 2351, 2729 and 2743 of 1973 and 102, 652, 1186, 2480, 320

Appellant : Sirigeri Thippamma;s.C. Marulasiddappa;s.N. Parthasarathy;b. Venkanna; Savithribai N. Gowda; K. Kris

Respondent : Appellate Controller of Estate Duty and ors.;appellate Controller of Estate Duty and anr.;appellate

Advocate for Def. : K. Srinivasan, Adv.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

K.S. Puttaswamy, J.

1. On a reference made by Venkataramaiah J. (as he then was), these cases have been posted before us for disposal.
2. As common questions of law arise for determination in these cases, we propose to dispose of them by a common order.
3. In order to appreciate the questions that arise for determination in these cases, it is enough to notice the facts in Writ Petition No. 1462 of 1973 as illustrative only and not as exhaustive.
4. One Sirigeri Govindappa, a resident of Gangavathi of Raichur District, who was the karta of a Mitakshara Hindu undivided joint family (HUF) consisting of himself, his wife, Smt. Sirigeri Thippamma, his son, Ranganna, and an unmarried daughter, Kumari Raghamma, died on February 8, 1969. The Hindu undivided family owned considerable movable and immovable properties.
5. On November 17, 1969, Smt. Sirigeri Thippamma, the petitioner before us, as the 'accountable person' under the Estate Duty Act of 1953 (Central Act 34 of 1953) ('the Act'), filed a return before the Assistant Controller of Estate Duty, Hubli ('the Assistant Controller'), declaring the value of the estate passing on the death of her husband at Rs. 1,73,770. On June 15, 1971, the Assistant Controller completed his assessment (exhibit-1) in which he included a sum of Rs. 1,53,303 as the share value of the lineal descendants of the Hindu undivided family for rate purposes under section 34(1)(c) of the Act and levied estate duty on the petitioner on that basis. Against the said order of the Assistant Controller, the petitioners filed an appeal in Appeal No. EDA 11 of 1971-72/HBL before the Appellate Controller of Estate Duty, Southern Zone, Madras ('the Appellate Controller'), who by his order dated October 31, 1972 (exhibit-2), disposed of the same giving certain minor reliefs with which we are not now concerned, but declining to interfere with the aggregation of the share value of the lineal descendants, with which alone we are now concerned. In this petition under article 226 of the Constitution, the petitioner has challenged the validity of section 34(1)(c) of the Act and the orders of the Appellate Controller and the Assistant Controller to the extent they relate to the aggregation of the share value of the lineal descendants and the consequent levy of higher duty the rejoinder the Act.

6. In all other cases also, the facts are somewhat similar to the facts in Writ Petition No. 1462 of 1973 and their challenge in all of them is similar as in that writ petition.

7. The petitioners have urged that section 34(1)(c) of the Act was beyond the legislative competence of the Union Parliament and if it was within its legislative competence, then it was violative of articles 14 and 19(1)(f) of the Constitution. The respondents have resisted these writ petitions.

8. Sri G. Sarangan, learned counsel for the petitioners, in our opinion very rightly, did not pursue the proposition that section 34(1)(c) was beyond the legislative competence of the Union Parliament.

9. We are of the opinion that the contention of the petitioners that section 34(1)(c) was beyond the legislative competence of the Union Parliament, which was not rightly pursued, has absolutely no merit and we have no hesitation in rejecting the same.

10. Sri Sarangan, in our opinion, very rightly did not also pursue the challenge of the petitioners to section 34(1)(c) of the Act based on article 19(1)(f) of the Constitution which was then part of the Constitution, but stands deleted from June 20, 1979, by the Constitution 44th Amendment Act, 1978.

11. With the deletion of article 19(1)(f) of the Constitution from June 20, 1979, by the 44th Amendment of the Constitution, the challenge based on that provision is no longer available. Even otherwise, article 19(1)(f) did not guarantee any immunity from taxation. We see no merit in this point either.

12. What now remains to be considered is the challenge to section 34(1)(c) based on article 14 of the Constitution. This bears a serious examination, for which purpose it is necessary to notice the case pleaded in some detail. On this challenge, the petitioners have asserted thus :

'Article 14 forbids class legislation though it does not forbid reasonable classification for the purposes of legislation. The distinction between a coparcener dying leaving lineal descendants and others who are divided prior to their death

from their lineal descendants, in the matter of estate duty and subjecting the estate of an undivided coparcener (leaving lineal descendants) of a Mitakshara joint family to a higher duty than would have been normally levied under the charging section, it is respectfully submitted, infringes article 14 of the Constitution. It is also unreasonable to fix the rate of tax with reference to the interest of the lineal descendants of the deceased in the case of Mitakshara Hindu joint family when that interest admittedly does not pass on the death of a deceased. There is no reasonable nexus between the object of the statute and the levy of the duty on the principle of aggregation.'

13. Sri Sarangan has urged that section 34(1)(c) of the Act that chooses only the share value of lineal descendants of a Hindu undivided family for aggregation and consequent levy of higher duty under the Act, was violative of article 14 of the Constitution. In support of his contention, Sri Sarangan has strongly relied on a Division Bench ruling of the Madras High Court in V. Devaki Ammal v. Assistant Controller of Estate Duty : [1973]91ITR24(Mad) .

14. Sri K. Srinivasan, learned senior standing counsel, appearing for the Revenue, refuting the contention of Sri Sarangan, has urged that the impugned provision was not violative of article 14 of the Constitution. In support of his contention, Sri Srinivasan has relied on the rulings of the Supreme Court in Twyford Tea Co. Ltd. v. State of Kerala, : [1970]3SCR383 , S. Kodar v. State Kerala, : [1975]1SCR121 , and the rulings of all other High Courts including the Madras High Court in an earlier case that had uniformly upheld the constitutionality of section 34(1)(c) of the Act.

15. The Act passed in 1953 to levy and collect estate duty defined in article 366(9) of the Constitution came into force on October 15, 1953. Section 5 of the Act which is the charging section provides for levy of estate duty on the principal value of the property that passes or is deemed to pass from the deceased to be ascertained in accordance with the detailed provisions made in the Act.

16. Part IV of the Act deals with the aggregation of property and rates of duty payable thereon. Section 34 of the Act, as originally enacted, dealing with aggregations did not provide for agreeability of the share values of lineal

descendants of a deceased person in a Hindu undivided family governed by Mitakshara, Marumakkattayam or Aliyasantana law. The Acts originally enacted provided for two rates of duty-one in the case of property that consisted of an interest in the joint family property of a Hindu family governed by Mitakshara, Marumakkattayam or Aliyasantana Law [vide Part I of the Second Schedule to the Act) and the other in the case of other properties (vide Part II of the Second Schedule to the Act). In the case of properties falling under Part I, the first slab exempt from duty was Rs. 50,000 and in the case of properties falling under Part II, the first slab exempt from duty was Rs. 1,00,000.

17. In the working of the Act from October 15, 1953 to 1958, and experience gained therefrom, the Union Government introduced Bill No. 18 of 1958 proposing various amendments to the Act (vide Gazette of India Extraordinary dated February 25, 1958), appending a statement of objects and reasons as set out hereunder [See [1958] 33 ITR 105 :

'The object of the Bill is to make certain amendments to the Estate Duty Act, 1953 (34 of 1953), in the light of the experience gained in the working of that Act since its coming into force on October 15, 1953. The main amendments are intended to restrict some of the concessions which in the light of subsequent experience do not appear to be justified. Other amendments have been proposed to clarify assessment procedure, to facilitate collection of duty and also to provide for two appellate authorities. These latter amendments seek to bring the provisions of the Estate Duty Act, 1953, in line with those of the Indian Income-Act, 1922, the Wealth-tax Act, 1957, and the Expenditure-tax Act, 1957.

2. The Notes on Clauses explain the object underlying each of the important amendments proposed in the Bill.'

18. The notes to clause 17 of the Bill setting out the specific reasons for substitution of section 34 and the introduction of section 34(1)(c), which is material for our purpose, read thus [See [1958] 33 ITR 119 :

'Clause 17 redrafts the provisions relating to aggregation for determining the rate of estate duty so as to bring under aggregation the interests in the joint family

property of the lineal descendants of the deceased member as well.'

19. The bill was referred to a select committee which did not make any modification or recommendation for the substitution of section 34 and the introduction of section 34(1)(c) thereto, though it suggested various modifications to other provisions of the Bill. The said Bill passed by Parliament called 'The Estate Duty (Amendment) Act, 1958 (Central Act 33 of 1958)' ('the Amending Act'), received the assent of the President on September 19, 1958, and was published in the Gazette (Extraordinary) on the same day. The Amending Act came into force from July 1, 1960.

20. Section 13 of the Amending Act substituted the original section 34 in which a new sub-section, viz., sub-section (1)(c), was introduced. The Amending Act also abolished the earlier distinctions and differences in the first exemption limits and introduced a uniform first exemption slab at Rs. 50,000.

21. section 34(1)(c) that is under challenge reads thus :

'34. (1) For the purpose of determining the rate of the estate duty to be paid on any property passing on the death of the deceased,-.....

(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, Marumakkattayam 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.'

22. On the true scope and ambit of this provision, a Full Bench of this court in Controller of Estate Duty v. Andal Thayaramma (T. R. C. Nos. 17 of 1974 and 85 of 1975 decided on October 26, 1984)-since reported in : [1985]151ITR197(KAR) , speaking through one of us (Puttaswamy J.), has expressed thus (p. 203) :

'Aggregation for rate purposes provided in the Act is nothing new or novel and is on the familiar pattern as in other taxation measures like the Income-tax Act and

levy of estate duty in England, on which the Act is generally modelled, however taking care to comprehend the peculiarities prevailing in our country... (p. 206). Section 34(1)(a) of the Act sets out in detail the properties exempted from duty but are still aggregated for rate purposes. A detailed enumeration of the properties exempted under section 34(1)(a) and the extent of exemptions is not necessary for these cases. Section 34(1)(b) provides for aggregation of the value of agricultural lands that are not subject to estate duty under the Act. section 34(1)(c) of the Act provides for the aggregation of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law as also the interests in the joint family property of the lineal descendants of the deceased member.

Under the Act, as it originally stood prior to its amendment by the Amending Act, there were two rates of estate duty, one in the case of property, which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law (vide Part I of the Second Schedule to the Act) and the other in the case of other properties (vide Part II of the Second Schedule to the Act). In the case of properties falling under Part I, the first slab exempt from duty was Rs. 50,000 and in the case of properties falling under Part II, the first slab exempt from duty was Rs. 1,00,000. The Amending Act abolished these distinctions and differences, introduced a uniform first exemption slab at Rs. 50,000 and section 34(1)(c) of the Act (vide Notes on Clause 30 of Bill No. 18 of 1958, page 339 of Gazette of India (Extraordinary) dated February 28, 1958). In the later amendments, the exemption limits have been raised. But, that does not make any difference on the scope and ambit of this provision. section 34(1)(c) clearly provides for aggregation of the interests of lineal descendants of the deceased in the joint family property for purposes of determining the rate of duty leviable under the Act. The aggregation is of the interest of the lineal descendants only and not of others (vide Notes on Clause 17 of the Bill proposing the Amendment to original section 34 of the Act). But, in the case of such aggregation, it is necessary to notice that under Explanation (iii) of sub-section (2) of section 34 of the Act, the interests of all coparceners other than the deceased in the joint family property is exempted from payment of estate duty. We are of the view that this construction of section 34 of the Act is in accord with the

amendments made by the Amending Act.'

23. But, on the same question, in Devaki Ammal's case : [1973]91ITR24(Mad) , their Lordships of the Madras High Court have expressed thus (p. 38) :

'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 the death of the deceased.'

24. With great respect to their Lordships, we are constrained to state that this construction is opposed to the provisions of the Act, as interpreted by this court in Andal Thayaramma's case : [1985]151ITR197(KAR) and cannot, therefore, be followed by us.

25. The true scope and ambit of article 14 and its application to a taxation measure have been explained by our Supreme Court in a large number of cases and it is sufficient to notice three of them only in some detail.

26. In Ram Krishna Dalmia v. Justice S. R. Tendolkar, : [1959]1SCR279 , reviewing all the earlier cases decided till then, the Supreme Court summed up the true scope and ambit of article 14 in these words (p. 547) :

'In Budhan Choudhry v. State of Bihar : 1955 CriLJ374 , a Constitution Bench of seven judges of this court at pages 1048.49 (of SCR) (at p. 193 of AIR) explained the true meaning and scope of article 14 as follows :

'The provisions of article 14 of the Constitution have come up for discussion before this court in a number of cases, namely, Chiranjit Lal v. Union of India : [1950]1SCR869 , State of Bombay v. F. N. Balsara : [1951]2SCR682 , State of West Bengal v. Anwar Ali Sarkar : 1952 CriLJ510 , Kathi Raning Rawat v. State of Saurashtra : 1952 CriLJ805 , Lachmandas Kewalram v. State of Bombay : 1952 CriLJ1167 , Qasim Razvi v. State of Hyderabad : 1953 CriLJ862 and Habib Mohamad v. State of Hyderabad : 1953 CriLJ1158 . It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well-established that while article 14 forbids class

legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may-be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure.'

27. The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this court further establish :

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by appearance and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be may confine its the clearest;

(e) that in order to sustain the presumption of constitutionality, the court may take into consideration matters of common knowledge, matters of common report, the

history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the Classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

28. The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.

29. A close perusal of the decisions of this court in which the above principles have been enunciated and applied by this court will also show that a statute which may come up for consideration on a question of its validity under article 14 of the Constitution may be placed in one or other of the following five classes :

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute, the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law, as it did in *Chiranjit Lal v. Union of India*, : [1950]1SCR869 , *State of Bombay v. F. N. Balsara*, AIR 1951 SC 318, *Kedar Nath Bajoria v. State of West Bengal* : 1953 CriLJ1621 , *V. M. Syed Mohammed Company v. State of Andhra* : [1954]1SCR1117 and *Budhan*

Choudhry v. State of Bihar, : 1955 CriLJ374 .

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case, the court will strike down the law as an instance of naked discrimination, as it did in *Ameerunnissa Begum v. Mahboob Begum* : [1953]4SCR404 and *Ramprasad Narain Sahi v. State of Bihar* : [1953]4SCR1129 ;

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute, the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of selection or classification. After such scrutiny, the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situated and that, therefore, the discrimination is inherent in the statute itself. In such a case, the court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal v. Anwar Ali Sarkar*, : 1952 CriLJ510 ; *Dwarka Prasad v. State of Uttar Pradesh* : [1954]1SCR803 and *Dhirendra Kumar Mandal v. Superintendent and Remembrancer of Legal Affairs* : [1955]1SCR224 .

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance

of the exercise of discretion by the Government in the matter of such selection or classification; the court will uphold the law as constitutional, as it did in *Kathi Raning Rawat v. State of Saurashtra*, : 1952 CriLJ805 .

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this court, e.g., in *Kathi Raning Rawat v. State of Saurashtra*, that in such a case, the executive action but not the statute should be condemned as unconstitutional.'

30. In *Twyford Tea Co. Limited v. State of Kerala*, : [1970]3SCR383 , Hidayatullah C.J., speaking for the majority, reviewing all the earlier cases and sustaining the validity of a taxation measure called the Kerala Plantation (Additional Tax) Act, 1960, as amended in 1967, expressed thus (p. 1137) :

'We may now state the principles on which the present case must be decided. These principles have been stated earlier but are often ignored when the question of the application of article 14 arises. One principle on which our courts (as indeed the Supreme Court in the United States) have always acted, is nowhere better stated than by Willis in his 'Constitutional Law', page 587. This is how he put it :

'A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.'

31. This principle was approved by this court in *East India Tobacco Co. v. State of Andhra Pradesh* : [1963]1SCR404 . Applying it, the court observed :

'If a State can validly pick and choose one commodity for taxation and that is not open to attack under article 14, the same result must follow when the State picks

out one category of goods and subjects it to taxation.'

32. This indicates a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable. If production must always be taken into account, there will have to be a settlement for every year and the tax would become a kind of income-tax.

33. The next principle is that the burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack. This was also observed in the same case of this court at page 411 (of SCR); (at p. 1735 of AIR) approving the dictum of the Supreme Court of the United States in *Madden v. Kentucky* [1940] 309 US 83; 84 Law Ed. 590 :

'In taxation even more than in other fields, Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.'

34. As Rottschaefer said in his Constitutional Law at p. 668 :

'A statute providing for the assessment of one type of intangibles at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax.' The decisions of the Supreme Court in this field have permitted a State Legislature to exercise 'an extremely wide discretion' in classifying property for tax purposes 'so long as it refrained from clear and hostile discrimination against particular persons or classes'

35. The burden is on a person complaining of discrimination. The burden is proving not possible 'inequality' but hostile 'unequal' treatment. This is more so when uniform taxes are levied. It is not proved to us how the different plantations can be said to be 'hostilely or unequally' treated. A uniform wheel tax on cars does not take into account the value of the car, the mileage it runs, or in the case of taxis, the profits it makes and the miles per gallon it delivers. An Ambassador taxi and a Fiat taxi give different out turns in terms of money and mileage. Cinemas

pay the same show fee. We do not take a doctrinaire view of equality. The Legislature has obviously thought of equalising the tax through a method which is inherent in the tax scheme. Nothing has been said to show that there is inequality much less 'hostile treatment'. All that is said is that the State must demonstrate equality. That is not the approach. At this rate nothing can ever be proved to be equal to another.

36. There is no basis even for counting one tree as equal to another. Even in a thirty years' settlement, the picture may change the very next year for some reason but the tax as laid continues. Siwai income is brought to land revenue on the basis of number of trees but not on the basis of the produce. This is worked out on an average income per tree and not on the basis of the yield of any particular tree or trees.

37. What is meant by the power to classify without unreasonably discriminating between persons similarly situated, has been stated in several other cases of this court. The same applies when the legislature reasonably applies a uniform rate after equalising matters between diversely situated persons. Simply stated, the law is this : Differences in treatment must be capable of being reasonably explained in the light of the object for which the particular legislation is undertaken. This must be based on some reasonable distinction between the cases differentially treated. When differential treatment is not reasonably explained and justified, the treatment is discriminatory. If different subjects are equally treated, there must be some basis on which the differences have been equalised, for otherwise discrimination will be found. To be able to succeed in the charge of discrimination, a person must establish conclusively that persons equally circumstanced have been treated unequally and vice versa. However, in *Khandige Sham Bhat v. Agricultural Income-tax officer* : [1963]48ITR21(SC) , it was observed :

'If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment Taxation law is not an exception to this doctrine : vide *Purshottam Govindji Halai v. Shree B. M. Desai* :

1956 CriLJ129 and Kunnathat Thathunni Moopil Nair v. State of Kerala : [1961]3SCR77 . But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification so long as it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of 'wide range and flexibility' so that it can adjust its system of taxation in all proper and Reasonable ways.'

38. In S. Kodar v. State of Kerala, : [1975]1SCR121 , a Constitution Bench of the Supreme Court has expressed that the economic wisdom of a tax was within the exclusive province of the Legislature. Bearing these principles, it is necessary to examine the challenge of the petitioners based on article 14 of the Constitution.

39. We have earlier noticed the history and object of legislation leading to the introduction of section 34(1)(c) and its true scope and ambit also.

40. Mulla in his Treatise on Principles of Hindu Law, 15th edition, has summed up the very broad distinctions and differences between the two main schools of Hindu law, viz., Mitakshara and Dayabhaga, in these words (pp. 48-49) :

'An account of the origin and development of the schools of Hindu law was given by the Judicial Committee of the Privy Council in Collector of Madura v. Moottoo Ramalinga [1868] 12 MIA 397 : 'The remoter sources of the Hindu law are common to all the different schools. The process by which those schools have been developed seems to have been of this kind. Works universally or very generally received became the subject of subsequent commentaries. The commentator put his own gloss on the ancient text, and his authority having been received in one and rejected in another part of India, schools with conflicting doctrine arose. Thus the Mitakshara which is universally accepted by all the schools except that of Bengal as of the highest authority, and which in Bengal is received also as of highest authority, yielding only to the Dayabhaga in those points where they differ, was a commentary on Institutions of Yajnavalkya; and the Dayabhaga, which, wherever it differs from the Mitakshara, prevails in Bengal and is the foundation of the principal divergencies between that and the other schools, equally admits and relies on the authority of Yajnavalkya. In like manner, there are

glosses and commentaries upon the Mitakshara, which are received by some of the schools that acknowledge the supreme authority of that treatise, but are not received by all.' The Dayabhaga school prevails in Bengal; the Mitakshara school prevails in the rest of India. These schools born of diversity of doctrines mark a new stage in the evolution of Hindu law. One of the main differences between these two principal schools of Hindu law relates, as has been pointed out later on in some detail, to the law of inheritance. The meaning of the doctrine of sapinda relationship in the law of inheritance insisted upon by Vijnanesvara whereby community of blood (propinquity) is to be preferred to community in the offering of religious oblations is the governing factor whereby under the Mitakshara law the right to inherit arises. Under the Dayabhaga, the right arises from spiritual efficacy, that is, the capacity for conferring spiritual benefit on the manes of paternal and maternal ancestors. Another distinguishing feature relates to certain incidents of the joint family. According to the Mitakshara law, each son acquires at his birth an equal interest with his father, and on the death of the father, the son takes the property, not as his heir, but by survivorship. The position of the son or grandson in the Mitakshara is somewhat similar to that of sueheredes who under the Roman law are regarded as having a sort of dormant ownership in the estate of their father even during his lifetime. Their succession was not so much a succession as coming into the enjoyment of what in a sense had already partly belonged to them. According to the Dayabhaga school, the son does not acquire any interest by birth in ancestral property. His rights arise for the first time on the father's death. On the death of the father, he takes such of the property as is left by the father, whether separate or ancestral, as heir and not by survivorship. Partition is another branch of law on which there is some radical difference between the two principal schools.'

41. The Act as also the Hindu Succession Act of 1956 have not interfered with a Hindu undivided family, though the latter has made certain inroads in the traditional law of succession.

42. Without any doubt, those that are governed by the Mitakshara law with their inherent differences and distinctions cannot be compared with those that are governed by other systems of laws. After all, unequals cannot be treated as

equals. In any event, the impugned provision passes the twin tests of permissible classification-On any view, the impugned provision cannot be condemned as offending article 14 of the Constitution.

43. We will assume that the Central Board of Revenue is correct in its view that section 34(1)(c) has been introduced to equalise or bring the two systems of Hindu law, viz., Mitakshara school and Dayabhaga school, on par. The measure cannot on that reason be condemned as violative of article 14 of the Constitution.

44. Aggregation for rate purposes and consequent provision for a higher levy is nothing new or novel and is a familiar tool of the taxman. If the provision, with due regard to the peculiarities of the system, provides for aggregation, there is hardly any ground to condemn it, as offending article 14 of the Constitution.

45. On an independent examination itself, we are of the view that section 34(1)(c) is not violative of article 14 of the Constitution. We are also of the view that the reasons on which the High Courts of Andhra Pradesh, Kerala, Punjab & Haryana, Allahabad, Madhya Pradesh and Patna in *N. Krishna Prasad v. Assistant Controller of Estate Duty* : [1972]86ITR332(AP) , *Komanduri Seshamma v. Appellate Controller of Estate Duty* : [1973]88ITR82(AP) , *N. V. Somaraju v. Government of India* : [1974]97ITR97(AP) , *T. R. Jayashankar v. Assistant Controller of Estate Duty* [1972] 83 ITR 445 , *Hariram v. Assistant Controller of Estate Duty* , *Badri Vishal Tandon v. Assistant Controller of Estate Duty* : [1976]103ITR468(All) and *Rameshwar Lal Agarwal v. Union of India* : [1982]133ITR545(Patna) have sustained the provision, as also the earlier ruling of the High Court of Madras in *Ramanathan Chettiar v. Assistant Controller of Estate Duty* : [1970]76ITR402(Mad) , are in consonance with the principles enunciated by the Supreme Court. We are in respectful agreement with what has been expressed in all these cases.

46. In *Devaki Ammal's case* : [1973]91ITR24(Mad) , a Division Bench of the Madras High Court consisting of Ramanujam and Ramaswamy JJ. noticing the earlier Division Bench ruling of that court in *Ramanathan Chettiar's case* : [1970]76ITR402(Mad) , which had upheld the validity of the provision rejecting the very ground urged before them, has invalidated the same. The question is whether

the principle in Devaki Ammal's case should be accepted.

47. We have stated earlier that the construction placed by their Lordships in Devaki Ammal's case : [1973]91ITR24(Mad) , on the scope and ambit of section 34(1)(c) is not in accord with that provision and the Full Bench ruling of this court in Andal Thayaramma's case : [1985]151ITR197(KAR) . With respect to their Lordships, we are of the view that the erroneous construction placed on the provision has necessarily led to an erroneous conclusion on the challenge based on article 14 of the Constitution. Even otherwise, every one of the reasons on which we have sustained the provision but have not been noticed and examined by their Lordships in Devaki Ammal's case : [1973]91ITR24(Mad) , compel us, with respect, to dissent from the views expressed by their Lordships in that case and we do so accordingly.

48. On the foregoing discussion, it follows that the challenge of the petitioners to section 34(1)(c) of the Act based on article 14 of the Constitution has no merit and is liable to be rejected. From this, it follows that the aggregation made in all these cases on the correctness of which no contention whatsoever was urged before us, is also liable to be rejected.

49. In the light of our above discussion, we hold that these writ petitions are liable to be dismissed. We, therefore, dismiss these writ petitions and discharge the rule issued in all these cases. But, in the circumstances of the cases, we direct the parties to bear their own costs.

50. ORDERS ON THE ORAL APPLICATION MADE BY THE PETITIONERS FOR A CERTIFICATE OF FITNESS TO APPEAL UNDER ARTICLES 133 AND 134A OF THE CONSTITUTION OF INDIA.

51. After we pronounced the order dismissing the writ petitions, Sri Sarangan prays for a certificate of fitness to appeal to the Supreme Court under articles 133 and 134A of the Constitution.

52. In our common order, we have upheld the validity of section 34(1)(c) of the Estate Duty Act of 1953, dissenting from the view expressed by a Division Bench

of the Madras High Court in Devaki Ammal v. Assistant Controller of Estate Duty : [1973]91ITR24(Mad) , in which case that court had struck down the same provision accepting the very ground urged before us. So far, the Hon'ble Supreme Court has not set at rest the controversy on the validity of section 34(1)(c) of the Act on which there is a difference of opinion among the High Courts in the country! Even otherwise, the constitutionality of the provision touches a large number of persons in the country and the interests of the Revenue considerably. We are, therefore, of the opinion that these cases involve a substantial question of law on general importance and the same needs to be decided by the Hon'ble Supreme Court. We accordingly grant a certificate of fitness to appeal to to the Hon'ble Supreme Court under articles 133(1) and 134A of the Con situation to the petitioners and direct the Registrar to issue them the necessary certificate with expedition.

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