

**V. Devaki Ammal Vs. Assistant Controller of Estate Duty**

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**Court :** Chennai

**Decided On :** Oct-10-1972

**Reported in :** [1973]91ITR24(Mad)

**Judge :** G. Ramanujam and ;V. Ramaswami, JJ.

**Acts :** [Estate Duty Act, 1953](#) - Sections 5, 6 to 15, 16, 34, 34(1) and 34(2);  
[Constitution of India](#) - Articles 14 and 366(9); Hindu Law

**Appeal No. :** Writ Petition No. 2114 of 1968

**Appellant :** V. Devaki Ammal

**Respondent :** Assistant Controller of Estate Duty

**Advocate for Def. :** V. Balasubrahmanyam and ;J. Jayaraman, Adv.

**Advocate for Pet/Ap. :** S. Padmanabhan, Adv.

**Judgement :**

**Ramanujam, J.**

1. The petitioner is the widow of one late P. S. Venkatesa Pillai, hereinafter called the deceased, who died intestate on December 2, 1966, leaving behind him his widow, a minor son, Mohanasundaram, and an unmarried daughter, Gajabai. He was the karta of a Hindu undivided family consisting of himself and his minor son.

The family possessed immovable properties in Madras and agricultural lands in Peruganavoor village, Penned Taluk, and movable properties in the form of cash in current account, recurring deposit, compulsory deposit, etc. The deceased as a coparcener would have had a half share in the family properties if a partition had taken place during his lifetime. But, no such partition took place.

2. The petitioner as an accountable person submitted a return of estate duty declaring the principal value of the share of the deceased in the joint family properties at Rs. 74,884. The Assistant Controller of Estate Duty, the respondent herein, however, determined the value of the property passing on the death of the deceased at Rs. 1,24,859 as against the value returned, after adjusting the funeral and other expenses which are permissible deductions under the Act. He, however, added a sum of Rs. 1,26,067 being the lineal descendant's share, namely, the share of the minor son in the family properties to the value of the share of the deceased in accordance with the provisions of Section 34(1)(c) of the [Estate Duty Act, 1953](#), hereinafter called the Act, and determined the principal value of the estate at Rs. 2,50,926. The estate duty payable on the said principal value was fixed at Rs. 19,638.90. After allowing Rs. 9,866.72 as rebate on lineal descendant's share the estate duty payable was arrived at Rs. 9,772.18. Aggrieved against such aggregation of the lineal descendant's share with that of the deceased, the petitioner has come forward with this writ petition seeking to quash the said assessment order.

3. According to the petitioner, the principal value of the estate of the deceased should be taken only as Rs. 1,24,859 being the value of his half share in the properties, and determination of the principal value of Rs. 2,50,926 arrived at by the respondent on an aggregation of the value of the properties passing on the death of the deceased and the value of the lineal descendant's share under Section 34(1)(c) is illegal. The petitioner contends that the provision in Section 34(1)(c) providing for aggregation of the ' value of the property passing on the death of the deceased ' with the value of his lineal descendant's share even for rate purposes is unconstitutional and invalid as it is violative of Articles 14 and 19(1)(f) of the [Constitution of India](#). It is urged that Section 34(1)(c) which enables the aggregation of the interests of all the lineal descendants in the joint family

properties with the interest of the deceased coparcener so as to form one whole estate and the levy of tax at the rates applicable in respect of the principal value of such an estate, does not take in its fold deceased coparceners who did not have any lineal descendants, that a coparcener of a jointfamily who has lineal descendants is discriminated against from a coparcener who does not have any lineal descendants, and that making such invidious distinction having no reasonable and rational nexus with the object of the Act between a coparcener having lineal descendants and a coparcener having no lineal descendants as also others and casting an additional and onerous burden on the family of the coparcener who has left behind him lineal descendants violated Article 14 of the Constitution. It is also urged that the provision in Section 34(1)(c) making a special and unique provision in relation to a family of a deceased coparcener having lineal descendants makes an inroad into the rights of the lineal descendants as coparceners in the joint family properties and adversely affects their rights, as the heirs of the deceased under the Hindu Succession Act, that by the process of aggregation applied exclusively to a coparcener with lineal descendants the rights of the lineal descendants to acquire and hold the properties under the Hindu Succession Act, 1956, are infringed and that, therefore, the said provision is violative of Article 19(1)(f) of the Constitution as well

4. The revenue, however, contends that Section 34(1)(c) of the Act is not violative of either Article 14 or Article 19(1)(f) of the Constitution, that Section 34(1)(c) makes a reasonable classification between the coparceners having lineal descendants and others, that such classification has got a sensible relation to the object of the Act, and that, therefore, it cannot be said to be discriminatory in character so as to attract Article 14 of the Constitution. It is also the contention of the revenue that though it is only the undivided interest of a deceased coparcener in a Mitakshara family that is deemed to pass on his death under Section 7 of the Act, for the purpose of fixing the rate of duty, the deceased and his lineal descendants are regarded as a group or as a branch family, that this groupal consideration is necessary for arriving at the slice of the joint family property on the basis of a fictional partition in a family which actually continues to be joint before and after death, and that the deceased and his lineal descendants form a natural group or branch not only under the personal law but also as an economic

unit. It is also said that Section 34(1)(c) applies to all cases where a Mitakshara father dies undivided from his lineal descendants, that in a fiscal complex in a country like India having different systems of law of devolution of property, classification has got to be made by Parliament with the object of distributing the tax burden, as far as possible equitably between various economic units, that the overall structures and scheme of the Act is to see that duty is adjusted with reference to actual beneficial enjoyment before and after the death and not merely with reference to the passing of title to the property, and that, therefore, there is nothing irrational or inconsistent with the object of the Act in the said provision. The revenue also submits that there is nothing peculiar in the impact of Section 34(1)(c) as respects property rights, for the impact is not on the shares of the surviving coparceners, be they adults or minors, but on the share or interest referable to the deceased coparcener which devolves on the survivors and that the estate duty being a tax it cannot be struck down as offending the rights of successors because the duty has to be paid as a charge on the property to which they succeed.

5. In the face of the above rival contentions we have to consider the validity of the provision in Section 34(1)(c) of the Act. To appreciate the scope of Section 34(1)(c) of the Act, it is necessary to note some of the other provisions of the Act. Section 2(15) defines 'property' as including 'any interest in property movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also including any property converted from one species into another by any method.' We are not concerned with the Explanations to that section. Section 2(16) defines 'property passing on the death' as follows:

"Property passing on the death' includes 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.'

6. Sections 6 to 16 deal with various properties and interests which are deemed to pass on the death of a deceased. Of those sections, Section 7(1) provides that a

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 Aliyasanthana law. Sub-section (2) of that section provides that, if a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of Sub-section (1) shall apply with respect to the interest of the deceased in the coparcenary property only if the deceased had completed his eighteenth year at the time of his death, or where he had not completed his eighteenth year at the time of his death, if his father or other male ascendant in the male line was not a coparcener of the same family at the time of his death. Section 39 deals with the valuation of an interest in coparcenary property ceasing on death. Sub-section (1) of that section sets out that the value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family 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 property which would have been allotted to the deceased had there been a partition immediately before his death. Section 40 provides that the value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall, (i) if the interest extended to the whole income of the property, be the principal value of that property ; and (ii) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended. Coming to the impugned provision in Section 34, it is seen that it is a provision for aggregation of certain properties and interests for the purpose of ascertaining the rate of estate duty payable. That section runs as follows;

' 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,--

(a) all property so passing other than property exempted from estate duty under Clauses (c), (d), (e), (i), (j), (l), (m) and (h) of Sub-section (1) of Section 33 ;

(b) agricultural land so passing, if any, situate 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, Marumakkattayam or Aliyasanthana 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. '

7. Section 34(1)(c) directs that if the property passing on death consists of a coparcenary interest in the joint family property of a Hindu family governed by Mitakshara, Marumakkattayam or Aliyasanthana law, the interests in the joint family property of all his lineal descendants shall be aggregated with the coparcenary interest of the deceased so as to form one estate, and that the estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value of such estate. Sub-section (2) provides that 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 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. The Explanation to this section defines what is ' property exempt from estate duty '. Under that Explanation interest of all coparceners other than the deceased in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasanthana law has to be treated as property exempt from estate duty.

8. The validity of Section 34(1)(c) was questioned before this court in Ramanathan Chettiar v. Assistant Controller of Estate Duty, : [1970]76ITR402(Mad) on the ground that it is violative of Article 14 in that 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. The court construed Section 34(1)(c) as enabling aggregation of the benefits accrued to all the lineal descendants of the deceased and expressed that but for the principle of aggregation contained therein, the rate

applicable to a case of members belonging to a joint Hindu family governed by the Mitakshara law 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 and gave the following illustration to explain its point of view.

' 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 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. '

9. If Section 34(1)(c) is construed as a provision for aggregation of the benefits accrued to each of the lineal descendants on the death of the deceased, then on the principle laid down in that case the validity of the section has to be upheld. In fact, the learned counsel for the petitioner, wanted us to construe Section 34(1)(c) in the same manner and quash the order of the respondent on the ground that the clubbing of the son's share with that of the deceased in this case is not warranted under Section 34(1)(c). But the revenue very strenuously contends that 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. As a matter of fact, the respondent in this case has construed Section 34(1)(c) in the manner suggested by the revenue and has clubbed the half share of the son with the half share of the deceased father so as to form one estate and had applied the rate applicable to such combined estate in his assessment orders and it is that order which is being challenged before us. We, therefore, proceed to consider the question of the validity of Section 34(1)(c) on the basis of the wider interpretation which the revenue has adopted.

10. According to .the petitioner, while Section 5 brings to charge only the principal value of the property passing on the death of the deceased, Section 34(1)(c) brings to charge not only the principal value of the property passing on the death of the deceased but also the principal value of the interests of the lineal descendants of the deceased in the joint family properties, and that this clearly results in a hostile discrimination between coparceners having lineal descendants and other coparceners who have no lineal descendants, as also between coparceners having lineal descendants and others in general. That the statutory provision in Section 34(1)(c) makes a distinction between coparceners having lineal descendants and others and imposes a higher tax burden on the former is not disputed by the revenue. But, its case is that it is a reasonable classification having a rational nexus with the object of the Act and that, therefore, it will not be hit by Article 14 of the Constitution. This leads us to a consideration of the question as to whether the said differentiation has any reasonable nexus with the object of the Act.

11. The Estate Duty Bill, 1952, sets out the statement of objects and reasons as follows:

'The object of the Bill as to impose an estate duty on property passing or deemed to pass on the death of a person. Though the levy and collection of income-tax at high rates since the war and the investigations undertaken by the Income-tax Investigation Commission in a number of important cases of tax evasion have, no doubt, prevented to some extent the further concentration of wealth in the hands of those who are already wealthy, yet these do not amount to positive steps in the direction of reducing the existing inequalities in the distribution of wealth. It is hoped that by the imposition of an estate duty such unequal distributions may be rectified to a large extent. Such a measure would also assist the States towards financing their development schemes.'

12. The object of levying estate duty, therefore, appears to be to prevent to some extent the concentration of wealth in the hands of those who are already wealthy, and also to reduce the inequalities in the distribution of wealth, apart from raising revenue. Clause 33 of the said Bill corresponded to Section 34 of the Act. Section

34 as enacted originally in the year 1952 was a slight modification of the said clause 33 of the Bill. At that stage the aggregation of the lineal descendant's share in the joint family property with the coparcenary interest of the deceased was not contemplated. There was no provision like Section 34(1)(c) at that stage. It is only after the Finance Minister's Budget speech of 1958-59, Section 34 came to be amended. In the Finance Minister's speech one of the important changes in the Estate Duty Act he proposed was that the value of coparcenary interest in Hindu undivided families would be taxed at the rate applicable to the value of the estate of the branch of the family concerned. By Clause 17 of the Estate Duty (Amendment) Bill, 1958, Section 34 of the principal Act was proposed to be amended, to bring it to its present form. The note on Clause 17 of the said Bill states as follows:

'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.'

13. Thus, neither the Budget speech nor the notes on clauses of the Estate Duty (Amendment) Bill of 1958 throw any light as to what is the object in aggregating the interests of the lineal descendants along with the coparcenary interest of the deceased in the joint family so as to form one estate and thus subjecting the property passing on the death of the deceased to a higher duty if he were to leave any lineal descendant. But a Circular No. 6-D of 1960 dated June 16, 1960, issued by the Central Board of Revenue explains the scope of Section 13 of the Amending Act which brings about the change in Section 34(1) thus:

Section 13: ' This section introduces an important change with regard to the levy of estate duty on property which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasanthana school. To take for example, a Hindu family of this type owning property worth Rs. 5 lakhs and consisting of a father, wife and his three sons, on the death of the father, the value of the property that passes on his death will be the value of his 1/5th share of the family property, that is, Rs. 1 lakh (on the assumption that under the customary law the wife had an equal share with the

sons). Estate duty under the existing Act on this share of Rs. 1 lakh will be Rs. 2,500. If, on the other hand, the entire property had belonged to a Hindu family governed by the Dayabhaga law or to an individual, estate duty would be payable on the whole of Rs. 5 lakhs and the duty will be Rs. 51,250 under the existing rates. This state of affairs placed the Mitakshara, Marumakkattayam or Aliyasanthana family at a highly advantageous position. In order to reduce this inequality to some extent, the [Estate Duty Act, 1953](#), already provided a lower exemption limit of Rs. 50,000 in the case of a coparcenary interest in the joint family property belonging to a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasanthana law as against a limit of Rs. 1,00,000 in case of properties of other kinds, However, even with this lower limit, the disparity in the liability between a member of the Mitakshara family and a member of the Dayabhaga family or an individual was very great. It was, therefore, felt that some method should be devised by which the levy of estate duty on the former should be made more equitable. Section 34 of the principal Act has been amended with this object in view.'

14. It is well established 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 a reasonable classification founded on an intelligible differentia having a rational relation to the object sought to be achieved by the law. The Supreme Court in *Ameemnissa Begum v. Mahboob Begum*, : [1953]4SCR404 expressed:

' It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view.'

15. In *Ram Krishna Dalmia v. Justice Tendolkar*, A.I.R. 1959 S.C. 538 the Supreme Court, after setting out the various principles that have to be constantly borne in mind by the courts when they are called upon to adjudicate on the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws, expressed that 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 surrounding circumstances known to or brought to the notice of the court, that 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, and that where a statute directs 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, the court will strike down the law as an instance of naked discrimination.

16. In *Raja Jagannath Baksh Singh v. State of U. P.*, : [1962]46ITR169(SC) the Supreme Court, however, recognised a larger play to legislative discretion in the matter of classification so far as tax laws are concerned.

17. In *V. Venugopala Ram Varma Rajah v. Union of India*, : [1969]74ITR49(SC) the Supreme Court again reiterated the principle thus:

'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 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 the 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. ...'

18. In *K. T. Moopil Nair v. State of Kerala*, : [1961]3SCR77 it has been laid down that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, that if the legislature has classified persons or properties into different categories which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal, that similarly, different kinds of property may be subjected to different rates of taxation, that so long as there is a rational basis for the classification, Article 14 will not be in the way of such classification resulting in unequal burdens on different persons or classes of properties, and that if the same class of property similarly situated is subjected to an incidence of taxation which results in inequality, the law may be struck down as creating an inequality amongst

holders of the same kind of property. In *State of A. P. v. Nalla Raja Reddy*, : [1967]3SCR28 . the Supreme Court again reiterated the position that Article 14 applies to taxing statutes as well, that while the court may concede a larger discretion to the legislature in the matter of fiscal adjustment, it will still insist that a fiscal statute, just like any other statute, cannot infringe Article 14 by introducing unreasonable discrimination between persons or property either by classification or lack of classification, and that a statutory provision may offend Article 14 both by finding differences where there are none and by making no differences where there is one. In *V.J. Ferreira v. Municipal Corporation of Greater Bombay*, : [1972]2SCR257 , their Lordships of the Supreme Court again reiterated that the taxing statute is as much subject to Article 14 as any other statute, but in view of the inherent complexity of fiscal adjustment of diverse elements a larger discretion has to be permitted to the legislature for classification so long as there is no transgression of the fundamental principles underlying the doctrine of classification, and that the power to classify must be wide and flexible so as to enable the legislature to adjust its system of taxation in all proper and reasonable ways.

19. The Supreme Court in *Twyford Tea Co. v. State of Kerala*, : [1970]3SCR383 pointed out that the burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack, that it is on a person complaining of discrimination, and that such burden is proving not possible 'inequality' but hostile 'unequal treatment'. When the legislature reasonably applies an uniform rate after equalising matters between diversely situated persons differences in treatment must be capable of being reasonably explained in the light of the objects for which the particular legislation is undertaken. This must be based on some reasonable distinction between the cases differentially treated. To be able to succeed in the charge of discrimination one must establish conclusively that persons equally circumstanced have been treated unequally and vice versa.

20. Bearing the above principles in mind we have to see whether the provision in Section 34(1)(c) is violative of Article 14 of the Constitution. As already stated, this section makes a classification between coparceners leaving lineal descendants and other persons. 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 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 the 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 the provision in Section 34(1)(c) has been introduced.

21. We are not able to see how the classification can be sustained on the grounds 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*, [1933] A.C. 710 (P.C.) 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 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 interest 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 effect 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 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.

22. 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.

23. 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 family 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 A.P. v. Nalla Raja Reddy*, 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 : [1967]3SCR28 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 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 and to

avoid concentration of wealth. The intention, scope and object of the Act has only to be gathered from the provisions of the Act.

24. ' Estate duty ' has been defined under Article 366(9) of the Constitution as ' a duty to be assessed on or by reference to the principal 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 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 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 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.

25. Though the petitioner questioned the said section as being violative of Article 19(1)(f) in his affidavit, no arguments were addressed before us at the time of the hearing of the petition. We, therefore, do not express our opinion on that question.

26. In the result the writ petition is allowed with costs. Counsel's fee Rs. 250. The rule nisi is made absolute. It is, however, open to the respondent to make a fresh assessment on the principal value of the property actually passing on death or deemed to have passed on death without reference to Section 34(1)(c).

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