[IN THE PRIVY COUNCIL]

1957 *Present :* Viscount Simonds, Lord Reid, Lord Cohen, Lord Somervell of Harrow, and Mr. L. M. D. de Silva

THE ATTORNEY-GENERAL, Appellant, *and* AR. ARUNACHALAM CHETTIAR and others (Substituted for V. Ramaswami Iyengar and another, Administrators of the Estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased), Respondents

PRIVY COUNCIL APPEALS NOS. 16 AND 17 OF 1955

S. C. 235 and 236—D. C. Colombo, 37 and 38 (Special)

Estate duty—Hindu undivided family—Mitakshara system—Death of a coparcener in 1934—Death of a sole surviving coparcener in 1938—Exigibility of estate duty—Nature of a coparcener's interest—Nature of a single surviving coparcener's interest—Estate Duty Ordinance, No. 8 of 1919, ss. 2 (1) and (2), 7, 8 (1) (a) (b), 17 (6)—Estate Duty Ordinance, No. 1 of 1938, s. 73 (in its unamended form).

A father and his son, who were Natukottai Chettiars governed by the Mitakshara system of Hindu law, were coparcenary members of a joint Hindu family which had extensive trading and other interests in India, Ceylon, and other far Eastern countries. Immediately before July 9, 1934, when the son died, he and the father were the only living coparceners. On the death of the son, the father became the sole surviving coparcener of the family. But there were females also who, though they had not the rights of coparceners, yet had rights of residence in, and maintenance out of, the joint family property. Moreover it was competent for the surviving widow of the son to adopt a son who would thus become a coparcener with the father, and the father himself during his life and, after his death, his surviving widows had a similar power of adoption. These powers were in fact exercised after the father's death.

The son died on the 9th July, 1934. The father died on the 23rd February, 1938, shortly after the Estate Duty Ordinance No. 1 of 1938 came into operation. Both of them died in India where they were domiciled.

After the son died in 1934, assessment to estate duty was made by the Commissioner of Estate Duty, Colombo, in respect of what was described as the "Deceased's half share" of the assets of the business carried on by the family in Ceylon and of certain other assets. It was claimed that estate duty in respect of the son's estate was exigible either under section 7 or under section 8 (1) (*a*) or (*b*) of the Estate Duty Ordinance No. 8 of 1919. Estate duty was also claimed under the Estate Duty Ordinance No. 1 of 1938 in respect of the estate of the father after his death in 1938.

Held, in Appeal No. 16, (i) that a first principle of taxing law is that its language is not to be strained to an unnatural use in order to enlarge its scope.

(ii) that no property "passed" upon the death of the son within the meaning of section 7 of the Estate Duty Ordinance No. 8 of 1919. It cannot be said that a coparcener has a "share" of the family property which "passes" on his death.

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(iii) that it could not be contended that the son was at or immediately before his death "competent to dispose" of a share of the Ceylon property of the undivided family. Therefore, the provisions of section 8 (1) (*a*) were not applicable.

(iv) that the language of the Ordinance was inept to embrace the case of the death of a coparcener. It could not be contended that there was any property in which the son had an interest ceasing on his death within the meaning of section 8 (1) (*b*), read with section 17 (6).

Held further, in Appeal No. 17, (i) that the father was, at his death in 1938, a member of a Hindu undivided family the continuity of which was preserved, after his death, by the adoptions.

(ii) that, though it may be correct to speak of a single surviving coparcener as the "owner", yet it is still correct to describe that which he owns as the joint property of the undivided family. Therefore, the exempting provisions of section 73 (in its unamended form) of the Estate Duty Ordinance No. 1 of 1938 protected from taxation the property which was in the possession of the father at the time of his death.

APPEALS from two judgments of the Supreme Court reported in *55 N. L. R. 481* and *55 N. L. R. 496*.

Sir Frank Soskice, Q.C., with *John Senter, Q.C.*, *R. K. Handoo* and *Jenny Bisschop*, for the appellant.

D. N. Pritt, Q.C., with *Ralph Millner*, *J. D. Derrett* and *Sirimevan Amerasinghe*, for the respondents.

Cur. adv. vult.

[The following judgment was delivered in Appeal No. 16 :—]

July 10, 1957. [*Delivered by* VISCOUNT SIMONDS]—

This appeal from a judgment and decree of the Supreme Court of Ceylon and the succeeding appeal, No. 17 of 1955, from the same Court have certain facts in common which will be stated in the opinion now given by their Lordships and will not be repeated in their opinion on the second appeal.

Both appeals raise questions as to the exigibility of estate duty under the relevant Ordinances of Ceylon upon the death, first, of one Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar and, second, of his father one Rm. Ar. Ar. Arunachalam Chettiar. These gentlemen will be called "the son" and "the father" in this opinion.

The father and the son were members of a Hindu community known as Nattukottai Chettiars who inhabit certain districts of Southern India and were governed by the Mitakshara system of Hindu law in matters relating to inheritance succession, adoption, marriage and other matters. They were also coparcenary members of a joint Hindu family which

had extensive trading and other interests in India, Ceylon, and other far Eastern countries. Immediately before the 9th July, 1934, when the son died, he and the father were the only living coparceners. The father then became the sole surviving coparcener of the family. But there were females also who, though they had not the rights of coparceners, yet had rights of residence in, and maintenance out of, the joint family property and were in all respects members of the Hindu undivided family of which the father and son were coparceners. Moreover it was competent for the surviving widow of the son to adopt a son who would thus become a coparcener with the father and the father himself during his life and after his death his surviving widows had a similar power of adoption. It is convenient to set out here a genealogical tree which shows not only the members of the family but the manner in which these powers of adoption were exercised.

ARUNACHALAM CHETTIAR (No. 1).

Ramanathan Chettiar married twice

Somasundaram Chettiar (died 1923)

3 daughters

(1) Umyal Achchy (dead)

(2) Sivagami Achchy (alive in 1948; no issue)

Alamelua Achchy

Arunachalam Chettiar Sr. (No. 2) b. 4.1.1883 d. 23.2.1938 married three times

(1) Valami Achchy (dead)

(2) Letchumi Achchy (alive in 1948;) no issue; adopted a son (Arunachalam) (No. 4) on 17.6.45

(3) Natchiar Achchy (alive in 1948;) married after 9.7.34 daughter adopted a son b. 22.12.37(Ramanathan) d. 25.1.39 on 17.6.45

Arunachalam Chettiar Jnr. b. May 1901 d. 9.7.1934 married twice

3 daughters

(1) Alamelu Achchy (dead)

(2) Umaiyal Achchy (alive 1948;) adopted a son (Veerappan) on 17.6.45

The son, as has been said, died on the 9th July, 1934. The father died on the 23rd February, 1938. Both of them died in India where they were domiciled.

On the 31st October, 1938, the Assessor of Estate Duty, Colombo, served on the administrators of the estate of the father a notice of assessment that in respect of the estate of the son estate duty payable by them had been assessed at a figure of Rs. 223,493.70. This sum was by amended notices reduced to Rs. 221,743. From the notices it is clear that the assessment was in respect of what was described as

the "Deceased's half share" of the assets of the business carried on by the family in Ceylon and of certain other assets. Objection was duly taken to the assessment but was overruled by the Commissioner of Estate Duty. The matter was then appealed to the District Court of Colombo. The learned District Judge allowed the appeal and an appeal from his decision by the present appellant, the Attorney-General of Ceylon, to the Supreme Court of Ceylon was dismissed.

At the date of the son's death estate duty was imposed by the Estate Duty Ordinance No. 8 of 1919 which in all material respects was a faithful copy of the Finance Act, 1894, of the United Kingdom. It will be useful to set out the provisions of the Ordinance which are relevant to this appeal.

THE ESTATE DUTY ORDINANCE, No. 8 OF 1919.

2.—(1) In this Ordinance, unless the context otherwise requires, the term—

"Estate duty" means the duty imposed under the provisions of this Ordinance in case of the death of any person dying on or after the commencement* of this Ordinance.

"Deceased" means any person dying on or after the commencement of this Ordinance.

* * * *

"Property" includes movable and immovable property of any kind situate or being in the Colony and the proceeds or sale thereof respectively, and any money or investment for the time being representing the proceeds of sale. . . .

"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 the expression "on the death" includes "at a time ascertainable only by reference to the death".

(2) For the purposes of this Ordinance—

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself.

* * * *

7. In the case of every person dying after the commencement of this Ordinance, there shall, save as hereinafter expressly provided, be levied and paid, upon the value of all property settled or not settled, which passes on the death of such person, a duty called "estate duty", at the graduated rates set forth in the Schedule to this Ordinance.

8.—(1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

(*a*) Property of which the deceased was at the time of his death competent to dispose.

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by the cesser of such interest. . . .

17.—(*b*) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) If the interest extended to the whole income of the property, be the value of that property ; and

(*b*) If the interest extended to less than the whole income of the property, be such proportion of the value of the property as corresponds to the proportion of the income which passes on the cesser of the interest.

* * * *

It was and is claimed by the appellant that estate duty in respect of the son's estate was exigible either under S. 7 of the Ordinance (which corresponds with S. 1 of the Finance Act, 1894) or under S. 8 (1) (*a*) or (*b*) (which reproduce part of S. 2 of the same Act).

It became necessary therefore to determine with as much precision as the subject matter permitted what was the nature of the son's interest in the property in Ceylon of the Hindu undivided family of which he and the father were coparceners. This was a question of fact for the Courts of Ceylon and is today a question of fact for their Lordships also, notwithstanding that frequent reference was made to decisions of this Board given at a time when Hindu law was within their cognizance.

Expert evidence was accordingly called and given at great length by distinguished Hindu lawyers, who, though they necessarily agreed generally upon the material principles of the Mitakshara law, took different views upon certain aspects of that law. And it was upon those differences that counsel for the appellant based his argument, relying upon the evidence given by the learned Advocate General for Madras before the District Judge. It was not seriously urged that this was a case in which their Lordships should regard the matter as concluded by the fact that there were concurrent findings by the District Judge and the Supreme Court as to the nature in Hindu law of the son's interest. They have therefore felt at liberty, and indeed bound, to scrutinize the evidence given by the witnesses together with the authoritative text books and the case law upon which they relied. Nor did they reject references in the present appeal to authorities which had not been referred to in evidence. But, having done so, they must express the opinion which as the case proceeded more and more forced itself upon them, that the issue turned not upon the minor differences between the expert lawyers but upon the possibility, whichever of them was right, of bringing within the scope of a taxing Act couched in the language of the 1919 Ordinance an interest which originated in a wholly different system of law. The language of the Finance Act may be appropriate to the law of Ceylon, but it is singularly inappropriate to the legal concepts upon which the Hindu undivided family is based and their Lordships would at the outset insist as a first principle of taxing law that its language is not to be strained to an unnatural use in order to enlarge its scope. This is particularly to be observed where the matter which is the subject of claim is well known and susceptible of clear definition and taxation by appropriate words.

It is in this context that the questions must be asked whether any property passed upon the death of the son within the meaning of S. 7 of the Ordinance or whether, alternatively, he was "competent to dispose" of any property at the time of his death within S. 8 (1) (*a*) or whether there was any property in which he had an interest ceasing on his death within S. 8 (1) (*b*), an interest which falls to be measured by the extent to which a benefit accrues or arises by its cesser, which benefit is in its turn valued in accordance with the provisions of S. 17 (6) of the Ordinance.

First, then, did any and what property "pass" on the death of the son? An attempt was made at the hearing before their Lordships to argue that the whole of the property in Ceylon of the Hindu undivided family so "passed", though a claim for estate duty in respect of one half only was made. Their Lordships considered this argument to be inadmissible in view of the assessment that had been made and the course that the proceedings had so far taken. Counsel was therefore limited to the argument that the son's share in that property "passed" and that that share was one-half.

It appears to their Lordships that this contention is refuted by the most elementary consideration of the Mitakshara law. The learned District Judge observed that "to describe the deceased as a coparcener in relation to the joint property is but to adopt a convenient term in the process of attempting to analyse a legal concept which has no precise equivalent in this country". And he added, "the problem before us cannot satisfactorily be solved by the mere selection of appropriate words". But, whatever else may be said of a coparcener, it is clear that it would be a misuse of language to say that he had a "half share" or any "share" of the family property. The numerous passages to which their Lordships were referred in Mulla's Principles of Hindu Law and Mayne's Hindu Law and Usage illustrate and expand the statement made by Lord Westbury in delivering the opinion of this Board in 11 Moore's I.A. 75 at p. 89, "According to the true notion of an undivided family in Hindu Law, no individual member of that family whilst it remains undivided can predicate of the joint and undivided property, that he, that particular member has a certain definite share". A little earlier in 9 Moore's I.A. 539, at p. 611, Lord Justice Turner had referred to the property as "the common property of a united family". "There is," he said, "community of interest and unity of possession between all the ('coparceners') members of the family and upon the death of any one of them, the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession."

These two passages, capable as they may be of qualification and refinement, state the essential nature of a coparcener's interest. It is true that he has other rights which appear to enlarge that interest. He can separate from the family and ask for partition of the family property: he can in certain circumstances alienate his interest (a later and not universal development of the Mitakshara law) and, if he does so, the Court will, if necessary, protect the alienee's rights by decreeing

the partition for which he might himself have asked. So also the Court may intervene for the benefit of an execution creditor. These incidents give colour to the view that a coparcener has what may be called a "share". But against them may be set the fact that the disposition of the income of the family property is in the discretion of the Karta, usually the senior male member of the family, whose right and duty it is to maintain out of it not only the coparceners but also the female members of the family, the wives, widows and unmarried daughters of living or dead coparceners, and further to devote such money as may be necessary for such family purposes as the education, marriage, and religious ceremonies of the coparceners and of the members of their respective families (see Mulla Sec. 237). To say that in such circumstances a coparcener has a "share" of the property which "passes" on his death is in their Lordships' opinion a clear misuse of language. Nor does it help to say that the property is "vested" in or "owned" by (if "vest" and "own" are legitimate words to use) the coparceners for the time being rather than by all the members of the undivided family. It appears to their Lordships unnecessary to examine further this aspect of the claim, and the less so because they do not dissent from the views expressed by the District Judge and Mr. Justice Gratiaen in their careful and exhaustive judgments.

Section 7 failing him, the appellant turns to section 8 (1) (*a*) and contends that the son was at or immediately before his death "competent to dispose" of a share—again a half-share—of the Ceylon property of the undivided family: therefore the property passing on his death must be deemed to include that half share.

This contention was based primarily on the consideration that the son could at any time during his lifetime have obtained his share of the family property by partition. Having first communicated his intention to separate from the family, he could then have obtained his share either by agreement or in the absence of agreement by going to the Court and getting a decree. It was a complementary contention that he could by alienating or purporting to alienate his 'share' for value place his alienee in a position in which the Court would decree in favour of the latter the same partition that it would have granted to him. Thus indirectly at one or two removes, it was said, one half of the Ceylon property could have been disposed of by the son in his lifetime. In support of this argument reference was made to English cases, such as re *Penrose* [1] and re *Parsons* [2]. The correctness of these decisions is not in issue but it seems to their Lordships that they throw no light upon the question, though the argument illustrates the danger of trying to apply the principles of English law to the esoteric doctrines of the Hindu undivided family. There are other answers to the contention, but, leaving them aside for the moment, why should it be assumed that the son would take the necessary preliminary step of separating from his family, a step which for economic, sentimental and traditional reasons might be utterly repugnant to him? It would be little less than absurd to stretch "competency to dispose" to such an extremity.

[1] [*1933*] *Ch. 793.* [2] [*1943*] *Ch. 12.*

Moreover, if, and so far as "competency to dispose" rests upon a right to obtain partition, it must be remembered that both son and father were domiciled in India and that the family property included interests not only in Ceylon but in India and other parts of Asia. Their Lordships have no right to assume in favour of the appellant that, if there had been a partition by agreement or decree, any part of the property in Ceylon would have fallen to the share of the son. Learned Counsel for the appellant tried to meet this difficulty by saying that, if there was a partition, at least the Ceylon property would have fallen to someone's share, but this did not appear to their Lordships to be equivalent to saying that the son had been competent to dispose of it. The same considerations apply to the contention that the son was competent to dispose of one half of the Ceylon property because he might have alienated for value and his alience might have applied to the Court (to use a phrase sometimes used in this connection) "to work out the equities" in his favour. Such a process leaves the son at a long distance from competency to dispose of any particular part of the family property.

Finally section 8 (1) (*b*) of the Ordinance was invoked. Duty is exigible under this subsection in respect of property (*a*) in which the son had an interest ceasing on his death, (*b*) to the extent to which a benefit accrues or arises by the cesser of such interest, the value of that benefit being measured in accordance with the provisions of S. 17 (6) of the Ordinance, that is to say, if the interest extended to the whole income of that property, being the value of that property, or if it extended to less than the whole income of the property, being the corresponding proportion of the value of the property.

It is clear then that two elements must coincide. There must be not only a cesser of interest in property : there must be also a benefit arising by such cesser. And further the benefit must be capable of valuation by reference to the income of the property which the deceased had enjoyed. The brief exposition already given of the law of the Hindu undivided family is sufficient to show how inept is the language of the Ordinance to embrace the case of the death of a coparcener. Their Lordships are so fully in agreement with what was said by Mr. Justice Gratiaen in the Supreme Court that they quote and adopt his words "He [the deceased] merely had a right to be maintained by the Karta out of the common fund to an extent which was at the Karta's absolute discretion : in addition, he could, if excluded entirely from the benefits of joint enjoyment have taken appropriate proceedings against the Karta to ensure a recognition of his future maintenance rights and also to obtain compensation for his earlier exclusion. I find it impossible to conceive of a basis of valuation which in relation to such an 'interest' would conform to the scheme prescribed by S. 17 (6). Nor do I think that upon a cesser of that so-called 'interest' a 'benefit' of any value can be said to have accrued to the surviving 'coparcener' when the deceased's 'interest' lapsed".[1] This reasoning appears to their Lordships to be cogent and conclusive. Counsel for the appellant sought a way of escape by urging that at least the surviving coparcener must.

[1] *(1953) 55 N.L.R. 481, 493-494.*

benefit by the fact that the deceased could no longer claim partition of the family estate. That might or might not be an advantage to him, but the short answer is that it is not a benefit susceptible of valuation in the only way which the Ordinance prescribes.

In the result the claim to duty cannot be upheld either under S. 7 or S. 8 (1) (*a*) or (*b*). Subsidiary questions were raised with which it is not necessary to deal. If their Lordships had taken a different view on the main question, it would have been necessary to consider the local situation of certain so-called Mysore Bonds. It need not now be discussed. Nor is it necessary to consider whether, as was urged by the respondents, they were not liable to pay the duty upon the son's death, even if it was otherwise exigible. Upon this question their Lordships express no opinion. Finally a submission was made in regard to immovable property in Ceylon, in which reliance was placed on section 18 of the Partition Ordinance No. 10 of 1863 and section 7 of the Wills Ordinance No. 21 of 1844. This matter does not appear to have been raised in the Court of the District Judge. In the Supreme Court it was dealt with summarily by Mr. Justice Gratiaen and their Lordships concur in the view that he expressed.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

[The following judgment was delivered in Appeal No. 17 :—].

July 10, 1957. [*Delivered by* VISCOUNT SIMONDS]—

Their Lordships have in their opinion in the preceding appeal No. 16 of 1955 stated the facts which are relevant to this appeal also and made some references to the relevant law. They do not repeat them here.

The question which arises in this appeal is whether an assessment made by the Commissioner of Estate Duty under the Estate Duty Ordinance No. 1 of 1938 in respect of the estate of one Rm. Ar. Ar. Rm. Arunachalam Chettiar can be upheld. This gentleman, who died on the 23rd February, 1938, shortly after the 1938 Ordinance came into operation, was in the previous, and will in this, opinion be called the father. The learned District Judge upheld the assessment but his decision was reversed by the Supreme Court of Ceylon. Hence this appeal by the Attorney General for Ceylon.

The 1938 Ordinance introduced a new provision in regard to Hindu undivided families. By S. 73 (in its unamended form) it provided as follows : " Where a member of a Hindu undivided family dies no estate

duty shall be payable on any property proved to the satisfaction of the Commissioner to be the joint property of that Hindu undivided family".

The father, as appears from the facts stated in the previous opinion, became upon the death of his son in 1934 the sole surviving coparcener of a Hindu undivided family to which also a number of females belonged. No other coparcener came into existence during his lifetime, but at all material times there subsisted a power of adoption in his son's widow, a member of the family, and after his own death a similar power in his widows. These powers were in fact exercised after his death as appears from the table which is incorporated in the previous opinion. Moreover, at all material times the female members of the family had the right of maintenance and other rights which belong to female members of a Hindu undivided family.

The question then is a narrow one of construction, whether (*a*) the father was at his death a member of a Hindu undivided family and (*b*) the property of which he was the sole coparcener was the property of that Hindu undivided family. Upon (*a*) no doubt arises : it is conceded that he was a member of a Hindu undivided family. It must be observed that it was the same undivided family of which the son when alive was a member and of which the continuity was preserved after the father's death by the adoptions that have been mentioned. For his death did not put an end to the family line. Mr. Justice Gratiaen, in his judgment in the Supreme Court, quotes the language of this Board in two cases which appear to be apt to the present appeal. In A.I.R. 1918, P.C. 192, it was said : "Hindu lawyers do not regard the male line to be extinct or a Hindu to have died without male issue until the death of his widow renders the continuation of the line of adoption impossible", and in A.I.R. 1943, P.C. 196, it was said : "A Hindu undivided family cannot be brought finally to an end while it is possible in nature and in law to add a male member to it". These and similar quotations which might be multiplied supply the context in which the second part of the question must be considered, viz., whether, while the undivided family thus persists, the property in the hands (to use a neutral expression) of a single coparcener can properly be described as the "joint property of" that family.

The nature of the interest of a single surviving coparcener was the subject of exhaustive evidence by expert witnesses and their Lordships were referred to and studied numerous authorities in which in reference to his interest language was used not incompatible with his being regarded as the "owner" of the family property. But though it may be correct to speak of him as the "owner", yet it is still correct to describe that which he owns as the joint family property. For his ownership is such that upon the adoption of a son it assumes a different quality : it is such too that female members of the family (whose numbers may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which

arise, notwithstanding his so-called ownership, just because the property has been and has not ceased to be joint family property. Once again their Lordships quote from the judgment of Mr. Justice Gratiaen: "To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener"[1]. To this it may be added that it would not appear reasonable to impart to the Legislature the intention to discriminate so long as the family itself subsists between property in the hands of a single coparcener and that in the hands of two or more coparceners. It was urged that already the difference is there since a single coparcener can alienate the property in a manner not open to one of several coparceners. The extent to which he can alienate so as to bind a subsequently adopted son was a matter of much debate. But it appears to their Lordships to be an irrelevant consideration. Let it be assumed that his power of alienation is unassailable: that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it, and, if he does not alienate it, that is what it remains. The fatal flaw in the argument of the appellant appeared to be that, having labelled the surviving coparcener "owner", he then attributed to his ownership such a congeries of rights that the property could no longer be called "joint family property". The family, a body fluctuating in numbers and comprised of male and female members, may equally well be said to be owners of the property but owners whose ownership is qualified by the powers of the coparceners. There is in fact nothing to be gained by the use of the word "owner" in this connection. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as "joint property" of the undivided family. Judging by that test their Lordships have no doubt that the Supreme Court came to the right conclusion.

Had their Lordships taken a different view from that of the Supreme Court it might have been necessary to review some at least of the large number of cases cited at the Bar, from which chosen passages appeared to favour the contentions of the appellant. But, as was said in the case of the previous appeal, the matters upon which the parties and their expert witnesses were agreed were of far greater significance than those upon which they differed, and their Lordships doubt whether, even if the appellant's evidence stood alone, they could have come to any different conclusion as to the meaning and scope of the words "joint property of that Hindu undivided family" as used in the 1938 Ordinance.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

[1] *(1953) 55 N. L. R. 496, 501.*