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V. VENUGOPALA RAVI VARMA RAJAH

v.

UNION OF INDIA & ANR.

February 26, 1969

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[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Expenditure Tax Act (29 *of* 1957), *s.* 3(1)—*Applicable to Hindu families governed by* Marumakkattayam *law but not to Mappilla families governed by the* Marumakkattayam *law—If violative of Art.* 14 *Constitution of India,* 1950.

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The members of a Hindu undivided family governed by the *Marumakkattayam* law, while remaining joint, had entered into an agreement for separate enjoyment of certain properties of the family by different members as permitted by their customary law. For the assessment year 1958-59 its *karta,* in the status of a Hindu undivided family, filed a return under the Expenditure-tax Act, 1957, of the expenditure incurred by him in respect of the property under his 'personal control and direct enjoyment'. The Expenditure-tax Officer added the expenditure incurred

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by the other members of the family in respect of properties set apart for their use and enjoyment as the expenditure of the Hindu undivided family under s. 3(1).

On the question, whether s. 3 is violative of Art. 14 because, a Hindu undivided family governed by the *Marumakkattayam* law has to pay the tax at a higher rate by reason of the unit of taxation under the section being the Hindu undivided family there is an amalgamation of the ex-

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penditure of all the members of the family, whereas, a Mappilla family may pay tax at a lower rate since the members of a Mappilla undivided family governed by the *Marumakkattayam* law are liable to be taxed as 'individuals' under the section,

HELD : The equal protection clause of the Constitution allows a large play to legislative discretion in the matter of classification. The power to

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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 of tax, if the Legislature does so reasonably and if the classification is rational. A taxing statute may contravene Art. 14 if it seeks to impose on the *same class* of property, persons, transactions or occupations similarly situate, an incidence of taxation which leads to obvious inequality, but, a taxing statute is not exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for *different*

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categories of persons, transactions, occupations or objects. 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. [832 H; 833 A-F]

Though the law applicable to Hindu undivided families governed by the *Marumakkattayam* law and to the Mappilla *tarwad* in North Malabar

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has the same characteristics in two respects, namely, (a) tracing descent through females; and (b) community of interest and unity of possession in respect of the family property, the laws applicable to them in other respects differ widely. Initially a common system of law relating to family property of the *tarwad* was applicable to Hindus and Mappillas governed

by the *Marumakkattayam* law, but since the enactment of the Madras *Marumakkattayam* Act (22 of 1933) and other enactments governing Hindus, and the Mappilla *Marumakkattayam* Act (17 of 1939) governing the Mappillas, there are few points of similarity in property matters in the *tarwads*. The application of the Islamic laws of marriage and inheritance to the Mappillas has led to greater cleavage. The community of Mappillas governed by *Marumakkattayam* law is a small community, restricted only to the Northern area of Malabar district and is dwindling because of the impact of the Muslim law of inheritance applicable to shares obtained on partition. Parliament has been accustomed to treating a Hindu undivided family as a unit of taxation and to enacting tax laws making a distinction between a Hindu undivided family consisting of Hindus and undivided families of Mappillas. The long course of legislative history in matters of taxing income, wealth, gifts, capital gains and business profits indicates that the Legislature regarded undivided Hindu families as a class to which the legislation may appropriately be applied. Even though the basic scheme of a Hindu undivided family governed by the *Mitakshara* law is different from that of a family governed by the *Marumakkattayam* law, a Hindu undivided family governed by the *Marumakkattayam* law falls within he expression 'Hindu undivided family. Therefore, Parliament, by making the Act applicable to Hindu families and not to Mappilla families governed by the *Marumakkattayam* law, has not attempted any obvious inequality or made any discrimination violative of Art. 14. [832 B-C, G-H; 834 E-G; 835 A-G]

Raja Jagannath Baksh Singh v. *State of U.P.*, [1963] 1 S.C.R. 250, followed.

U.S. law referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2436 and 2437 of 1966.

Appeals by special leave from the judgment and order dated November 5, 1965 of the Kerala High Court in Writ Appeals Nos. 9 and 44 of 1964.

M. C. Chagla, C. K. Vishwa Nath Aiyar and *R. Gopalakrishnan*, for the appellant (in both the appeals).

D. Narsaraju, T. A. Ramachandran and *B. D. Sharma*, for the respondents (in both the appeals).

The Judgment of the Court was delivered by

Shah, J. Rajah Padmanabha Ravi Varma was the karta of a Hindu undivided family governed by the *Marumakkattayam* law. On his death in 1961 the appellant—his brother—became the *karta* of the family. In 1909 the members of the family, while remaining joint, had entered into an arrangement for separate enjoyment of certain properties of the family by different members. For the assessment year 1958-59 Rajah Padmanabha filed, in the status of a Hindu undivided family, a return under the Expenditure-tax Act of the taxable expenditure incurred by him in respect of the property under his "personal control and direct enjoyment". The Expenditure-tax Officer added thereto

A the expenditure incurred by the other members of the family in respect of properties set apart for their use and enjoyment. The Expenditure-tax Officer also served a notice of assessment under s. 15(2) calling for a return of expenditure by the Hindu undivided family for the assessment year 1959-60.

B The appellant then moved petitions before the High Court of Kerala under Art. 226 of the Constitution for writs quashing the assessment and the notice of demand for the year 1958-59 and the notice calling for a return for the assessment year 1959-60 contending, *inter alia*, that he was not liable to be assessed to tax on expenditure incurred in respect of property not "under his personal control and direct enjoyment". A single Judge of C the High Court of Kerala upheld the contention. In appeal a Division Bench of the High Court set aside the order of the single Judge.

The appellant contends that the law which enables the Expenditure-tax Officer to assess tax on the expenditure of all D members of the Hindu undivided family governed by the *Marumakkattayam* law, discriminates, on the ground of religion, between the Hindu undivided family and a Mappilla undivided family governed by the *Marumakkattayam* law resident in North Malabar.

Section 3 of the Expenditure-tax Act 29 of 1957 is the charg-E ing section : insofar as it is relevant it reads :

> "(1) Subject to the other provisions contained in this Act, there shall be charged for every financial year, commencing on and from the first day of April, 1958, a tax (hereinafter referred to as expenditure-tax) at the rate or rates specified in the Schedule in F respect of the expenditure incurred by any individual or Hindu undivided family in the previous year :
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> Provided that . . . . .
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> . . . . ."

G Under the charging section tax is imposed on individuals and Hindu undivided families. An undivided family which consists of Hindus alone may be treated as a unit of assessment : an undivided family whose members are not Hindus will be assessed to tax as an "individual". Counsel for the appellant contends that whereas a Hindu family governed by the *Marumakkattayam* H law is assessed to expenditure-tax on the total expenditure incurred by all the members of the undivided family, because the unit of taxation under s. 3 is the Hindu undivided family, a Mappilla undivided family governed by the *Marumakkattayam* law in

North Malabar is liable to be assessed to tax as an "individual", and on that account at a lower rate. A

Marumakkattayam law applied originally by usage to a section of the Hindus inhabiting the South-Western coastal region in India. Some centuries ago a section of the Hindu inhabitants of North Malabar were converted *en masse* to *Islam*, but they still continued to remain governed by the *Marumakkattayam* law especially in matters of property relations among members of the family. The law administered by the Courts to these communities is, subject to express statutory provisions, a body of customs and usages which have received judicial recognition. B

The *Mitakshara* law of joint family is founded upon agnatic relationship : the undivided family is characterised by community of interest and unity of possession among persons descended from a common ancestor in the male line. The principal incident of *Marumakkattayam* law is that it is matriarchate : members of the family constituting a *Marumakkattayam tarwad* are descended through a common ancestress in the female line with equal rights in the property of the family. Under the customary *Marumakkattayam* law no partition of the family estate may be made, but items of the family property may by agreement be separately enjoyed by the members. On death of the interest of a member devolved by survivorship. Management of the family property remained in the hands of the eldest male member, and in the absense of a male member a female member. A *tarwad* may consist of two or more branches known as *thavazhies;* each *tavazhi* or branch consisting of one of the female members of the *tarwad* and her children and all her descendants in the female line. Every *tarwad* consisted of a mother and her children—male and female—living in commensality, with joint rights in property. C D E

The District of Malabar formed part of the State of Madras till October 31. 1956. The customary *Marumakkattayam* law applicable to Malabar was modified in certain respects from time to time by the Madras Legislature *e.g.* the Malabar Marriage Act 4 of 1896. the Malabar Wills Act 5 of 1898. But the law relating to property relations between the members of the *tarwad* remained in its customary form till the fourth decade of this century. Under the customary law partition of the property of the family could not be claimed by an individual member or even by a *thavazhi*. It was so laid down by a course of judicial decisions for over 75 years, and this rule was accepted as settled law till the Madras Legislature enacted the Madras *Marumakkattayam* Act, 22 of 1933 and the Mappilla *Marumakkattayam* Act 17 of 1939. the former applying to Hindus and the latter to Mappillas who are Muslims. There were however significant differences between the two Acts. Under Act 22 of 1933 only F G H

A a *tarwad* could claim partition (s. 38) (by the Madras *Marumakkattayam* (Amendment) Act 26 of 1958 enacted by the Kerala Legislature the right to claim partition was also granted to individual members); property obtained by partition was held with incidents of *tarwad* property [s. 38(2)]; and the *Karnavan* was not required to maintain an inventory of the property, but had B to maintain a true and correct account of the income and expenditure of the *tarwad*. By the Madras Act 17 of 1939 any member of a Mappilla *tarwad* could claim partition (ss. 13 & 14); succession to property obtained by partition was governed by *Islamic* law (s. 18); the *Karnavan* was required to maintain an inventory of family property (s. 3); any member of the family C could apply to the Court for an order directing the *Karnavan* to give inspection of accounts or inventory [s. 5(2)]; surplus income had to be invested by the *Karnavan* (s. 7); and the *Karnavan* could be removed by a suit (s. 11).

These and other statutory modifications were applicable only to the Malabar area which was originally part of the State of D Madras and not to the State of Travancore-Cochin as it existed before the States Reorganization Act, 1956. There were several legislative measures in the States of Travancore and Cochin before those States merged with the Indian Union, and in the State of Travancore-Cochin after merger and in the State of Kerala, making changes in the customary *Marumakkattayam* E law: these were the Cochin Makkathayam Thiyya Act 17 of 1115 (M.E.); Cochin *Marumakkattayam* Act 13 of 1095 (M.E.). Cochin Nair Act 13 of 1095 (M.E.) and Act 29 of 1113 (M.E.); Cochin Paliam Tarwad Act 8 of 1097 (M.E.); Cochin Thiyya Act 8 of 1107 (M.E.); Travancore Nanjinad Vellala Regulation 6 of 1101 (M.E.); Travancore Nayar Regulation I of 1088 (M.E.) and II of 1100 (M.E.); Travancore F Wills Act 6 of 1074 (M.E.). It is sufficient to observe that by these statutes significant changes were made in the customary laws governing the family and property relations between the members governed by the *Marumakkattayam* law.

The Hindu Succession Act 30 of 1956 also made inroads G upon the customary law. Section 3(h) defined the expression "Marumakkattayam law", and by s. 7 it was provided that if a Hindu to whom the *Marumakkattayam* or *Nambudri* law would have applied, if the Hindu Succession Act had not been passed, dies, his or her interest in the property of a *tarwad, tavazhi* or *illom* shall devolve by testamentary or intestate succession, not H according to the *Marumakkattayam* law or the *Nambudri* law, but under the Hindu Succession Act. By s. 17 of the Act ss.8, 10, 15 and 23 apply to persons governed by the *Marumakkattayam* law subject to certain modifications.

The Hindu Adoptions and Maintenance Act 78 of 1956 and the Hindu Marriage Act 23 of 1955 also apply to Hindus governed by the *Marumakkattayam* law and modify the law relating to family relations. A

Initially a common system of law relating to family property of the *tarwad* was applicable to Hindus and Mapillas governed by the *Marumakkattayam* law. Since the enactment of Madras Act 22 of 1933 and the other Acts governing the Hindus, and Act 17 of 1939 governing the Mappillas, points of similarity even in property relations in the *tarwads* have considerably narrowed. Application of the *Islamic* laws of marriage and inheritance to the Mappillas led to greater cleavage. If a member of a Mappilla *Marumakkattayam* family married a person not governed by the *Marumakkattayam* law, the property of the person governed by the *Marumakkattayam* law apparently devolved according to that system of law, whereas the property of the person governed by the *Islamic* law devolved according to *Islamic* rules of succession. The result was that whereas the interest of a Mappilla governed by the *Marumakkattayam* law devolved by survivorship, his separate property descended by inheritance in accordance with the *Islamic* law. Hindus governed by the *Marumakkattayam* law, since the enactment of the Hindu Succession Act remained members of the undivided family, but on death the interest devolved by the rules prescribed by the Hindu Succession Act. B C D E

In a Hindu *tarwad* governed by the *Marumakkattayam* law the descent is matriarchate and all members male and female have equal shares in the property of the *tarwad*. Though not a family governed by the *Mitakshara* law, it is still a Hindu undivided family within the meaning of the Expenditure-tax Act. The property relations between members of a Mappilla *Marumakkattayam tarwad* governed by the matriarchate with equal shares for males and females were in certain respects, already stated, different from the relations between members of a Hindu joint family governed by the *Marumakkattayam* law. F

The community of Mappillas governed by the *Marumakkattayam* law is, compared to the Hindus, a small community restricted only to the northern area of the Malabar District. It is again a dwindling community because of the impact of the law of inheritance applicable to share obtained on partition. It is in the light of these special characteristics that the plea of discrimination must be considered. G

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 H

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 of 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 Art. 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 : *Raja Jagannath Baksh Singh* v. *State of Uttar Pradesh and Another*(1). The same rule has been accepted by the Courts in America.

Willis in his Constitutional Law of the United States has stated at p. 587 :

> "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."

As stated in Weaver's Constitutional Law Art. 275 at p. 405 :

> "The Fourteenth Amendment was not designed to prevent a state from establishing a system of taxation or from effecting a change in its system in all proper

(1) [1963] 1 S.C.R. 220.

and reasonable ways, nor to require the states to adopt an ironclad rule of equality to prevent the classification of property for purposes of taxation or the imposition of different rates upon different classes." A

Weaver again says at p. 397 :

"Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.....A classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates. In respect to such distinction, a legislative body has a wide discretion and an Act will not be held invalid unless the classification is clearly unreasonable and arbitrary." B C D

It is unnecessary to multiply citations.

The Parliament has declared for the purpose of the Expenditure-tax Act an undivided family of Hindus as a unit of taxation and imposed tax at the rates prescribed. To fall within the description the unit must be an undivided family of Hindus. Within the expression "Hindu undivided family" will fall an undivided family of Hindus governed by the *Marumakkattayam* law. Even though the basic scheme of a Hindu undivided family governed by the *Mitakshara* law and the *Marumakkattayam* law is different in two important respects, *viz.* the descent is through females and children both males and females have equal rights to property—these families are still Hindu undivided families. The law applicable to Hindu undivided family governed by the *Marumakkattayam* law, and to the Mappilla *tarwad* in North Malabar has the same characteristics in two principal respects—(a) descent is traced through females; and (b) there is community of interest and unity of possession in respect of the family property. But the laws applicable to those families in other respects widely differ. E F G

The Mappilla families governed by the *Marumakkattayam* law reside in a small part of the country and form numerically a small community. The Parliament has again been accustomed H

A in enacting tax laws to make a distinction between a Hindu Undivided Family consisting of Hindus and undivided families of Mappillas. By the taxing Acts the Parliament could have treated Mappilla *tarwads* as units of taxation. But the mere fact that the law could have been extended to another class of persons who have certain characteristics similar to a section of the B Hindus but have not been so included is not a ground for striking down the law. In treating a Hindu Undivided Family as a unit of taxation under the Expenditure-tax Act and not a Non-Hindu Undivided Family the Parliament has not attempted an "obvious inequality".

C Under the taxing Acts the scheme of treating a Hindu Undivided Family has been adopted for a long time, *e.g.*, the Indian Income-tax Act IX of 1869, Indian Income-tax Act IX of 1870, Indian Income-tax Act XII of 1871, Act VIII of 1872, Act II of 1886, Act VII of 1918, Act XI of 1922. Act 43 of 1961 have treated a Hindu Undivided Family as a distinct taxable entity. Similarly under the Wealth-tax Act 27 of 1957 and the Gift-tax D Act 18 of 1958, the Hindu Undivided Family is made a unit of taxation. Under the Business Profits Tax Act 21 of 1947 and the Excess Profits Tax Act, 1940 also the Hindu Undivided Family was made a unit of taxation. For the purposes of these Acts Mappilla *tarwads* governed by the *Marumakkattayam* law have been regarded as individuals.

E This long course of legislative history in matters of taxing income, wealth, gifts, capital gains and business profits clearly indicates that the legislature regarded undivided families of Hindus as a class to which the legislation may appropriately be applied. An intention to effectively administer the taxing Acts and not to discriminate on the ground of religion may be attributed F to the Legislature.

The Parliament in the present case having made the Expenditure-tax Act applicable to Hindus governed by the law of the joint family, but not including Mappilla families who are governed by the Mappilla *Marumakkattayam* Act has not made any discG crimination and the charging section is not liable to be struck down on the ground that the Mappilla family may have to pay tax at a lower rate, whereas a Hindu Undivided Family, by reason of the amalgamation of the expenditure of all the members of the family, may have to pay tax at a higher rate.

H The appeals fail and are dismissed with costs. One hearing fee.

V.P.S. *Appeals dismissed.*