A

M. CT. MUTHIAH & ANOTHER ETC.

v.

THE CONTROLLER OF ESTATE DUTY, MADRAS ETC. (AND VICE VERSA) B

JULY 17, 1986

[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

Estate Duty Act 1953—Sections 2(15), 5, 6, 15, 34(3)—Estate duty—Property liable to estate duty—Personal accident Insurance policy—Money received by heirs of deceased under the policy—Whether forms part of estate of deceased, passes on death—Accident policy and life policy—Distinction between. C

Jurisprudence—Custom—Prevalence of—Matter of evidence—'Dwyanamanushyana' form of adoption—Prevalence of in Madras State. D

The deceased was the Karta of a Hindu undivided family. He had two sons. He gave his first son in adoption to his divided paternal uncle. He was joint with his second son throughout his life. He took out a personal accident insurance policy with the Insurance Company and effected a nomination in favour of his first son. During the currency of the policy, the deceased died following the crash of the airliner in which he had travelled, and the Insurance Company paid the nominee a sum of Rs.2 lakhs, the benefit stipulated under the terms of the policy. At the time of his death, the deceased had other properties and interests. One was his interest as an undivided coparcener in his joint family which consisted of himself and his second son. E F

In the assessment proceedings under the Estate Duty Act 1953, the accountable persons urged before the Deputy Controller of Estate Duty: (i) that the amount of Rs.2 lakhs could not be aggregated with the rest of the properties, but must be brought to charge independently as a separate estate in itself, because the deceased had no interest at all in the insurance money, and (ii) that the adoption in 1931 was on the basis that notwithstanding adoption into another family, the adoptee must continue to retain his interest in the properties belonging to the family of his birth and, therefore, he was entitled, as on the date of the de- G H

A ceased's death, to an equal interest in the deceased's family properties, so that the quantum of the deceased's coparcenary interest was not one-half but only one third of the total value of the family properties. A "Muri" (deed of adoption) that was executed was produced in this regard.

B

The Deputy Controller rejected these contentions and held: (i) that the personal accident insurance money of Rs.2 lakhs paid by the Insurance Company should be charged to estate duty and it had to be aggregated with the rest of the properties passing on the deceased's death; (ii) that the insurance money of Rs.2 lakhs was property which the deceased was competent to dispose of by will; (iii) that the deceased C did have an interest in the insurance money; (iv) that the deceased's interest in the coparcenary property, which had to be included in the dutiable estate, extended to one half share of the joint properties on the basis that the deceased and his second son were alone entitled as coparceners to the said properties; (v) that the document produced in D support of the plea of adoption was not genuine and even otherwise it had no legal effect on the continued rights of the adopted son in the family of his birth subsequent to his adoption. He, therefore, included in the dutiable estate, one-half of the joint family properties as being the measure of the deceased's coparcenary interest.

E The accountable persons appealed against the above assessment to the Central Board of Revenue. The Board held: (i) that the insurance money of Rs.2 lakhs was chargeable to estate duty under s. 6; (ii) that the deceased had interest in the insurance money; (iii) that the deceased did have the power of disposition over the insurance money both by the exercise of power of nomination under the policy and also indepen- F dently by the exercise of any testamentary power; (iv) that the Hindu law of adoption makes the adopted son lose his property interests in the family of his birth and that the "dwyamanushyana" form of adoption had become obsolete in Madras, and no such custom was prevailing in the Nattukottai Chettiar community, under which the adopted son never loses his property rights in the family of his birth and, therefore, G upheld the assessment of one-half of the value of the whole of the joint family property as the measure of the deceased's dutiable interest.

On reference, the High Court held that as the deceased was competent to dispose of the monies payable under the accident policy, the sum of Rs.2 lakhs was includible in the principal value of the estate but H the same was not liable to be aggregated with the other properties and

had to be assessed as an estate by itself and that the type of adoption pleaded by the accountable person was recognised by the custom of the Nattukottai Chettiar community, the terms of the 'muri' formed part of the adoption and the adoption could not be considered *de hors* the agreement and hence the deceased had only one-third share in the joint family properties at the time of his death.

In the appeal to this Court, on behalf of the accountable persons it was contended: (i) that it was a condition precedent for the attraction of the duty that (a) the estate holder must have had possessed or enjoyed a property or an interest in property; (b) the interest in a property might be either vested or contingent; (c) but that interest should be with regard to either an immovable property or a movable property which was capable of being ascertained during the lifetime or at the time of the death of the estate holder; (d) a contingent interest could fall within the purview of the Act only if the interest of a tangible nature and was capable of being ascertained (ii) that there had to be a passing of property or intertest as contemplated by s. 2(16). There has also to be a change in the beneficial possession and enjoyment of property of the interest in that property; (iii) that an accident insurance policy could not be construed as a movable property unlike a life insurance policy or an annuity since a person who possessed it could not also be said to have a contingent interest because there was every possibility of the accident policy getting extinguished or rendered worthless during his lifetime; (iv) that in the case of a life insurance policy, there is always a tangible continuing interest only that the value of that interest might be subjected to a change at the time of passing of the property; (v) that it was not necessary that during the lifetime of the deceased the property in question should have 'attained' the full value e.g. 'Annuity'. Only a future interest that crystalised after the death of the estate holder; (vi) that since the benefit in accident policy could only accrue after the death of the estate holder, it became property for the first time after the demise of the estate holder.

Allowing the appeal by the accountable persons and dismissing the appeal of the Revenue, the Court,

HELD: 1.1. Under the personal accident insurance policy in question the insurance money became property only on happening of a specified contingency. That property arose on the death of the deceased during the subsistence of the accident policy. The property is the sum of Rs.2 lakhs which became receivable by the nominee or the legal rep-

A resentative of the deceased because of the death of the deceased in the air accident during the subsistence of the policy. That right to the sum arose because (a) the deceased died; (b) in air accident; (c) during the subsistence of the policy. The property came into being on that contingency after death. No property can, therefore, be deemed to pass on the B death of the deceased. [342D-F]

1.2 During the lifetime of the deceased, an interest was vested totally and irretrievably in the hands of the beneficiary or the legatee or the nominee. The death did not cause property to change hands. The fact that a person can nominate a beneficiary will not tantamount to a disposition of the property. [342F-G]

C

1.3 Whether a particular custom prevails in a particular community or not is a matter of evidence. [343C]

2.1 Section 5 of the Estate Duty Act, 1953 provides that there shall D be levied and paid upon the principal value ascertained in the manner provided of all properties which passes on the death of a person. Three factors are important: (1) there must be passing (2) of such property and (3) such passing on must be on the death of a person. [326F]

2.2 Section 3(1)(a), (b) & (c) provides for certain situations in E which a person is deemed competent to dispose of property. Section 6 deals with property within disposing capacity and provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. [327A-B]

3.1 It was a condition precedent for the application of the Act F that the estate holder must have possessed or enjoyed the property or interest in property, the interest in property might be either vested or contingent but interest should be that with regard to which either immovable property or movable which was capable of being ascertained during the lifetime or at the time of the death of the estate holder. The property vested or contingent must be one which was capable of being G ascertained. Even if these tests were satisfied then there has to be a passing of that property or interest as contemplated under s. 2(16) of the Act. Even if a person might have power to dispose of a property or interest in property, he cannot or his estate cannot be brought within the purview of the Act solely because of that factor. In order for an estate to be liable to estate duty, the power of disposition must be with H regard to a property capable of being ascertainable during the lifetime

of the deceased or at the time of his death. There had to be a change in the beneficial possession and enjoyment of the property or the interest in that property. In other words, the property or interest which is liable to estate duty has to pass through the estate of the deceased. [340B-E] A

3.2 Though the deceased might have a right of disposition as and when the property would be available in case the contingency happens, namely, the death of the deceased in an accident, but that right is different from the right to the money accruing or arising because of the death due to accident. [340E-F] B

3.3 An accident insurance policy cannot be construed as a movable property unlike a life insurance policy or an annuity because as laid down in s. 2(15) of the Act it is not only necessary for the person to have property or interest in property but that interest must be in regard to a movable property and his interest should also be capable of being ascertainable during his lifetime or at the time of his death in that movable property. Secondly, an accident insurance policy could not be construed as a property or an interest in property since a person who possessed it cannot also be said to have a contingent interest because there was every possibility of the accident policy getting extinguished or rendered worthless during his lifetime; on the other hand, in the case of a life insurance policy, there was always a tangible continuing interest only that the value of that interest might be subjected to change at the time of passing of the property. [340H; 341A-C] C D E

3.4 A contingent interest which did not get crystallised during the lifetime of the deceased but which interest would, with certainty, accrue after the demise of the estate holder will be caught by s. 6 of the Act. The accident policy could only accrue after the death of the estate holder. It became property for the first time after the demise of the estate holder. There was no element of property during the lifetime of the estate holder. [341C-D] F

3.5 The interest in an accident insurance policy did not pass through the estate of the deceased as in the case of a life insurance policy or annuity and in the instant case, the interest directly went to the beneficiaries in the case of death by accident of the estate holder. [341E] G

3.6 In the instant case, the property is really born on the death of the deceased in an accident. The sum of Rs.2 lakhs was non-existent before the death. There might have been some right of disposition in H

respect of the property which might accrue on the death of the deceased. That right is different from the right to the movable property of Rs.2 lakhs that is taking place. [340F-G]

Attorney-General **v.** *Quixley,* **1929 All England Reports Reprint 696 and** *Controller of Estate Duty* **v.** *A.T. Sohani, New Delhi,* **78 I.T.R. 508, distinguished.**

Controller of Estate Duty **v.** *Kasturi Lal Jain,* **93 I.T.R. 435 and** *Controller of Estate Duty, Patiala* **v.** *Smt. Motia Rani Malhotra,* **I.T.R. 42, approved.**

Bharatkumar Manilal Dalal **v.** *Controller of Estate Duty, Gujarat,* **99 I.T.R. 179, over-ruled.**

Westminster Bank Ltd. **v.** *Inland Revenue Commissioners* **[1957] 2 All E.R. 745 = 36 I.T.R. (ED) 3,** *Smit. Amy F. Anti* **v.** *Assistant Controller of Estate Duty, Bombay* **142 ITR 57,** *P. Indrasena Reddy & Pingle Madhusudhan Reddy* **v.** *Controller of Estate Duty,* **156 ITR 45,** *Shri H. Anraj etc.* **v.** *Government of Tamil Nadu etc.* **[1986] (1) SCC 414,** *Smt. Sarabati Devi & Anr.* **v.** *Smt. Ushal Devi,* **1984(1) SCR 992 and** *Public Trustee* **v.** *Inland Revenue Commissioners,* **[1960] A.C. 398, referred to.**

CIVIL APPELLATE JURISDICTION: Civil appeal No. 2086 of 1974 and 67 of 1975

From the Judgment and Order dated 20th September, 1973 of the Madras High Court in Tax Case No. 310 of 1967.

C. Ramakrishna, Mohan Parasaran and Mrs. Janaki Ramachandran, for the Appellants in C.A. No. 2086 of 1974 and for the Respondent in C.A. No. 67 of 1975.

S.C. Manchande, Dr. Gauri Shankar, K.P. Bhatnagar and Miss A. Subhashini, for the Appellant in C.A. No. 67 of 1975 and for the Respondent in C.A. No. 2086 of 1974.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. These two appeals are from the judgment and order of the Madras High Court dated 20th September,

1973 by certificates of fitness granted by the High Court under section 65 of the Estate Duty Act, 1953, hereinafter called the Act.

Civil Appeal No. 2086 of 1974 is by accountable persons and Civil Appeal No. 67 of 1975 is by the revenue. The judgment under appeal is reported in 94 I.T.R. at page 323.

The accountable persons are the sons of one late M. Chindermbara Chettiar hereinafter called the deceased. The deceased was the Karta of a Hindu undivided family. He gave his first son Muthiah, in adoption to his divided paternal uncle Pethachi Chettiar, and adoption ceremony was held on 7th June, 1931. Subsequently his second son, also called Pethachi, was born in 1933, with whom the deceased was joint throughout his life.

On 21 February, 1954, prior to proceeding to Malaya by air, the deceased took out a personal accident insurance policy with the United India Fire and General Insurance Company Ltd. (hereinafter called the Insurance Company). Under the terms of the said policy which was to be in force for one month, the Insurance Company had agreed that if at any time during the currency of the said policy, the deceased should sustain any accident resulting in any injury or injury leading to his death, then, the Insurance Company undertook to pay to the assured or to the legal representative of the assured in case of the assured's death, such sum as might be appropriate in the Table of Benefits appended to the Policy. The Table of Benefits mentioned that in case of death or total disablement the benefit payable was Rs. 2 lakhs, in case of partial disablement, Rs. 1 lakh, in case of temporary disablement, a weekly payment of Rs.1200 or Rs.300 according to the nature of the disablement. The policy, inter alia, provided that "the policy is unassignable and the company shall not be affected by notice of any trust or purported to be imposed upon assignment of or of any charge or lien imposed or purported or any dealing with the policy and the receipt of the insured or the executors or administrators of the insured for any moneys payable thereunder shall in all cases be any effectual discharge to the company". A sum of Rs.250 was paid or credited as paid by the deceased as and towards the premium and other charges for the aforesaid personal accident insurance policy. It also appeared that in the proposal Form dated 20th February, 1954 filed by the deceased with the Insurance Company, the deceased had effected a nomination in favour of his son M. Ct. Muthiah. On the 13th March, 1954, the deceased died following the crash of the airliner in

which he had travelled. On his death the Insurance Company paid the nominee, the appellant No. 1 herein a sum of Rs. 2 lakh which was the benefit stipulated to be paid, in such an event, under the terms of the policy. At the time of his death the deceased had other properties and interests. One was his interest as an undivided coparcener in his joint family which consisted (after the adoption away of his first son A. Muthiah) of the deceased and his second son Pethachi.

In the assessment under the Estate Duty Act, 1953 (hereinafter called the 'Act'), the Deputy Controller of Estate Duty was of the view that the personal accident insurance money of Rs. 2 lakhs paid by the Insurance Company should be charged to estate duty and further that it had to be aggregated with the rest of the properties passing on the deceased's death. He held further that the insurance money of Rs. 2 lakhs was property which the deceased was competent to dispose of by will. Before the Deputy Controller, it was urged that the amount of Rs. 2 lakhs could not, in any case, be aggregated with the rest of the properties, but must be brought to charge independently as a separate estate in itself, the contention being that the deceased had no interest at all in the said insurance money. The Deputy Controller rejected this contention as untenable, holding that the deceased did have an interest in the insurance money. As in respect of the deceased's interest in the coparcenary property, which had to be included in the dutiable estate, the Deputy Controller took the view that such interest extended to 1/2 share of the joint properties on the basis that the deceased and his second son Pithachi were alone entitled as coparceners to the said properties. He rejected the contention that M. Ct. Muthiah who had been adopted away from this family in 1931 was nevertheless entitled, as on the date of the deceased's death, to an equal interest in the deceased's family properties, so that the quantum of the deceased's coparcenary interest was no one-half but only—one-third of the total value of the family properties. It was urged before the Deputy Controller that the adoption of M. Ct. Muthiah in 1931 was on the basis that notwithstanding his adoption into another family, M. Ct. Muthiah must continue to retain his interest in the properties belonging to the family of his birth. A *"Muri"* in Tasil in curdgeon-leaf purported to have been executed on 7th June, 1931 was produced before the Deputy Controller in support of the above plea. The Deputy Controller did not accept the genuineness of the said document. But even otherwise, the Deputy Controller proceeded to hold that the "Muri" had no legal effect on the continued rights of adopted son in the family of his birth subsequent to his adoption. He accord-

ingly included, in the dutiable estate, one-half of the joint family properties as being the measure of the deceased's coparcenary interest.

The accountable persons appealed against the above assessment to the Appellate authority which at that time, as the law then was, the Central Board of Revenue.

The Central Board held that the insurance money of Rs. 2 lakh was chargeable to estate duty under section 6 of the Act. The Board took the view that under the terms of the policy, the deceased had the right to nominate a person to take the moneys on the deceased's death and also the capacity to dispose of the amount by testamentary disposition.

On the question as to whether the amount of Rs. 2 lakhs must, in any event, be charged as a separate estate in itself, segregated from the rest of the properties, the Central Board rejected the accountable persons' contention that the deceased never had any interest in the said insurance money. On the terms of the accident policy, the Board was of the view that the deceased did have the power of disposition over the insurance money both by the exercise of the power of nomination under the policy and also independently by the exercise of any testamentary power.

On the point relating to the exact quantum of the deceased's interest in coparcenary property, the Board accepted the genuineness of the "Muri". Before the Board, an Agreement in writing dated 19th August, 1976 between A. Muthiah and Pethachi, the two sons of the deceased, was produced to further support the claim that Muthiah retained his coparcenary interest in the family of his birth despite his adoption into another family.

The Board however held that the Hindu law adpotion makes the adopted son lose his property interests in the family of his birth and that the "dwamushayana" form of adoption pleaded by the accountable persons had become obsolete in Madras. The Board rejected the claim that there was a custom prevailing in the Muttukttsi Chettiar community, to which the deceased belonged, under which the adopted son never loses his property rights in the family of his birth. On these findings, the Board upheld the assessment of one-half of the value of the whole of the joint family property as the measure of the deceased's dutiable interest.

A After the decision of the Board, the following questions of law were referred to the High Court.

> "1. Whether the deceased was competent to dispose of the moneys payable under the accident policy and whether the sum of Rs.2,00,000 is includible in the principal value of the estate?
>
> 2. If the sum of Rs. 2 lakhs was liable to be assessed to duty whether the said amount could be aggregated with the other properties or should be assessed as an estate by itself?
>
> 3. Whether the share of the deceased Chindambaram Chettiar in the property of the joint family at the time of his death was one half or one third of the property?"

The High Court by the judgment under appeal answered the first question in favour of the revenue and against the accountable person and the second and third questions were answered against the revenue and in favour of the accountable person.

Being aggrived by the answer against the first question, the accountable person has preferred the appeal being appeal No. 2086 of 1974 and on the certificate granted by the High Court and on the subsequent two questions, the revenue obtained the certificate of fitness to appeal to this Court which is appeal No. 67 (NT) of 1975.

The High Court in the judgment under appeal held that under section 5 of the Act, all properties which passed on the death of the person were liable to estate duty. Under section 6 of the Act, property which the deceased was at the time of his death competent to dispose of should be deemed to pass on his death and under section 3(1)(a), a person was 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 it of. General power included every power of authority enabling the holder thereof to appoint or dispose of property as he thought fit, whether exercisable by instrument inter vivos or by will or both. A personal accident policy was not a contract of indemnity. The amount payable on death of the insured was fixed in the policy itself. It was in the contemplation of the parties even at the time of the contract that in the case of death the amount would be

payable either to the nominee or the legal representative and not to the assured. It was thus in the nature of a provision made by the deceased for such person. The deceased had no interest in the money as such because that came into existence the moment after his death and was payable to the nominee or legal representative. But he had a right in the payment on his death to his legal representatives. In other words, he had interest over the payment of money and not in the money itself. He had a right to take away that right of the legal representatives to receive the money and to vest it in some other person by will. He could nominate a person to whom the amount should be paid. Nomination in such a case was in the nature of a disposition by will and as such till he breathed his last he could cancel such nomination and nominate another. The nominee, unlike an assignee of life policies, got title to the money on death, for the property itself came into existence by reason of the death and was payable to the nominee by virtue of the power of disposition by will which deceased had over the sum. The High Court further held that the money paid on death was property and that was clear. This property, according to the High Court, came into existence at the time of death. The High Court further held that though the property was not in existence before his death, since it came in at the time of his death, the deceased was competent to dispose of the same by will. It was this power, according to the High Court, of disposal that attracted the provisions and made it property which was deemed to pass on his death under section 6 of the Act. The beneficial interest in the policy which accrued or arose on death was the sum paid out under the policy and this beneficial interest having been purchased by the deceased, the provisions of section 15 of the Act were also attracted. Further, the estate had been depleted to the extent of the premium paid and the beneficial interest purchased and the deceased not having received a full equivalent for what he has paid and having regard to the nature of the policy, the intention from the beginning was to make a provision. The principal value of the estate that was deemed to pass under section 6 and which accrued or arose under section 15 was that sum which was paid out under the policy. As there was no devolution of interest from the deceased to another person and from the very inception the amount was payable only to the nominee or legal representative, section 5 of the Act was not applicable.

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It was further held by the High Court that in the case of a personal accident policy, the property was not the policy but the ultimate money that was paid and that should be deemed to pass on death of the deceased because of his competency to dispose of the same by

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A will and the holder of the policy had a right to have the amount paid to his legal representative or nominee. The right was with respect to the disposition of the money payable under the policy and not a right in the money itself. But in case of a life insurance policy, both the policy and the money payable thereon was property which could be settled B during the lifetime of the insured. As the deceased never had any interest during his lifetime in the money paid on death under the personal accident policy, though he was competent to dispose of the same by will, the sum paid under the policy was not aggregatable with the other estate of the deceased and was to be treated as an estate by itself under section 34(3) of the Act. The High Court held that though as the deceased was competent to dispose of the moneys payable under C the policy, the sum of Rs. 2 lakhs was includible in the principle value of the estate but the same was not liable to be aggregated with the other properties and had to be assessed as an estate by itself.

Regarding adoption, the High Court was of the view that the D type of adoption set out by the accountable person was recognised by the custom of the Nattukottai Chettiar community, the terms of the muri formed part of the adoption and the adoption could not be considered de hors the agreement and hence the deceased had only one-third share in the joint family properties at the time of his death.

E In order to appreciate the question involved in Civil Appeal No. 2086 of 1974, it is necessary to bear in mind the scheme of the Act. Section 5 deals with levy of estate duty. It states that there shall be levied and paid upon the principal value ascertained in the manner provided of all properties which passes on the death of such person. Therefore, three factors are important; (1) there must be passing, (2) F of such property and (3) such passing on must be on the death of a person. Section (2)(15) of the Act defines 'property' as inclusive of 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 includes any property converted from one species into another by any method. There are two Explanations which G are not necessary to be set out in detail.

Section 2(16) deals with 'property passing on the death' and includes any 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 H period ascertainable only by reference to the death'.

Section 3(1)(a), (b) & (c), inter alia, provides for certain situations in which a person is deemed competent to dispose of property. Section 5 as we have noted before deals with the levy of estate duty. Section 6 deals with property within disposing capacity and provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

Section 14 deals with policies kept up for a donee. It is not necessary to set out the actual terms of the said provisions. Section 15 deals with annuity or other interest purchased or provided by the deceased and provides that any annuity or other interest, purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

Section 34 of the Act provides for aggregation and stipulates that for purposes of determining the rate of the estate duty to be paid or any property passing on the death of the deceased, what kinds of property should be aggregated. Except sub-section (3) of section 34, nothing is material for our present purpose. Sub-section (3) of section 34 reads as follows:

> "(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), any property passing in which the deceased never had an interest, not being a right or debt or benefit that is treated as property by virtue of the Explanation to clause (15) of section 2, shall not be aggregated with any property, but shall be an estate by itself, and the estate duty shall be levied at the rate or rates applicable in respect of the principal value thereof."

Sree C. Ram Krishan, learned counsel for the accountable persons in the first appeal before us and who was the advocate who had appeared before the High Court made various submissions. He submitted that it was a condition precedent for the attraction of the duty that (a) the estate holder must have had possessed or enjoyed a property or an interest in property; (b) the interest in a property might be either vested or contingent; (c) but that interest should be with regard to either an immovable property or a movable property or an interest in immovable or movable property which was capable of being ascertained during the lifetime or at the time of the death of the estate

A holder; (d) a contingent interest could fall within the purview of the Act only if the interest was of a tangible nature and was capable of being ascertained, that is to say, the estate holder must always be having a possibility to enjoy or possess that interest either actually or constructively during his lifetime itself. He cited the example of a life B insurance policy.

According to counsel, if the above tests were satisfied then there had to be a passing of that property or interest as contemplated by section 2(16) of the Act. Even though a person might have a power to dispose of a property or interest in property, he could not or his estate could not be brought within the purview of the Act solely because of C the above factors. Because over and above this, in order for an estate to be liable for estate duty the power of disposition must be with regard to a property capable of being ascertainable during his lifetime or at the time of his death. It was urged that a property or interest in property has necessarily to change hands in order to attract estate D duty. There has also to be a change in the beneficial possession and enjoyment of the property or the interest in that property. In other words, it was submitted, the property of interest which was liable for estate duty under the Act has to pass through the estate of the deceased. According to the counsel, applying the above principles it could not be said that an accident insurance policy had the characE teristics of a property or interest in property and therefore was not liable for estate duty because an accident insurance policy could not be construed as a movable property unlike a life insurance policy or an annuity because as laid down in section 2(15) it was not only necessary for a person to have property or interest in property but that interest must be in regard to a movable property and his interest should also be F capable of being ascertainable during his lifetime or at the time of his death in that movable property. An accident insurance policy, according to him, could not be construed as a property or an interest in property since a person who possessed it could not also be said to have a contingent interest because there was every possibility of the accident policy getting extinguished or rendered worthless during his G lifetime; on the other hand in the case of a life insurance policy, there is always a tangible continuing interest only that the value of that interest might be subjected to a change at the time of passing of the property. Further it was submitted that it was not necessary that during the lifetime of the deceased the property in question should have 'attained' the full value e.g. 'Annuity'. An annuity could mature even H after the death of the estate holder. But it must be noted that the

estate holder in the case of an annuity deposit knew precisely the value of the contingent interest that would mature at a future date. Consequently even a contingent interest which did not get crystalised during the lifetime of the deceased but which interest would, with certainty, accrue after the demise of the estate holder will be caught by section 6 as a property passing from the deceased to the beneficiary. Thus though only a future interest that crystalised after the death of the estate holder would be deemed as a property of the estate holder. Learned counsel submitted that an accident policy is not property, because it lacks the well known characteristic of property namely, that it should be capable of being mortgaged or pledged as a security. It lacked the characterists of a security. Consequently an accident policy was not a property, according to counsel.

Since the benefit in accident policy could only accrue after the death of the estate holder, it became property for the first time after the demise of the estate holder. There was, according to the counsel for the accountable person, no element of property during the lifetime of the estate holder. Therefore, there could not be any passing of property in a case like this. A possession of accident policy could not be construed as a property in the hands of the estate holder. It was further submitted that in the case of an accident insurance policy, there cannot be passing because there was no change in the beneficial possession or enjoyment of the property or interest in the policy. The interest in accident insurance policy did not pass through the estate of the deceased as in the case of a life insurance policy or annuity. But here the interest directly went to the beneficiary in the case of the death by accident of the estate holder. It was in the premises submitted that it cannot be accepted that the deceased had any power of disposition over the accident policy during his lifetime because the interest in an accident policy could not also be elevated to that of a contingent interest since there is always the chance for the accident policy being rendered worthless during the lifetime of the deceased. There is also no chance for the deceased to bear the fruition of the policy during his lifetime because in the case of an accident policy the condition of the policy itself was to the effect that the policy would bear fruition only if the estate holder did not die due to natural causes but in an accident.

A large number of authorities both Indian and English and a large number of dictionaries relevant for this purpose were relied upon.

A So far as the first appeal is concerned, namely, Civil Appeal No. 2086 of 1974, the question of assessability to estate duty of the amount received as a result of the death of the assured is involved. This question has been examined by various authorites to some of which our attention was drawn.

B Before we do so, it may be worthwhile to refer to the dictionary meaning of certain words to which our attention was drawn.

In *Words and Phrases Legally Defined*—Vol. 1 1969 (second Edn.) at page 332, it has been said that "Contingent Liability" is a phrase with no settled meaning in English law because Danckwerts, J. C thought it necessary to resort to dictionary used. The Court of Appeal regarded its meaning as an open question. A conditional obligation, it has been said there, or an obligation granted under a condition which is uncertain, had no obligatory force till the condition was purified. All this was relied in aid of the submission that until the accident happened or death resulted, the beneficiary of the insurance policy or the D nominee of the assured does not get any benefit. In order words, the birth of the property and the right to get it accrues on the death of the deceased. The property which the legatee or the nominee receives was property until the accident during the lifetime of the deceased.

E In *Words and Phrases Legally Defined*—Vol. 4 at page 200, "Property" has been defined as to what belongs to a person exclusively of others and can be the subject of bargain and sale. It includes goodwil, trade marks, licences to use a patent, book debts, options to purchase, life policies and other rights under a contract. An annuity secured only by a personal undertaking was not, however, treated as F property; nor was a revocable Licence, according to that dictionary.

The decision in *Attorney-General* v. *Quixely*, 1929, All England Law Reports, Reprint, 696, has coloured many of the decisions of both English and our courts on this aspect. It is necessary, therefore, to appreciate that decision properly, if possible. Briefly the facts in that G case were that on 11th April, 1927, a school teacher died and her legal representative became entitled to receive a "death gratuity" under the School Teachers (Superannuation) Act, 1925—section 5(1). On 11th August, 1927, the gratuity was paid and the estate duty was claimed in respect of it. It was held by the Court of Appeal in England that the gratuity was property of which the teacher was "competent to H dispose" within the meaning of the Finance Act, 1894 of England and,

therefore, estate duty was exigible in respect of it by virtue of section 2(1)(a) of that Act. A

The information filed on behalf of the Attorney-General alleged that Margaret Louis Quixley died intestate on 11th April, 1927. Letters of administration to her estate were 5th July, 1927 granted to her sister, the defendant, out of the Principal Probate Registry. The deceased was at the time of her death in the service of the Girls' Public Day School Trust as a secondary school teacher at the Blackheath High School and had been in such service for a period of upwards of five years. Such service was "recognised service" within the meaning of the School Teachers (Superannuation) Acts, 1918 to 1925, and "contributory service" within the meaning of the Schools Teachers (Superannuation) Act, 1925, and the contributions prescribed by the School Teachers (Superannuation) Acts, 1922, 1924 and 1925 were duly paid by and in respect of the deceased down to the time of her death. In the above circumstances a death gratuity became payable by the Board of Education to the defendant as the legal personal representative of the deceased under the School Teachers (Superannuation) Act, 1925. Rowlatt, J. observed that the question involved was not free from difficulty. He narrated the facts as such. The lady was a teacher under circumstances which under the School Teachers (Superannuation) Act, 1918, entitled her to the prospect of—brought within the ambit of a power in the Board of Education to grant a gratuity of this kind on her death. Rowlatt, J. observed that she had no right, she made no contribution, but there was a power conferring a gratuity. Then the effect of the School Teacher (Superannuation) Act, 1922, was that she remained without any further advantage than being in the category of persons who might receive such a grant, but she was compelled to make a contribution. Under the School Teachers (Superannuation) Act, 1925, matters were carried a step further because she or her executors or administrators were given in return for the compulsory contribution a right to receive the gratuity. Considering sub-section (1)(a) of the relevant Act which is similar to our section 6 of the present Act reads as follows: B C D E F G

> "Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death."

Rowlatt, J. gave judgment for the Crown. There was an appeal and the appeal was dismissed. Lord Hanworth, M.R. after stating the H

A facts and analysing the provisions noted that in 1925 there came an important Act under which the gratuity became payable to the deceased's representatives. Master of Rolls further went on to observe that from and after the operation of the Act of 1925 referred to in the judgment, there was a definite right on the part of the school teacher B who fulfilled certain conditions—as the teacher before the Court of Appeal did, by dying at the time when she was still in contributory service—to be paid a sum which was to be estimated and calculated under the provisions of the statute. Master of Rolls further observed: the statute, therefore, gave at once a right to the person who fulfilled the conditions of service, and equally a right to the board to insist C on the contributions being paid. Master of Rolls found as a fact that all the conditions required were fulfilled, therefore, the teacher had an absolute right to be paid. It is this significant factor that has to be borne in mind. Therefore, it was held that there was a right which the deceased could dispose of by will, therefore, it was property passing on the death of the deceased.

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It was a comprehensive Act providing for superannuation benefit for teachers on retirement and gratuity to legal heirs in the case of death in service. Section 5 provided that death gratuity to be paid to legal heirs if teacher died while in service. Section 9 provided for contribution compulsory at a certain fixed percentage both by the E teacher and by the employer. Section 12 provided for repayment of contributions on teacher creasing to be eligible. See in this connection Halsbury's Statutes of England, 2nd Edn., Vol. 8, page 388. In that context, in our opinion, this question of liability arising on the death of accident policy has to be understood in a different perspective. In *Quixley*'s case, there was a vested right in the teacher during her F lifetime and the teacher could dispose of that right in the manner she liked. But in case of death by accident in aircrash, the deceased had only a right of nomination for his heirs to get the money but the money would arise or the property would be born only on the contingency of the death happening. We have examined the nature of the right—in the light of the submissions made. The interest in accident policy does G not pass through the estate of the deceased. It was always a chance so far as the deceased was concerned in the instant case. Sankey, C.J. found in *Quixley's* case that the deceased had a right—only quantification was not there. But in the instant case before us the deceased had no right in his lifetime. Undoubtedly the right to nominate and right of the nominee or legal representative to get the money was there in case

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of death of the deceased but the deceased had no right to the money which was dependent on happening of an uncertain event.

In *Controller of Estate Duty* v. *A.T. Sahani, New Delhi*, 78 I.T.R. 508, the Delhi High Court had to consider slightly different question. There under Rule 159 of the Indian Airlines Corporation (Flying Crew) Service Rules, a member of the flying crew was entitled to a compensation at specific rates in the event of his death or an injury caused by an accident during or as a result of air journey performed as such in the Corporation's service. The compensation payable under the said rule was in addition to the compensation which the Corporation had agreed to pay under an agreement described as Pilot Agreement entered into with the Corporation whereby it was provided that the Corporation shall pay compensation for the death of a pilot a maximum of 36 times his monthly basic pay if such death occurred in the circumstances mentioned in the above-mentioned service rules, or while travelling on duty in surface transport provided by the Corporation or its nominated agents. In accordance with the terms of the aforesaid agreement between the deceased and his employer, a sum of Rs.68,300 was received by his widow as compensation. The High Court under reference in that case held that the right to get compensation as a condition of one's service was as much an interest in property as any other interest which a person might have in incorporeal property, such as choses-in-action etc. The circumstances that the occasion for the exercise of the right arose after the death of the person and was also conditional upon death, did not in any way detract from the existence of the right of the deceased's interest therein during his lifetime.

The Court noted that though in that case, the deceased was not required to make any contribution for the purpose of earning the compensation as in *Quixley*'s case, yet the compensation was payable as a reward for the services rendered. Therefore, the deceased had interest in it and had also the right to appoint the person to whom it should be paid. The distinction between pecuniary damages for the loss caused to the estate and pecuniary loss sustained by the membes of his family through his death has no relevance for the purpose of deciding whether the compensation payable in a case like the present was property which should be deemed to pass on the death of deceased. The High Court felt that the case came within the ratio of the decision of the Court of Appeal in *Quixley*'s case (supra). But the facts of the instant appeal are different.

A Prior to the judgment under appeal the problem arose before Jammu & Kashmir High Court in the case of *Controller of Estate Duty* v. *Kasturi Lal Jain*, 93 I.T.R. 435. Ali, C.J. as the learned judge then was of the Jammu & Kashmir High Court held that before a property could pass to the heirs of a deceased person under section 5 of the B Estate Duty Act, 1953, it had to fulfil the following conditions:

> "(i) The property must be in the power, possession and control (actual, constructive or beneficial) of the deceased;
>
> (ii) The deceased must have an interest, whether in praesenti or contingent, in the said property;
>
> C
>
> (iii) The property must be in existence during the life-time of the deceased or at the time of his death; and
>
> (iv) The deceased must have power of disposition over the property."

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The Court was of the view that where compensation was paid under the Carriage by Air Act, 1934, to the heirs of a person dying in an air crash by the Airlines Corporation, the deceased had neither any interest in the property nor was he in possession of the property either actually or constructively. The property in such a case did not and E could not have come into existence during the lifetime of the deceased but accrued for the first time after his death and that too because his death took place in a certain mode. It was further held that under the provisions of the Carriage by Air Act, 1934, the compensation ensured for the benefit of the members of the passenger's family and had nothing to do with the estate of the deceased. As none of the above- F said conditions for the passing of property on death under section 5 of the Act was fulfilled, the estate duty could not be levied on such compensation. The learned Chief Justice observed that the connotation of the words 'passes on the death of such person' was important. He referred to Webster's International Dictionary. He observed that 'passing' involved some actual change in the title or possession of the G property which must result on death. The Division Bench therefore negatived the revenue's contention.

The Punjab and Haryana High Court in the case of *Controller of Estate Duty, Patiala* v. *Smt. Motia Rani Malhotra*, 98 I.T.R. 42, had to deal with this problem though in a different context. It is held by the H High Court in that case that the amount of compensation received by

the heirs of a person who died in an air crash comes into being only after the death of the person. It exists at no point of time either contingently or otherwise during the lifetime of the deceased. The High Court was of the opinion that the property which was not in existence at all during the lifetime of the deceased cannot be said to pass on his death. The provisions of the Indian Carriage by Air Act, 1934 provided compensation to members of the family of a victim of an air crash. In the very nature of things the damages by way of compensation arose after the person was dead. The Act definitely provided for whom it was available. If it were part of his estate passing on his death it would pass on to his heirs other than those specified in the Act, in case they were not in existence. But that did not happen. If the members of the family specified in the Act are not in existence, the payment has not to be made. Hence, the compensation was not property capable of passing on death. The High Court felt that there was a lot of difference between compensation received on account of permanent or temporary injury in an air crash, and the compensation received by the heirs of a person dying in an air crash. In the former case the amount received by the person formed part of his estate but where compensation was received by his heirs on his death in air crash, according to the High Court, it cannot partake of his estate. When a person boarded a plane he could not, at that time, be said to have created an estate or interest capable of passing after his death.

Section 15 of the Act provided for those types of cases where the owner of property tried to dissipate his property in such a way that it passed on to his heirs without suffering estate duty. It did not bring to charge compensation received by the heirs of a victim of an air crash. Therefore the sum of money received in such a case was not liable to estate duty, according to Punjab and Haryana High Court. The problem there was, however, slightly different, from the present but the basic position was that the property came into existence only on the death of the passengar in the plane.

In *Bharatkumar Manilal Dalal* v. *Controller of Estate Duty, Gujarat*, 99 I.T.R. 179, it is necessary to refer briefly to the facts. One M, the deceased, in that case had purchased on 8th August, 1965, a limited non-renewable policy covering certain travel accidents from A insuring himself against risk of air travel for his journey from U.S.A. to India and back for a maximum sum of £ 75,000. Similarly, the deceased had purchased in July, 1965, a personal accident policy from company B insuring himself for a maximum of Rs.1,00,000 against risk

A of loss of life or limb arising as a result of accident in the course of one year. The deceased had paid only one premium of Rs.255 under the said policy to the company B. The father of the deceased, the accountable person, was nominated as the beneficiary in both the insurances for receiving the claim amount payable under the policies in case of B death of the insured. M died on 24th January, 1966, in a plane accident on his way to the U.S.A. Rs.1,00,000 and Rs.3,57,808 were received from company B and Company A respectively by the accountable person as a sequel to the accident. The Appellate Tribunal held that the said two sums were liable to be included in the dutiable estate of the deceased, M, under section 15 of the Estate Duty Act but not under any other section. On a reference at the instance of both the account- C able person and the revenue, the question was whether the amounts were liable to estate duty under sections 5, 6, 14 or 15 of the Act.

The High Court held that section 14 of the Act was not attracted on a plain reading of the section. The High Court held further that D section 14 imposed liability of duty on money received under a policy of insurance effected by any person on his life and would not, therefore, take in its sweep the cases of moneys paid under an accident policy, the connotation of which was well known as contradistinguished from that of life policy. It was contended for the assessee that the purchase of an accident policy by the deceased could not be held to E be an interest purchased or provided by him within the meaning of section 15 of the Act and that the words "other interest" in section 15 should be understood in the cognate sense of the word "annuity" on the principle of noscitur a sociis. The term "other interest" was of widest amplitude and there was no warrant in the section itself or in any other provision of the Act to infer that the legislature wanted to F restrict the meaning and import of the term "other interest". The contention that the import of the term "other interest" should be restricted and that it should take colour from the word "annuity" and should bear a cognate meaning must be rejected. If the legislative intent as outlined in the Statement of Objects and Reasons given in the Bill legislature wanted to cover all kinds of interests which have been G purchased or provided by the deceased in the nature of annuities or policies other than life insurance policy as passing on his death to the extent of a beneficial interest accruing or arising as a result of the death. The High Court referred to the decision in *Westminster Bank Ltd.* v. *Inland Revenue Commissioners.* [1957] 2 All E.R. 745 = 36 I.T.R. (ED) 3. It could not be successfully contended, according to the H High Court, that the deceased had no interest in his lifetime in the

relevant policies. In the two personal accident policies in that case, the subject matter of the insurance was the person of the deceased in case of its being exposed to certain perils of travelling and the assured would clearly be prejudiced by the loss of life or limb as a result of the accident and, therefore, had an insurable interest for purposes of personal accident. To contend that death did not generate a new beneficial interest, the High Court felt, was beside the point for the time being. The deceased had an interest in the contractual right under the two relevant policies of insurance to exact a particular sum, if and when there was loss of life or limb arising as a result of accident. The very fact that deceased had a contractual right to exact a particular sum in case of loss of life or limb was an interest in expectancy and it would have been in interest in presenti the moment the accident occurred resulting in loss of limb. The contract of insurance contained in the two relevant policies conferred on the deceased the benefit of the policies, namely, the right to exact a particular amount of damage depending on the loss of limb or life, as the case might be. The contention that the deceased had no interest in the policies, according to the High Court, was not well found be upheld. It was further held that on the death of the insured, the beneficial interest of the accountable person was generated. Therefore, section 15 of the Act was applicable.

As regards the applicability of sections 5 and 6 of the Act, the deceased had property in the nature of interest to receive the sums assured on the happening of the contingency of accident resulting in loss of limb or life under the contracts of insurance contained in the aforesaid two accident policies and he was competent to dispose of that property by an act inter vivos or by a will. The property in nature of interest was in existence in the lifetime of the deceased which passed on his death to the beneficiaries designated or to his legal representative in absence of such designation and was, therefore dutiable under section 5 of the Act. In any case, he had a right to property and under the said policies which he could have disposed of by will and, therefore, it must be deemed to pass on his death under section 6 of the Act. In the view we have taken of the policy involved in the instant case, we are unable, with respect, to agree with the High Court that the deceased had right in expectancy—the deceased had no right, the nominee or the beneficiary would have the right—the property does not pass through the deceased.

Relying on section 34(3) of the Act, it was contended by the

A accountable person that the aforsaid sum should not be aggregated with other property of the deceased and should be assessed as an estate by itself. As we have noted before, this question is a subject matter of Civil Appeal No. 67 of 1975. On this aspect, the judgment under appeal held in favour of the accountable person while the Gujarat B High Court was of the view that sub-section (3) would not be applicable because it could not be said that the deceased had no interest in the contract of insurance contained in the two accident policies. The High Court held that the deceased had property in the nature of interest to receive payment in case of loss of limb arising as a result of accident or the deceased purchased an interest for the benefit of his legal representatives in case of loss as a result of accident. It, there- C fore, could not be said that the deceased had never any interest in the contracts of insurance contained in the said two policies and money payable thereunder. To this extent, the Gujarat High Court dissented from the Madras High Court's view. It was further held by the Gujarat High Court that it could not be contended that the principal value of D the property should be determined with refeence to the death of the insured and at the time of his death the property in question had only the value of the premiums which had been paid. It must be held that the valuation must be ascertained on the date immediately succeeding the date of the death, which, in the present case would be aforesaid two sums. Therefore, the High Court allowed two sums received from E the insurance company to be included in the estate duty under section 5, section 6 and section 15 of the Act.

The Bombay High Court in *Smt. Amy F. Antia* v. *Assistant Controller of Estate Duty, Bombay*, 142 I.T.R. 57, was confronted with a situation where an engineer in the employment of M.N. Destur & F Company died in an air crash on 28th May, 1968. The question which arose in the course of estate duty proceedings on his death was whether an amount of Rs.68,400 which was payable on the death of the deceased in pursuance of a group insurance policy taken out by the employer, Destur & Co. was liable to be included as part of the property which passed on the death of the deceased. The Bombay High G Court was of the view that personal accident insurance was one of the three main types of insurance. The object of personal accident insurance was to make a provision in case an accidental injury happens which may sometimes disable a person and affect his employment and his earning capacity or in some cases it may result in death, and the injured person wants to make provision for his dependants in case H untimely accidental death occurs. A personal accident policy was in the

nature of a provision for the legal representatives and in the case of the death of the insured, the death benefit was payable to the legal representatives. The proviso in the insurance policy in that case stated that the insured alone would have the sole and exclusive right of receiving payment or enforcing any claim under the policy. D & Co. issued an office circular which made it clear that the compensation payable by the insurance company in each case would be equivalent to two years salary of the individual concerned at the time of accident resulting in a claim under the policy. Clause 5 of the circular stated that the benefits enjoyed by the staff under the scheme were ex gratia in character and might be withdrawn or modified at the sole discretion of the company. In pursurance of the insurance policy a sum of Rs.68,400 was paid by D & Co. to the estate of the deceased. A sum of Rs. 50,000 was also paid to the estate of the deceased by the airlines in accordance with the provisions of the Indian Carriage by Air Act. The Assistant Controller and the Appellate Controller held that both the amounts were liable to estate duty. The Tribunal held that the amount of Rs.68,400 was liable to estate duty and out of the amount of Rs.50,000, Rs.43,846 was not liable to estate duty. The Bombay High Court held that with regard to the amount of Rs.68,400 the insurance policy and the circular issued by D & Co. had to be read together. The policy expressly provided that in the case of an insured person suffering an injury, the insured would be paid the capital sum insured against the name of the insured person and in respect of the person—suffering was twice the annual salary drawn by the person on death or occurrence of the accident. The High Court held that the sum of Rs.68,400 was, therefore, liable to estate duty but held also that the sum received under the provisions of the Indian Carriage by Air Act was not liable to duty under the Act. The learned judges referred to the two decisions under appeal. The real question which fell for consideration in the case before the Bombay High Court was whether question No. 1 in that case was what the right the deceased had in the personal accident policy. The question No. 1 in that case was whether, on the facts and in the circumstances of the case, the sum of Rs.68,400 payable on the death of the deceased in pursuance of the insurance policy was liable to duty on estate. It would thus appear that each case is decided in the peculiar facts in terms of the policy.

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Reliance was also placed on certain observations in the case of *P. Indrasena Reddy & Pingle Madhusudhan Reddy* v. *Controller of Estate Duty*, 156 I.T.R. 45. There, the Court was dealing with the test of "disclaimer". The Court observed that the test of "disclaimer" has to

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A be adopted to determine whether the deceased had any interest in insurance policies. If the facts showed that the beneficiaries disclaimed, the resulting interest would be in favour of the deceased and the policy amount would pass to the legal representative.

B It was condition precedent for the application of the Act that the estate holder must have possessed or enjoyed the property or interest in property, the interest in property might be either vested or contingent but interest should be that with regard to which either immovable property or movable property or an interest in immovable or movable which was capable of being ascertained during the lifetime or at the time of the death of the estate holder. The property vested or contin-
C gent must be one which was capable of being ascertained. Even if the above tests were satisfied then there has to be a passing of that property or interest as contemplated under section 2(16) of the Act. Even if a person might have power to dispose of a property or interest in property, he cannot or his estate cannot be brought within the purview
D of the Act solely because of that factor. In order for an estate to be liable to estate duty the power of disposition must be with regard to a property capable of being ascertainable during the lifetime of the deceased or at the time of his death. It was next urged that property or interest in property had necessarily to change hands in order to be liable to estate duty under the Act. There had to be a change in the
E beneficial possession and enjoyment of the property or the interest in that property. In other words the property or interest which is liable to estate duty has to pass through the estate of the deceased. It is important to bear in mind that though the deceased might have a right of disposition as and when the property would be available in case the contingency happens namely the death of the deceased in an accident,
F but that right is different from the right to the money accruing or arising because of the death due to accident. See in this connection the case of *Shri H. Anraj etc.* v. *Government of Tamil Nadu etc.*, [1986] (1) SCC 414. So in this case the property is really born on the death of the deceased in an accident. Property in the sense the sum of Rs. two lakhs was non-existence before the death. There might have been some right
G of disposition in respect of the property which might accrue on the death of the deceased. That right is different from the right to the movable property of Rs. 2 lakhs that is taking place.

An accident insurance policy cannot be construed as movable property unlike a life insurance policy or an annuity because as laid
H down in section 2(15) of the Act it is not only necessary for the person

to have property or interest in property but that interest must be in regard to a movable property and his interest should also be capable of being ascertainable during his lifetime or at the time of his death in that movable property. Secondly, an accident insurance policy could not be construed as a property or an interest in property since a person who possessed it cannot also be said to have a contingent interest because there was every possibility of the accident policy getting extinguished or rendered worthless during his lifetime; on the other hand in the case of a life insurance policy, there was always a tangible continuing interest only that the value of that interest might be subjected to change at the time of passing of the property.

A contingent interest which did not get crystalised during the lifetime of the deceased but which interest would, with certainty, accrue after the demise of the estate holder will be caught by section 6 of the Act. A property passed from the deceased to the beneficiary. Though only a future interest that crystallised after the death of the estate holder would be deemed as a property of the estate holder. The accident policy could only accrue after the death of the estate holder. It became property for the first time after the demise of the estate holder. There was no element of property during the lifetime of the estate holder.

The interest in an accident insurance policy did not pass through the estate of the deceased as in the case of a life insurance policy or annuity and here the interest directly went to the beneficiaries in the case of death by accident of the estate holder.

This Court had to deal with nomination under the Insurance Act in the case of *Smt. Sarabati Devi & Anr.* v. *Smt. Ushal Devi,* [1984] (1) SCR 992. In that case the effect of nomination under the Insurance Act was analysed.

The meaning of the expression "property passes" came up for consideration in the observations of Viscount Simonds in the case of *Public Trustee* v. *Inland Revenue Commissioners* [1960] A.C. 398, where at page 407 of the report Viscount Simonds dealing with section 1 of the Finance Act, 1894 of U.K. observed that:

> "the word "passes", familiar as it has now become to us, was not in 1894 a term of art in the law relating to death duties, and that it would appear to have been a matter of

A sheer necessity for the Act to proceed to a definition of the area of charge. It was natural that the draftman should do so by the use of the word "deem," a word which, has been described by Lord Radcliffe, is apt to include the obvious, the uncertain and the impossible."

B Section 6 of the Act which makes property which the deceased at the time of his death competent to dispose of deemed to pass on his death makes, as in the words of Lord Radcliffe, inter alia, to include, 'impossible'. But the question here in the instant case is whether the expression 'impossible' also include the possibility of including something which is not property as yet of the deceased to pass on the death C of the deceased. The fact that a person can nominate a beneficiary will not tantamount to disposition.

In view of the discussions above we are of the opinion that insurance money became property only on happening of a specified contingency. That property arose on the death of the deceased during the D subsistence of the policy in accident. We are dealing with the passing of property or situation where property can be deemed to have passed. The property in this case is the sum of Rs. 2 lakhs which became receivable by the nominee or the legal representative of the deceased because of the death of the deceased in air accident during the subsistence of the policy. That right to the sum arose because (a) the de- E ceased died; (b) in air accident; (c) during the subsistence of the policy that property was not there before. Therefore, property came into being on that contingency after death. In our opinion, therefore, no property can be deemed to pass on the death of the deceased. In any event, during the lifetime of the deceased, an interest was vested totally and irretrievably in the hands of the beneficiary or the legatee or F the nominee. The death did not cause property to change hands. The fact that a person can nominate a beneficiary will not tantamount to a disposition of the property. In any event that disposition vested in the nominee or the legal representative a right in the property. It did not pass on the death of the deceased. In the premises, we are unable to G accept the High Court's conclusion on the first question and we are in agreement with the views of the High Court of Jammu and Kashmir in *Controller of Estate Duty* v. *Kasturi Lal Jain* (supra) . The first appeal No. 2086 of 1974 is allowed and question no. 1 is answered in the negative.

H In that view of the matter question No. 2 which is the subject

matter of Civil Appeal No. 67(NT) of 1975 need not be dealt with. However, we are of the opinion on the construction of section 34(3) and the views expressed by the High Court on this point that had it been necessary to answer this question, we would have treated this as a separate estate from the other estate of the deceased and the value of this could not be aggregated.

The third question which is also the subject matter of appeal No. 67 of 1975 relates to the adoption under the custom of Chettiar Community. Now whether a particular custom prevails in a particular community or not is a matter of evidence. Mayne's *Treatise on Hindu Law and Usage* 10th Edn. edited by S. Srinivasa Iyengar from page 280 described the peculiar form of Dwyamushyayana adoption thus:

> "208. An exception to the rule that adoption severs a son from his natural family exists in the case of what is called a dwyamushyayana or son of two fathers. This term has a two-fold acceptation. Originally it appears to have been applied to a son who was begotten by one man upon the wife of another, but for and on behalf of that other. He was held to be entitled to inherit in both families, and was bound to perform the funeral obligations both of his actual and his fictitious father. This is the meaning in which the term is used in the Mitakshara; but sons of this class are now obsolete. Another meaning is that of a son who has been adopted with an express or implied under- seems to take place in different circumstances. One is what seems to take place in different circustances. One is what is called the Anitya, or temporary adoption, where the boy is taken from a different gotra, after the tonsure has been performed in his natural family. He performs the ceremonies of both fathers, and inherits in both families, but his son returns to his original gotra. This form of adoption is now obsolete.
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> The only form of dwyamushyayana adoption that is not obsolete is the nitya or absolute dwyamushyayana in which a son is taken in adoption under an agreement that he should be the son of both the natural and adoptive fathers. It appears to be obsolete in Madras on the East Coast. But in the West Coast among the Nambudri Brahamana, it is the ordinary form. In Bombay and the United Provinces its existence is fully recognised. It has

A been recognised by the Judicial Committee in two cases from Bengal."

In Mulla's Principles on Hindu Law, 3rd Edition, p. 393 Dvyamushyayana, the effect of partition has been described. These B have been set out in the judgment of the High Court. It is not necessary to reiterate them again.

In any event we accept the reasoning of the High Court that if the adoption was not valid as contended for by the revenue, then Muthiah continued to be a member of the natural family and as such his share in the joint family would have passed on the death of the deceased. In C this background, it is, however, difficult to appreciate the stand of the revenue that the adoption was valid but no effect could be given to the terms of Muri. Muri, according to revenue stood by itself. The High Court found it not possible to accept this argument. We are of the same view. The agreement properly read could not be taken as a D post-adoption agreement. In that view of the matter certain factual aspects were urged before the High Court for contending that the accountable person was not free to urge that there was no valid adoption and Muthiah continued to be a member of the natural family. We do not find much merit in such contentions and these need not be dealt with. These have been dealt with by the High Court and we accept them. E Not much serious arguments in support of the appeal on this aspect by the revenue was advanced before us. In the premises we uphold the decision of the High Court in two questions involved in appeal No. 67 of 1975 and therefore the second question in that appeal is answered by saying that amount of Rs.2 lakhs if assessable would have been assessed as a separate estate and on the third question—the share of F the deceased in the property of the joint family at the time of death was one-third and not one-half. In the premises this appeal fails and is dismissed.

In view of the divided success, parties will pay and bear their costs in both the appeals.

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A.P.J. Appeal dismissed.