PETITIONER:
COMMISSIONER OF WEALTH TAX. KANPUR ETC. ETC.

Vs.

RESPONDENT:
CHANDER SEN ETC.

DATE OF JUDGMENT16/07/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
1986 AIR 1753 1986 SCR (3) 254
1986 SCC (3) 567 1986 SCALE (2)75
CITATOR INFO :
F 1987 SC 558 (10)
RF 1991 SC1654 (27)

ACT:
Hindu Succession Act, 1956-ss. 4, 8 and 19-Property of father who dies intestate-Whether devolves on son, who separated by partition from his father, in individual capacity or Karta of his HUF.
Wealth Tax Act, 1957-ss. 3 and 4-Property inherited under s 8 Hindu Succession Act, 1956-Whether HUF or individual property.
Income Tax Act, 1961/Income Tax Act, 1922-Income from as sets inherited by son from father-Whether assessable as individual income.

HEADNOTE:
Rangi Lal and his son Chander Sen constituted a Hindu undivided family. They had some immovable property and the family business. By a partial partition the HUF business was divided between the two and thereafter it was carried on by a partnership consisting of the two. The house property of the family continued to remain joint. The firm was assessed to income-tax as a registered firm and the two partners were separately assessed in respect of their share of income. The mother and wife of Rangi Lal having pre-deceased him, when he died he left behind him his only son Chander Sen and his grandsons. On his death there was a credit balance of Rs.1,85,043 in his account in the books of the firm.
In the wealth tax assessment for the assessment year 1966-67, Chander Sen, who constituted a joint family with his own sons, filed a return of his net-wealth by including the property of the family which u on the death of Rangi Lal passed on to him by survivorship and, also the assets of the business which devolved upon him on the death of his father. The sum of R.S.. l ,85,0 13 standing to the credit of Rangi Lal was, however, not included in the net-wealth of the assessee-family. Similarly, in the wealth tax assessment for the assessment year 1967-68 a sum of Rs.1,82,742 was not included, in the net wealth of the assessee family. It was contended that these amounts devolved on Chander Sen
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in his individual capacity and were not the property of the

assessee family. The Wealth-tax officer did not accept this contention and held that these sums also belonged to the assessee-family.

A sum of Rs.23,330 was also credited to the account of late Rangi Lal on account of interest accruing on his credit balance. In the proceedings under the Income Tax Act for the assessment year 1367-68 this sum was claimed as deduction on the same ground. The Income-tax officer disallowed the claim on the ground that it was a payment made by Chander Sen to himself.

On appeal, the Appellate Assistant Commissioner of Income-tax accepted the assessee's claim in full and held that the capital in the name of Rangi Lal devolved on Chander Sen in his individual capacity and as such was not to be included in the wealth of the assessee family. The sum of Rs.23,330 on account of interest was also directed to be allowed as deduction.

The Income-tax Appellate Tribunal dismissed the appeals filed by the Revenue and its orders were affirmed by the High Court.

On the question: "Whether the income or asset which a son inherits from his father when separated by partition should be assessed as income of the Hindu Undivided Family consisting of his own branch including his sons or his individual income", dismissing the appeals and Special Leave Petition of the Revenue, the Court,

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HELD: 1. The sums standing to the credit of Rangi Lal belong to Chander Sen in his individual capacity and not the Joint Hindu Family. The interest of Rs.23,330 was an allowable deduction in respect of the income of the family from the business. [268C-D]

2.1 Under s. 8 of the Hindu Succession Act, 1956, the property of the father who dies intestate devolves on his son in his individual capacity and not as Karta of his own family. Section 8 lays down the scheme of succession to the property of a Hindu dying intestate. The Schedule classified the heirs on whom such property should devolve. Those specified in class I took simultaneously to the exclusion of all other heirs. A son's son was not mentioned as an heir under class I of the Schedule, and, therefore, he could not get any right in the property of his grandfather under the provision. [265F-G]

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2.2 The right of a son's son in his grandfather's property during the lifetime of his father which existed under the Hindu law as in force before the Act, was not saved expressly by the Act, and therefore, the earlier interpretation of Hindu law giving a right by birth in such property "ceased to have effect". So construed, s. 8 of the Act should be taken as a self-contained provision laying down the scheme of devolution of the property of a Hindu dying intestate. Therefore, the property which devolved on a Hindu on the death of his father intestate after the coming into force of the Hindu Succession Act, 1356, did not constitute HUF property consisting of his own branch including his sons. [265G-H; 266A-C]

2.3 The Preamble to the Act states that it was an Act to amend and codify the law relating to intestate succession among Hindus. Therefore, it is not possible when the Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased-son, to say that when son inherits the property in the situation contemplated by s. 8, he takes it as Karta of his own undivided family. [267C-D]

2.4 The Act makes it clear by s. 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today that the property which devolved on a Hindu under s. X of the Act would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis sons and female heirs with respect to whom no such concept could be applied or contemplated. [267E-G]

2.5 Under the Hindu law, the property of a male Hindu devolved on his death on his sons and the grandsons as the grandsons also have an interest in the property. However, by reason of s. 8 of the Act, the son's son gets excluded and the son alone inherits the properly to the exclusion of his son. As the effect of s. 8 was directly derogatory of the law established according to Hindu law, the statutory provisions must prevail in view of the unequivocal intention in the statute itself, expressed in s. 4(1) which says that to the extent to which provisions have been made in the Act, those provisions shall override the established provisions in the texts of Hindu Law. [264G-H; 265A-B]

2.6 The intention to depart from the pre-existing Hindu law was again made clear by s. 19 of the Hindu Succession Act which stated that

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if two or more heirs succeed together to the property of an intestate, they should take the property as tenants-in-common and not as joint tenants and according to the Hindu law as obtained prior to Hindu Succession Act two or more sons succeeding to their father's property took a joint tenants and not tenants-in-common. The Act, however, has chosen to provide expressly that they should take as tenants-in-common. Accordingly the property which devolved upon heirs mentioned in class I of the Schedule under s. 8 constituted the absolute properties and his sons have no right by birth in such properties. [266F-H]

Commissioner of Income-tax, U. P. v. Ram Rakshpal, Ashok Kumar, 67 I.T.R. 164; Additional Commissioner of Income-tax, Madras v. P.L. Karuppan Chettiar, 114 I.T.R. 523; Shrivallabhdas Modani v. Commissioner of Income-Tax, M.P-I., 138 I.T.R. 673 and Commissioner of Wealth-Tax A.P. II v. Mukundgirji 144 I.T.R. 18, approved.

Commissioner of Income-tax, Gujarat-l v. Dr. Babubhai Mansukhbai (Deceased), 108 I.T.R. 417, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 166870 of 1974 etc.

From the Judgment and order dated 17.8.1973 of the Allahabad High Court in W.T. Reference No. 371 of 1971 and I.T. Reference No. 452 of 1971.

V.S. Desai, and Miss A. Subhashini for the Appellants.

P.K. Mukharjee and A. K. Sengupta for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. These appeals arise by special leave from the decision of the High Court of Allahabad dated 17th August, 1973. Two of these appeals are in respect of assessment years 1966-67 and 1967-68 arising out of the proceedings under the Wealth Tax Act, 1957. The connected reference was under the Income-Tax Act, 1961 and related to the assessment year 1968-69. A common question of law arose in all these cases and these were disposed of by the High

Court by a common judgment.

One Rangi Lal and his son Chander Sen constituted a Hindu
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undivided family. This family had some immovable property and the business carried on in the name of Khushi Ram Rangi Lal. On October 10, 1961, there was a partial partition in the family by which the business was divided between the father and the son, and thereafter, it was carried on by a partnership consisting of the two. The firm was assessed to income-tax as a registered firm and the two partners were separately assessed in respect of their share of income. The house property of the family continued to remain joint. On July 17, 1965, Rangi Lal died leaving behind his son, Chander Sen, and his grandsons, i.e. the sons of Chander Sen. His wife and mother predeceased him and he had no other issue except Chander Sen. On his death there was a credit balance of Rs.1,85,043 in his account in the books of the firm. For the assessment year 1966-67 (valuation date October 3, 1965), Chander Sen, who constituted a joint family with his own sons, filed a return of his net wealth. The return included the property of the family which on the death of Rangi Lal passed on to Chander Sen by survivorship and also the assets of the business which devolved upon Chander Sen on the death of his father. The sum of Rs.1,85,043 standing to the credit of Rangi Lal was not included in the net wealth of the family of Chander Sen (hereinafter referred to as 'the assessee-family') on the ground that this amount devolved on Chander Sen in his individual capacity and was not the property of the assessee-family. The Wealth-tax officer did not accept this contention and held that the sum of Rs.1,85,043 also belonged to the assessee-family.

At the close of the previous year ending on October 22, 1962, relating to the assessment year 1967-68, a sum of Rs.23,330 was credited to the account of late Rangi Lal on account of interest accruing on his credit balance. In the proceedings under the Income-tax Act for the assessment year 1967-68, the sum of R.S.. 23,330 was claimed as deduction. It was alleged that interest was due to Chander Sen in his individual capacity and was an allowable deduction in the computation of the business income of the assessee-faimly. At the end of the year the credit balance in the account of Rangi Lal stood at Rs.1,82,742 which was transferred to the account of Chander Sen. In the wealth-tax assessment for the assessment year 1967-68, it was claimed, as in the earlier year, that the credit balance in the account of Rangi Lal belonged to Chander Sen in his individual capacity and not to the assessee-family. The Income-tax officer who completed the assessment disallowed the claim relating to interest on the ground that it was a payment made by Chander Sen to himself. Likewise, in the wealth-tax assessment, the sum of Rs.1,82,742 was included by the Wealth-tax officer in the net wealth of the assessee-family. On appeal the Appellate Assistant Commissioner of Income-tax accepted the assessee's claim in
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full. He held that the capital in the name of Rangi Lalluded in the wealth of the assessee-family. He also directed that in the income-tax assessment the sum of Rs.23,330 on account of interest should be allowed as deduction. The revenue felt aggrieved and filed three appeals before the Income-tax Appellate Tribunal, two against the assessments under the Wealth-tax Act for the assessment years 1966-67 and 1967-68 and one against the assessment under Income-tax Act for the

assessment year 1967-68. The Tribunal dismissed the revenue's appeals.

The following question was referred to the High Court for its opinion:

"Whether, on the facts and in the circumstances of the case, the conclusion of the Tribunal that the sum of Rs.1,85,043 and Rs.1,82,742 did not constitute the assets of the assessee-Hindu undivided family is correct?"

Similarly in the reference under the Income-tax Act, the following question was referred:

"Whether, on the facts and in the circumstances of the case, the interest of Rs,23,330 is allowable deduction in the computation of the business profits of the assessee joint family?"

The answer to the questions would depend upon whether the amount standing to the credit of late Rangi Lal was inherited, after his death, by Chander Sen in his individual capacity or as a Karta of the assessee joint family consisting of himself and his sons.

The amount in question represented the capital allotted to Rangi Lal on partial partition and accumulated profits earned by him as his share in the firm. While Rangi Lal was alive this amount could not be said to belong to any joint Hindu family and qua Chander Sen and his sons, it was the separate property of Rangi Lal. On Rangi Lal's death the amount passed on to his son, Chander Sen, by inheritance. The High Court was of the opinion that under the Hindu Law when a son inherited separate and self-acquired property of his father, it assumed the character of joint Hindu family property in his hands qua the members of his own family. But the High Court found that this principle has been modified by section 8 of the Hindu Succession Act, 1956.

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Section 8 of the said Act provides, inter alia, that the property of a male Hindu dying intestate devolved according to the provisions of that Chapter in the Act and indicates further that it will devolve first upon the heirs being the relatives specified in class I of the Schedule. Heirs in the Schedule Class I includes and provides firstly son and thereafter daughter, widow and others. It is not necessary in view of the facts of this case to deal with other clauses indicated in section 8 or other heirs mentioned in the Schedule. In this case as the High Court noted that the son, Chander Sen was the only heir and therefore the property was to pass to him only.

The High Court in the judgment under appeal relied on a bench decision of the said High Court rendered previously. Inadvertently, in the judgment of the High Court, it had been mentioned that the judgment was in Khudi Ram Laha v. Commissioner of Income-tax U.P, 67 I.T.R. 364. but that was a case which dealt with entirely different problem. The decision which the High Court had in mind and on which in fact the High Court relied was a decision in the case of Commissioner of Income-tax, U. P. v. Ram Rakshpal, Ashok Kumar, 67 I.T.R. 164. In the said decision the Allahabad High Court held that in view of the provisions of the Hindu Succession Act, 1956, the income from assets inherited by a son from his father from whom he had separated by partition could not be assesssed as the income of the Hindu undivided family of the son. The High Court relied on the commentary in Mulla's Hindu Law, Thirteenth Edition page 248. The High Court also referred to certain passages from Dr. Derret's "Introduction to Modern Hindu Law" (paragraph 411, at page 252). Reliance was also placed on certain observations of

this Court and the Privy Council as well as on Mayne's 'Hindu Law'. After discussing all these aspects the Court came to the conclusion that the position of the Hindu Law was that partition took away by way of coparcenary the character of coparcener property which meant that the share of another coparcener upon the divisions although the property obtained by a coparcener by a partition continued to be coparcenary property for him and his unseparated issue. In that case what had happened was one Ram Rakshpal and his father, Durga Prasad, constituted a Hindu undivided family which was assessed as such. Ram Rakshpal separated from his father by partition on October 11, 1948. Thereafter Ram Rakshpal started business of his own, income whereof was assessed in the hands of the assessee-family. Shri Durga Prasad also started business of his own after partition in the name and style of M/s Murlidhar Mathura Prasad which was carried on by him till his death.
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Durga Prasad died on March 29, 1958 leaving behind him his widow, Jai Devi, his married daughter, Vidya Wati and Ram Rakshpal and Ram Rakshpal's son, Ashok Kumar, as his survivors. The assets left behind by Durga Prasad devolved upon three of them in equal shares by succession under the Hindu Succession Act, 1956. Vidya Wati took away her 1/3rd share, while Jai Devi and Shri Ram Rakshpal continued the aforesaid business inherited by them in partnership with effect from April, 1, 1958 under a partnership deed dated April 23, 1958. The said firm was granted registration for the assessment year 1958-59. The share of profit of Shri Ram Rakshpal for the assessment year under reference was determined at Rs.4,210. The assessee-family contended before the Income-tax Officer that this profit was the personal income of Ram Rakshpal and could not be taxed in the hands of the Hindu undivided family of Ram Rakshpal, and held that Ram Rakshpal contributed his ancestral funds in the partnership business of Murli Dhar Mathura Prasad and that, hence, the income therefrom was taxable in the hands of the assessee family. The High Court finally held on these facts in C.I.T v. Ram Rakshpal (supra) that the assets of the business left by Durga Prasad in the hands of Ram Rakshpal would be governed by section 8 of the Hindu Succession Act, 1956.

The High Court in the Judgment under appeal was of the opinion that the facts of this case were identical with the facts in the case of Commissioner of Income-tax, U.P. (supra) and the principles applicable would be the same. The High Court accordingly answered the question in the affirmative and in favour of the assessee so far as assessment of wealth-tax is concerned. The High Court also answered necessarily the question on the income-tax Reference affirmatively and in favour of the assessee.

The question here, is, whether the income or asset which a son inherits from his father when separated by partition the same should be assessed as income of the Hindu undivided family of son or his individual income. There is no dispute among the commentators on Hindu Law nor in the decisions of the Court that under the Hindu Law as it is, the son would inherit the same as karta of his own family. But the question, is, what is the effect of section 8 of the Hindu Succession Act, 1956? The Hindu Succession Act, 1956 lays down the general rules of succession in the case of males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and class I of the Schedule provides that if there is a male heir of class I then upon the heirs

mentioned in class I of
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the Schedule. Class I of the Schedule reads as follows:

> "Son; daughter; widow; mother; son of a pre-deceased son; daugther of a predeceased son; son of a pre-deceased daughter, daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son."

The heirs mentioned in class I of the Schedule are son, daughter etc. including the son of a pre-deceased son but does not include specifically the grandson, being a son of a son living. Therefore, the short question, is, when the son as heir of class I of the Schedule inherits the property, does he do so in his individual capacity or does he do so as karta of his own undivided family?

Now the Allahabad High Court has noted that the case of Commissioner of Income-tax, U.P. v. Ram Rakshpal, Ashok Kumar (supra) after referring to the relevant authorities and commentators had observed at page 171 of the said report that there was no scope for consideration of a wide and general nature about the objects attempted to be achieved by a piece of legislation when interpreting the clear words of the enactment. The learned judges observed referring to the observations of Mulla's Commentary on Hindu Law, and the provisions of section 6 of the Hindu Succession Act that in the case of assets of the business left by father in the hands of his son will be governed by section 8 of the Act and he would take in his individual capacity. In this connection reference was also made before us to section 4 of the Hindu Succession Act. Section 4 of the said Act provides for overriding effect of Act. Save as otherwise expressly provided in the Act, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in the Act and any other law in force immediately before the commencement of the Act shall cease to apply to Hindus in so far it is inconsistent with any of the provisions contained in the Act. Section 6 deals with devolution of interest in coparcenary property and it makes it clear that when a male Hindu dies after the commencement of the Act having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not
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in accordance with the Act. The proviso indicates that if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Section 19 of the said Act deals with the mode of succession of two or more heirs. If two or more heirs succeed together to the property of an intestate, they shall take the property per capita and not per stripes and as tenants-in-common and not as joint tenants.

Section 30 stipulates that any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him in accordance with

the provisions of the Indian Succession Act, 1925.

It is clear that under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes part of the comparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint family of his son and grandson and other members who form joint Hindu family with him. But the question is; is the position affected by section 8 of the Succession Act, 1956 and if so, how? The basic argument is that section 8 indicates the heirs in respect of certain property and class I of the heirs includes the son but not the grandson. It includes, however, the son of the predeceased son. It is this position which has mainly induced the Allahabad High Court in the two judgments, we have noticed, to take the view that the income from the assets inherited by son from his father from whom he has separated by partition can be assessed as income of the son individually. Under section 8 of the Hindu Succession Act, 1956 the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own family. On the other hand, the Gujarat High Court has taken the contrary view.

In Commissioner of Income-tax, Gujarat-I v. Dr. Babubhai Mansukhbhai (Deceased), 108 I.T.R. 417 the Gujarat High Court held that in the case of Hindus governed by the Mitakshara law, where a son
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inherited the self-acquired property of his father, the son took it as the joint family property of himself and his son and not as his separate property. The correct status for the assessment to income-tax of the son in respect of such property was as representing his Hindu undivided family. The Gujarat High Court could not accept the view of the Allahabad High Court mentioned hereinbefore. The Gujarat High Court dealt with the relevant provisions of the Act including section 6 and referred to Mulla's Commentary and some other decisions.

Before we consider this question further, it will be necessary to refer to the view of the Madras High Court. Before the full bench of Madras High Court in Additional Commissioner of Income-tax, Madras v. P.L. Karappan Chettiar, 114 I.T.R. 523, this question arose. There, on a partition effected on March 22, 1954, in the Hindu undivided family consisting of P, his wife, their sons, K and their daughter-in-law, P was allotted certain properties as and for this share and got separated. The partition was accepted by the revenue under section 25A of the Indian Income-tax Act, 1922. K along with his wife and their subsequently born children constituted a Hindu undivided family which was being assessed in that status. P died on September 9, 1963, leaving behind his widow and divided son, K, who was the karta of his Hindu undivided family, as his legal heirs and under section 8 of the Hindu Seccession Act, 1956, the Madras High Court held, that these two persons succeeded to the properties left by the deceased, P, and divided the properties among themselves. In the assessment made on the Hindu undivided family of which K was the karta, for the assessment year 1966-67 to 1970-71, the Income-tax Officer included for assessment the income received from the properties inherited by K from his father, P. The inclusion was confirmed by the Appellate Assistant Commissioner but,

on further appeal, the Tribunal held that the properties did not form part of the joint family properties and hence the income therefrom could not be assessed in the hands of the family. On a reference to the High Court at the instance of the revenue, it was held by the Full bench that under the Hindu law, the property of a male Hindu devolved on his death on his sons and grandsons as the grandsons also have an interest in the property. However, by reason of section 8 of the Hindu Succession Act, 1956, the son's son gets excluded and the son alone inherits the property to the exclusion of his son. No interest would accrue to the grandson of P in the property left by him on his death. As the effect of section 8 was directly derogatory of the law established according to Hindu law, the statutory provision must prevail in view of the unequivocal intention in the statute itself,
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expressed in section 4(1) which says that to the extent to which provisions have been made in the Act, those provisions shall override the established provisions in the texts of Hindu law. Accordingly, in that case, K alone took the properties obtained by his father, P, in the partition between them, and irrespective of the question as to whether it was ancestral property in the hands of K or not, he would exclude his son. Further, since the existing grandson at the time of the death of the grandfather had been excluded, an after-born son of the son will also not get any interest which the son inherited from the father. In respect of the property obtained by K on the death of his father, it is not possible to visualise or envisage any Hindu undivided family. The High Court held that the Tribunal was, therefore, correct in holding that the properties inherited by K from his divided father constituted his separate and individual properties and not the properties of the joint family consisting of himself, his wife, sons and daughters and hence the income therefrom was not assessable in the hands of the assessee-Hindu undivided family. This view is in consonance with the view of the Allahabad High Court noted above.

The Madhya Pradesh High Court had occasion to consider this aspect in Shrivallabhdas Modani v. Commissioner of Income-Tax, M.P.-I, 138 I.T.R. 673, and the Court held that if there was no coparcenary subsisting between a Hindu and his sons at the time of death of his father, property received by him on his father's death could not be so blended with the property which had been allotted to his sons on a partition effected prior to the death of the father. Section 4 of the Hindu Succession Act, 1956, clearly laid down that "save as expressly provided in the Act, any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act should cease to have effect with respect to any matter for which provision was made in the Act". Section 8 of the Hindu Succession Act, 1956 as noted before, laid down the scheme of succession to the property of a Hindu dying intestate. The schedule classified the heirs on whom such property should devolve. Those specified in class I took simultaneously to the exclusion of all other heirs. A son's son was not mentioned as an heir under class I of the schedule, and, therefore, he could not get any right in the property of his grandfather under the provision. The right of a son's son in his grandfather's property during the lifetime of his father which existed under the Hindu law as in force before the Act, was not saved expressly by the Act, and therefore, the earlier

interpretation of Hindu law giving a right by birth in such property "ceased to have effect". The Court
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further observed that in construing a Codification Act, the law which was in a force earlier should be ignored and the construction should be confined to the language used in the new Act. The High Court felt that so construed, section 8 of the Hindu Succession Act should be taken as a self-contained provision lying down the scheme of devolution of the property of a Hindu dying intestate. Therefore, the property which devolved on a Hindu on the death of his father intestate after the coming into force of the Hindu Succession Act, 1956, did not constitute HUF property consisting of his own branch including his sons. It followed the full bench decision of the Madras High Court as well as the view of the Allahabad High Court in the two cases noted above including the judgment under appeal.

The Andhra Pradesh High Court in the case of Commissioner of Wealth-Tax, A.P.-II v. Mukundgirji, 144 I.T.R. 18, had also to consider the aspect. It held that a perusal of the Hindu Succession Act, 1956 would disclose that Parliament wanted to make a clean break from the old Hindu law in certain respects consistent with modern and egalitarian concepts. For the sake of removal of any doubts, therefore, section 4(1)(a) was inserted. The High Court was of the opinion that it would, therefore, not be consistent with the spirit and object of the enactment to strain provisions of the Act to accord with the prior notions and concepts of Hindu law. That such a course was not possible was made clear by the inclusion of females in class I of the Schedule, and according to the Andhra Pradesh High Court, to hold that the property which devolved upon a Hindu under section 8 of the Act would be HUF property in his hands vis-a-vis his own sons would amount to creating two classes among the heirs mentioned in class I, viz., the male heirs in whose hands it would be joint family property vis-a-vis their sons; and female heirs with respect to whom no such concept could be applied or contemplated. The intention to depart from the pre-existing Hindu law was again made clear by section 19 of the Hindu Succession Act which stated that two or more heirs succeed together to the property of an intestate, they should take the property as tenants-in-common and not as joint tenants and according to the Hindu law as obtained prior to Hindu Succession Act two or more sons succeeding to their father's property took a joint tenants and not tenants-in-common. The Act, however, has chosen to provide expressly that they should take as tentants-in-common. Accordingly the property which devolved upon heirs mentioned in class I of the Schedule under section 8 constituted the absolute properties and his sons have no right by birth in such properties. This decision, however,
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is under appeal by certificate to this Court. The aforesaid reasoning of the High Court appearing at pages 23 to 26 of Justice Reddy's view in 144 I.T.R. appears to be convincing.

We have noted the divergent views expressed on this aspect by the Allahabad High Court, Full Bench of the Madras High Court, Madhya Pradesh and Andhra Pradesh High Courts on one side and the Gujarat High Court on the other.

It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

In view of the preamble to the Act, i.e., that to

modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under section 8 of the Act included widow, mother, daughter of predeceased son etc.

Before we conclude we may state that we have noted the obervations of Mulla's Commentary on Hindu law 15th Edn. dealing with section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on Hindu Law, 12th Edition pages 918-919.

The express words of section 8 of The Hindu Succession Act,
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1956 cannot be ingorned and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored.

In the aforesaid light the views expressed by the Allahabad High Court, the Madras High Court, Madhya Pradesh High Court, and the Andhra Pradesh High Court, appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court noted hereinbefore.

In the premises the judgment and order of the Allahabad High Court under appeal is affirmed and the appeals Nos. 1668-1669 of 1974 are dismissed with costs. Accordingly Appeal No. 1670 of 1974 in Income-tax Reference which must follow as a consequence in view of the findings that the sums standing to the credit of Rangi Lal belongs to Chander Sen in his individual capacity and not the joint Hindu family, the interest of Rs. 23,330 was an allowable deduction in respect of the income of the family from the business. This appeal also fails and is dismissed with costs.

The Special Leave Petition No. 5327 of 1978 must also fail and is dismissed. There will be no order as to costs of this.

A.P.J. Appeals and Petition dismissed.
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