(1993) 02 SC CK 0098

In the Supreme Court Of India

Case No : Civil Appeal No. 1330 Of 1982

Additional Commissioner of Income Tax APPELLANT

Vs

M. Karthikeyan RESPONDENT

Date of Decision : 24-02-1993

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Income Tax Act, 1922 — Section 25A

Citation : (1994) 2 SCC 112 Supp

Hon'ble Judges : N. Venkatachala, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is preferred against the judgment of the Madras High court answering the question referred to it, at the instance of the Revenue, against the Revenue. The question referred is :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee''s share in the partnership firm of M/s Erode Service constituted a separate and individual property and not the property of the joint family consisting of himself and his five sons?"

2. One Angappa Mudaliar had five sons including the assessee. There was complete partition among Angappa Mudaliar and his five sons in the year 1943. The said partition was also accepted and recorded by the Income Tax Department under Section 25-A of the Indian Income Tax Act, 1922. Angappa Mudaliar died on 25/01/1962 leaving behind him certain assets. The question is whether the share obtained by the assessee in his father''s assets in his separate property? The High court has answered it saying that it is governed by Section 8 of Hindu Succession Act and therefore the said share is his separate property. This question has since been concluded by the decision of this court in CWT v. Chander Sen which has also been followed in COMMISSIONER OF INCOME TAX v. P.L. Karuppan Chettiar. It is held that in such circumstances the share obtained

by the son is governed by Section 8 of Hindu Succession Act and therefore his separate property. The appeal is accordingly dismissed. No costs.

