

(1971) 09 CAL CK 0025
In the Calcutta High Court
Case No : A.F.O.D. No. 953 of 1966

Fatechand Mahesri and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-09-1971

Acts Referred:

General Clauses Act, 1897 — Section 3(42)

West Bengal Estates Acquisition Act, 1953 — Section 14(3), 6

Citation : AIR 1972 Cal 177 : (1972) 1 CALLT 313 : 76 CWN 137 : (1972) 1 ILR (Cal) 684

Hon'ble Judges : M.M. Dutt, J;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : P.K. Roy and Nihar Ranjan Majumdar, for the Appellant; Hemendra Chandra Sen and B.C. Dutt, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—This appeal is at the instance of the plaintiffs and it arises out of a suit for declaration of title, recovery of possession, permanent injunction and other consequential reliefs. The principal question involved in this appeal is whether each of the coparceners of a Mitakshara Joint Hindu family is an intermediary within the meaning of the West Bengal Estates Acquisition Act, 1953.

2. The plaintiff No. 1 Fatechand Mahesri is the father of the plaintiffs 2, 3 and 4. The plaintiffs Nos. 5 to 10 are the grandsons of the plaintiff No. 1 Fatechand. Plaintiffs Nos. 5 and 6 are the sons of the plaintiff No. 2 Sitaram, plaintiff Nos. 7 to 9 are the sons of plaintiff No. 3 Gouri Sarkar and the plaintiff No. 10 is the son of the plaintiff No. 4 Lakshmi Narayan.

3. The case of the plaintiffs was that the plaintiffs constituted a joint Hindu family governed by the Mitakshara School of Hindu Law. Fatechand Mahesri was the Karta of the said joint family. The properties described in Schedule "A" of the plaint were the joint family properties acquired with the ancestral funds. It was

alleged that the joint status of Fatechand and his three sons, namely, the plaintiffs Nos. 2, 3 and 4 was severed on and from April 10, 1946. In view of the said severance each of the plaintiffs Nos. 1 to 4 became entitled to 1/4th share in the schedule "A" properties. Each of the plaintiffs Nos. 1 to 4, however, constituted separate joint family with his sons and continued to live jointly for some time. It was alleged that on April 1, 1955, the sons of Fatechand declared their intention to sever their joint status with their respective sons. There was, therefore, complete severance in status of the members of the joint family constituted by the plaintiffs.

4. After the West Bengal Estates Acquisition Act came into force the names of the plaintiffs were not recorded in the Revisional Record of Rights, according to their respective shares. Instead, the name of Fatechand Mahesri was recorded in respect of all the properties. The plaintiffs submitted returns in Form "B" retaining the khas lands in their respective shares as mentioned in schedule "B" to the plaint. The plaintiffs were about to retain the khas lands mentioned in "B" schedule to the plaint in terms of the order dated October, 1959 of the Revenue Officer passed in a proceeding u/s 44(2a) of the Act. The Revenue Officer also directed opening of khandakhatians in the names of the plaintiffs in respect of the "B" schedule lands but the Government did not give effect to the order of the Revenue Officer.

5. The plaintiffs claimed that each of the plaintiffs was an intermediary and each of them was entitled to get compensation in respect of the lands of "A" schedule and that each of them was entitled to retain khas possession of the lands described in schedule "B".

6. The plaintiffs have claimed recovery of khas possession of the "B" schedule lands as the State Government took possession of the said lands and granted licences to different persons. By an application for amendment the plaintiff's got the plaint amended by adding 227 persons as defendants in the suit. They were alleged to be the licensees of the State Government in respect of "B" schedule lands.

7. The plaintiffs accordingly prayed for declaration of their title to the extent of their respective shares in respect of the lands in suit, a further declaration that the plaintiffs were Intermediaries and were entitled to retain the "B" schedule lands separately according to their claim and title to those lands as raiyats under the State of West Bengal, recovery of khas possession of the "B" schedule lands and permanent injunction restraining the State of West Bengal from settling the lands of "B" schedule to any other persons.

8. The suit was contested by the State of West Bengal. It was alleged that the lands mentioned in schedule "A" were held and possessed by the plaintiff No. 1 and the plaintiff No. 2 as their personal properties and treated as such by them at all material times, that the other plaintiffs never had any right, title or interest in the land in suit and that they never claimed any interest therein before the

lands were acquired by the Government as surplus land of the plaintiffs Nos. 1 and 2. It was denied that there was severance in the joint Status of the plaintiffs on April 10, 1946, between the plaintiffs Nos. 1 to 4 or that there was any severance between the plaintiffs Nos. 2, 3 and 4 and their respective sons on April 1, 1955 as alleged in the plaint. It appears from the written statement of the defendant No. 1, the State of West Bengal that according to the defendant No. 1 the properties in suit belonged to the plaintiffs Nos. 1 and 2 and not to the joint Hindu family as claimed in the plaint. The defendant No. 1 denied any right of the plaintiffs Nos. 3 to 10 in the Properties in suit and alleged that the plaintiffs Nos. 1 and 2 were allowed to retain land in accordance with the ceiling prescribed by the Act and that the rest of the land having vested in the State, the State took possession of the same. The defendant No. 1 denied the plaintiffs' claim for recovery of possession of the "B" schedule land.

9. The defendant No. 1 filed an additional written statement. In the additional written statement it has been alleged that so long as the coparcenary exists, the coparcenary should be treated as one single intermediary for the purpose of retention of land irrespective of the number of members who may constitute the coparcenary.

10. The learned Subordinate Judge came to the findings that the suit properties standing in the name of the plaintiff No. 1 Fatechand, though originally might have been acquired as his separate properties yet those did subsequently lose that character and became the properties of the joint Hindu family by virtue of waiver of that separate right of the plaintiff No. 1. Therefore, the finding of the learned Subordinate Judge is that the suit properties were the coparcenary properties of the joint Hindu family consisting of the plaintiffs. The learned Subordinate Judge disbelieved the case of the plaintiffs that there was severance of the joint status or that the coparcenary came to an end either on April 10, 1946 or on April 1, 1955 as alleged by the plaintiffs. On the question whether each of the coparceners was an intermediary or not, the learned Subordinate Judge was of the view that the joint Hindu family should be treated as one unit for the purpose of retention of lands u/s 6(1) or for the purpose of compensation in respect of the vested lands, under the Act. In that view of the matter, the learned Subordinate Judge dismissed the plaintiffs' suit. Hence this appeal by the plaintiffs.

11. Although the plaintiffs' case was that there had been severance of joint status between Fatechand Mahesri and his sons on April 10, 1946, and thereafter between the sons of Fatechand and their respective sons on April 1, 1955, Mr. Roy, learned Advocate appearing on behalf of the appellants submitted before us that on the materials on record it would be difficult to support the case of severance that was alleged to have taken place on April 1, 1955 between the sons and grandsons of Fatechand, He, however pressed the alleged partition that took place between Fatechand and his sons, the plaintiffs Nos. 2, 3 and 4.

12. It is well established rule of law that according to true notion of an undivided

Mitakshara family, no individual member of that family, whilst it remains undivided, can predicate of the joint property that he -- that particular member -- has a certain definite share, one-third or one-fourth. Partition according to that law, consists in a numerical division of the property; in other words, it consists in defining the shares of the coparceners in the joint property; an actual division of the property by metes and bounds is not necessary. Once the shares are defined, whether by an agreement between the parties or otherwise, the partition is complete. After the shares are so defined, the parties may. divide the property by metes and bounds, or they may continue to live together and enjoy the property in common as before. But whether they do the one or the other, it affects only the mode of enjoyment, but not the tenure of the property. The property ceases to be joint immediately the shares are defined, and thenceforth the parties hold the property as tenants-in-common (See Mulla's Hindu Law, 13th Edition. Article 322 page 372).

13. In support of his contention Mr. Roy relied upon certain assessment orders passed by the Agriculture Income Tax Officer. These assessment orders are Exhibits 8 to 8 (c) and they relate to the assessment years 1944-45 to 1947-48. In all these assessment orders Fatechand Mahesri has been mentioned as the assessee. In column No. 6 under the item "share, partners/ members with the names and the shares" the names of Fatechand Mahesri and his three sons are mentioned and each one has been shown as having four annas share. In column No. 9 of the assessment order (Exhibit 8 it appears that the Agricultural Income Tax Officer accepted the contention of the assessee that the status of the assessee was that of a firm. From these entries in the assessment orders Mr. Roy contended that there was severance of the joint status between Fatechand Mahesri and his sons even in the year 1944. In any event, it was submitted that it was a clear intention on their part to separate inasmuch as they specified their shares in the joint property in the Agricultural Income Tax assessment proceedings. Attractive though the contention is, we regret that we are unable to accept the same. The plaintiffs have not filed the returns of their agricultural income for the assessment years in respect of which the assessment orders were passed. The plaintiffs have not also filed the Roker Book for the relevant year in which severance of the joint status or partition was alleged to have taken place and also the Roker Books of the subsequent years showing recording of separate shares in the names of Fatechand Mehesri and his sons. None of the plaintiffs examined himself and no explanation was given why none of them was examined. On behalf of the plaintiffs one Chhaganlal Mahesri. the nephew of Fatechand was only examined. Chhasanlal stated in his evidence that the partition took place on April 10, 1946, between Fatechand and his three sons and he averred that in the Roker of all subsequent years the names of the said four persons were noted separately till 1956. As aforesaid, no such Roker was filed and no explanation has been given by Chhaganlal for the non-filing of any such Roker Books. Further, Chhaganlal stated that there was no separation of shares before April 10, 1946. In the plaint also the plaintiffs' case was that there was

separation between Fatechand and his sons on April 10, 1946. but if the assessment orders are accepted to be evidence of separation then it must be held that separation between Fatechand and his sons had taken place at least in 1944.

14. The assessment orders do not contain the description of properties in respect of which the agricultural income was assessed on Fatechand and his three sons. It may be that the joint family had no other property excepting the properties in suit. But from that alone it cannot be inferred that the assessment orders relate to the properties in suit as contended by Mr. Roy. In the absence of any evidence on that point, it is very difficult to rely on the evidence of Chhaganlal about the partition alleged to have taken place on April 10, 1946, for, in the year 1959 Chhaganlal swore an affidavit in the writ petition before this Court on behalf of the plaintiffs wherein it was alleged, that the plaintiffs were members of a joint Hindu family governed by the Mitakshara School of the Hindu Law.

15. Partition is a severance of joint status and all that is necessary to constitute partition is a definite and unequivocal indication of the intention of a member of a joint family to separate himself from the family and enjoy his share in severality. But this intention has to be communicated to the other members of the family. In *Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another*, , the Supreme Court has held that there should be an intention, indication or representation of such intention and that what form that manifestation should take would depend upon the circumstances of each case. The only documentary evidence on which the plaintiffs rely in support of their case that there had been a partition between Fatechand and his sons, is the assessment orders. There is no evidence on record to show who filed the returns. It may be that Fatechand Mahesri whose name appears in all these assessment orders as the assessee filed the returns without the knowledge of his sons. He was the Karta of the joint family and it can very well be presumed that he filed the returns of agricultural income. There is no evidence that his sons were aware of the filing of these returns wherein the shares of Fatechand and his sons were mentioned as four annas each. As already stated, the Roker Books showing the shares of Fatechand and his sons have not been filed. Merely because in the assessment orders the shares of Fatechand and his sons were shown as four annas each, it cannot be held that there was a severance of joint status of Fatechand and his sons in accordance with law. We would, therefore, overrule the contention of Mr. Roy that there was separation between Fatechand and his sons.

16. The next question is whether each of the plaintiffs is an intermediary within the meaning of the West Bengal Estates Acquisition Act, 1953. The learned Subordinate Judge has not accepted the contention of the plaintiffs that each of the plaintiffs is an intermediary and that each one is entitled to retain lands as per ceiling prescribed by the Act. According to the learned Subordinate Judge, If the undivided family of the plaintiffs continued its status as such on the date of vesting of the estate under the Act, then the coparcenary consisting of all the

members should be considered as a single individual and entitled to retain land up to the prescribed ceiling as a single individual or intermediary within the meaning of the Act. This view of the learned Subordinate Judge has been challenged by Mr. Roy.

17. Mr. Roy drew our attention to two unreported Bench decisions of this Court in *Biswanath Misra v. Asst. Settlement Officer*. F.M.A. Nos. 6 and 7 of 1962 disposed of on 17 1 1969 (Cal) (A. N. Ray and A. N. Sen JJ.) and in *Subhkaran Dugar v. State of West Bengal*. F.M.A. No. 604 of 1964 disposed of on 20 1 1969 (Cal) (A.N. Ray and Bagchi. JJ.). The judgments in both the cases were delivered by A.N. Ray, J, (as his Lordship then was). In both these cases it has been held that a coparcener is not an intermediary within the meaning of the Act and that it is the collective body of individuals who constitute the coparcenary is regarded as an intermediary. Mr. Roy has, however, challenged the propriety of these two Bench decisions of this Court.

18. The first point that was urged by Mr. Roy is that partition or no partition each coparcener, that is each of the plaintiffs, is an intermediary within the meaning of the West Bengal Estate Acquisition Act. According to him on the date of vesting under the Act the interest of a coparcener in the coparcenary property becomes certain in the sense, that his share becomes defined as in the case of severance of joint status between the coparceners. As soon as the coparcenary property goes out of the joint family there is disruption of joint status in respect of that property and the share of each coparcener becomes defined. In support of his contention Mr. Roy relied upon the decision of the Privy Council in *Suraj Buns Koer v. Sheo Proshad Singh* (1879) 6 Ind App 88 (PC). In that case, a suit was instituted by two minor sons of one Adit Sahai for setting aside a sale of joint ancestral property which had been sold in execution of a decree obtained against their deceased father on the ground that the debt was not one for which such property should be made liable. It was held by the Privy Council that the purchaser of undivided property sold in execution of a decree during the life of the debtor for his separate debt, acquires the debtor's interest in such property with the power of ascertaining and realising it by partition. According to their Lordships the proper decree to be passed was an order declaring that, by virtue of the execution sale to them, the purchasers acquired only the one undivided third share in the property with such power of ascertaining the extent of such third part or share by means of partition as Adit Sahai possessed in his lifetime. Mr. Roy strongly relied on the observation of the Privy Council that the purchasers acquired one undivided third share in the property. It was contended by Mr. Roy that as soon as the share of the purchasers was declared, the shares of the other coparceners in the property became defined and that effected a partition of the property and severance of the joint status of the coparceners in respect of that property.

19. The decision in *Suraj Bunshi Koer's* case (1879) 6 Ind App 88 (PC) is based on equitable principle. According to the Mitakshara law as administered in

Bombay and Madras, a coparcener can alienate his undivided interest in the coparcenary property. but in Bengal and United Provinces, a coparcener has no such right and the alienation will be invalid unless it is made with the consent of all other coparceners. In Suraj Bunshi Koer's case. Sir James Colvile after referring to the Mitakshara law as administered in Bombay and Madras observed as follows:--

"There can be little doubt that all such alienations whether voluntary or compulsory, are inconsistent with the strict theory of a joint and undivided Hindu family; and the law as established in Madras and Bombay has been one of gradual growth, founded upon the equity which a purchaser for value has. to be allowed to stand in his vendor's shoes, and to work out his rights by means of a partition."

20. This equitable principle has been incorporated in the Hindu Law for the purpose of safeguarding the interest of a purchaser for value of an undivided share of a coparcener. So far as Bengal is concerned Sir James Colvile. after referring to an earlier decision of the Privy Council in Deendyal Lal v. Jugdeep Narain Singh. (1877) 4 Ind App 247 (PC) observed that by that decision

"the law has so far been assimilated to that prevailing in Madras and Bombay, that it has been ruled that the purchaser of undivided property at an execution sale during the life of the debtor for his separate debt, does acquire his share in such property with the power of ascertaining and realizing it by a partition."

In Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh and Others, . Mukherjea. J. observed as follows:--

"The High Court has held that this claim of the plaintiff must fail. All that he purchased at the execution sale was the undivided interest of the coparceners in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work out his rights only by a suit for partition and his right to possession would date from the period when a specific allotment was made in his favour. In our opinion, this is the right view to take

* * * * *

It is apparent from the above observation of the Supreme Court in Sidheshwar's case that the contention of Mr. Roy that an attachment of the undivided share of a member of a Mitakshara joint family during his lifetime operates as a division of interest and causes a severance of Status in respect of the property attached, does not find support.

21. Even, assuming that there is such a severance as contended by Mr. Roy. we are of the view that the position of an execution purchaser cannot be equated with that of a coparcener after vesting of the coparcenary property. As already stated the right of the purchaser is founded on equity, but there is no question of any equity in favour of a coparcener,

22. The next point that was argued by Mr. Roy is, that property in the hands of the Government as a result of vesting, loses the character of coparcenary property and consequently, the shares of the coparceners have to be worked out. We are unable to accept this contention. In our view, the property in the hands of the Government remains to be coparcenary property, but in another form, that is. in the form of money. When Government takes possession of the coparcenary property as a result of vesting of the same under the West Bengal Estates Acquisition Act, the joint family consisting of the coparceners will be entitled to compensation. Thus the property is transformed into money as belonging to the coparcenary.

23. Next it was argued by Mr. Roy that a Joint Hindu family cannot be regarded as a single individual or a person within the meaning of the word "person" in Section 3(42) of the General Clauses Act. 1897. u/s 3(42) "person" includes a company or association or body of individuals whether incorporated or not. In the two unreported Bench decisions of this Court referred to above, it has been held that a joint Hindu family is a person within the meaning of the definition of the term in the General Clauses Act.

24. The question whether joint Hindu family is a person or not arises in this way. In the instant case, the Hindu family was a tenure holder in respect of the disputed property. Section 2(i) of the West Bengal Estates Acquisition Act. 1953, defines the term "intermediary" as meaning a proprietor, tenure-holder, under tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and. in relation to mines and minerals, includes a lessee and a sub-lessee. The term "tenure-holder" has not been defined in the Act. but Clause (p) of Section 2 provides that expression used in the Act and not otherwise defined having relation to the areas to which the Bengal Tenancy Act, 1855 applies, the same meaning as in that Act. In view of Clause (p) the definition of the term "tenure-holder" as given in the Bengal Tenancy Act will apply. Under Sub-section (1) of Section 5 of the Bengal Tenancy Act "tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it. and includes also the successors-in-interest of persons who have acquired such a right. The question, therefore, is whether the joint Hindu family can be said to be a "person" within the meaning of the Bengal Tenancy Act. There can be no doubt that joint Hindu family is a body of individuals and prima-facie. the definition of the term "person" under the General Clauses Act applies to the joint Hindu family. It was. however, contended by Mr. Roy that each of the coparceners should be held to be a person, or in other words, each of the coparceners should be regarded as a tenure-holder in respect of the disputed property.

25. Sir Dinshanji Mullah in his Principles of Hindu Law, 13th Edition, Page 244, Article 216 says as follows:--

"The essence of a coparcenary under the Mitakshara law is unity of ownership.

The ownership of the coparcenary property is in the whole body of the coparceners. According to true notion of an undivided family governed by the Mitakshara law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share, one-third or one-fourth. His interest is a fluctuating interest capable of being enlarged by deaths in the family, and liable to be diminished by births in the family. It is only on a partition that he becomes entitled to a definite share."

26. The title to the coparcenary property is one title and that is in the whole body of the coparceners. No coparcener can claim individual ownership in the coparcenary property. The title to the property belongs to the coparcenary consisting of the coparceners. accepting that each coparcener has an undivided interest in the property which is also fluctuating, and none of the coparceners has any definite share in the coparcenary property. It is only when a partition takes place that the shares of the coparceners become defined and specific. So long partition does not take place the coparceners jointly own the property.

27. It was, however, submitted by Mr. Roy that a coparcener having an interest in the coparcenary property, the collective body of coparceners constituting the coparcenary cannot be said to be a "person" within the meaning of the General Clauses Act. According to him in order to hold that a collective body of individuals is a person, none of the individuals forming that body should have any interest whatever in the property. Mr. Roy referred to the case of a school committee owning property and submit-tied that the unity of title as in the case of a coparcenary is not the same unity of of title as in the case of the members of the school committee. He makes a distinction between the two cases, namely, in the case of a coparcenary each coparcener has an undivided interest although title to the property is in the whole body of coparceners, but in the case of the members of the school committee no individual member has any interest whatsoever. We are unable to accept the said contention based on the analogy referred to above. The nature of undivided interest of a coparcener in the coparcenary property has been clearly stated in the above passage quoted from Mulla's Hindu Law. There is no authority for the proposition that the definition of the word "person" in the General Clauses Act will have no application when each of the individuals forming the body of individuals has an undivided interest in the property. The members of the school committee do not hold the property for themselves or for their own interest. They are entrusted with the management of the institution and its properties. That analogy therefore, has no application to the facts and circumstances of the case. We are also unable to accept the contention of Mr. Roy that true unity of title contemplates that none of the individuals forming the group should have any interest As no coparcener is owner of any specific share of the coparcenary property, and the title to the property being in the whole body of coparceners, we are of the view that there is true unity of title. When each individual of a body of individuals is owner in respect of a specific share in the property, there is no question of unity of title, and such a

body of individuals is not a person within the meaning of the definition of the term in the General Clauses Act.

28. Mr. Roy submitted that the true test for ascertaining whether the joint Hindu family is a person or not would depend upon whether the landlord can sue all the coparceners jointly for the purpose of realising arrears of rent. Ordinarily, the Karta of the joint family looks after the affairs of the joint family. The Karta represents the joint family. It is true that the landlord can sue all the coparceners instead of suing the Karta for the purpose of realisation of arrears of rent, but in our view, the test is not that as contended by Mr. Roy. There is no distinction between the case when a Karta is sued as representing the joint family and all the coparceners are sued jointly by the landlord. The true test is whether each coparcener is liable to the landlord for payment of rent in respect of the coparcenary property in terms of Section 146-A (1) of the Bengal Tenancy Act which provides that all co-sharer tenants in a tenure or holding or their successors-in-interest are liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding. The coparceners are joint tenants and not tenants-in-common. The landlord is not entitled to sue a coparcener for arrears of rent in respect of the coparcenary property. A coparcener is not a co-sharer tenant in respect of the tenure or holding. In the case of tenants each having a definite share in the tenancy, each is liable to the landlord for payment of rent u/s 146-A (1) of the Bengal Tenancy Act. but in the case of a joint Hindu family the landlord has either to sue the whole body of the coparceners or to sue the Karta representing the joint family for arrears of rent, for, a coparcener not having any specific share is not individually liable. We are, therefore, unable to accept the test as proposed by Mr. Roy.

29. Lastly it was contended by Mr. Roy that indefiniteness of share of the coparceners could not be a criterion for vesting. According to him, although a coparcener has no definite share till partition takes place, he has undoubtedly an undefined share. There is uncertainty over a period, but at a particular point of time it is certain. It was submitted that on the date of vesting the share of each coparcener can be calculated and thus there will be no difficulty in ascertaining the shares of the coparceners. The shares of the coparceners become defined only on a partition taking place. The vesting of coparcenary property under the West Bengal Estates Acquisition Act cannot be regarded as effecting a partition of the coparcenary. There is, therefore, no scope for calculating or ascertaining the shares of the coparceners on the date of vesting.

30. In view of the aforesaid discussion, we hold that a joint Hindu family governed by the Mitakshara School of Hindu Law is a person under the definition of the term "person" as given in Section 3(42) of the General Clauses Act and that a single coparcener out of the body of coparceners constituting the coparcenary cannot be held to be a person or a co-sharer tenant. A coparcener is not an intermediary but it is the joint Hindu family constituting the coparcenary is the intermediary. The view which we take, namely, that a coparcener is not an

intermediary finds support on a reference to some of the provisions of the West Bengal Estates Acquisition Act.

31. u/s 6 of the West Bengal Estates Acquisition Act. provisions have been made for retention of land by a corporation or an institution established exclusively for a religious or a charitable purpose, co-operative societies, companies etc.. but no provision has been made about the coparceners governed by the Mitakshara School of Hindu Law. This points to the intention of the legislature that the legislature did not intend to treat each coparcener as an intermediary under the Act. Under Sub-section (3) of Section 14 of the Act. every intermediary who had a share in any estate or interest which has vested in the State u/s 5, shall be treated separately for assessment of compensation. Sub-section (3) clearly indicates that the intermediary must have a share in any estate or interest so that he may be treated separately for assessment of compensation. In our view, the share referred to in Sub-section (3) means a defined share. As the coparcener cannot be said to have a defined share in the coparcenary property he cannot be treated separately for the purpose of assessment of compensation under Sub-section (3), or in other words a coparcener cannot be held to be an intermediary.

32. Sub-section (1) of Section 7 provides that arrears of land revenue, cesses, taxes and impositions due from any intermediary in respect of his share in any estate which vests in the State u/s 5 shall, after the date of vesting, continue to be recoverable from the intermediary under an order of the Collector by reduction of the amount of such arrears from the money which the intermediary is entitled to receive as compensation under the Act. If it is held that a coparcener is an intermediary, it will be difficult to give effect to Section 7(1). for the simple reason that the arrears of land revenue, cesses, taxes etc.. upto the date of vesting cannot be said to be due from a coparcener but undoubtedly it would be due from the joint family. For the same reason, the provision of Section 8 which deals with recovery by an intermediary of arrears of rent due to him from any person for a period up to the date of vesting, cannot also be given effect to. u/s 6(1) of the Act an intermediary is entitled to retain agricultural land in his khas possession not exceeding 25 acres as may be chosen by him. A coparcener cannot claim that he has in his khas possession any specific property belonging to the joint Hindu family. From the above provisions, it is clear that a coparcener is not an intermediary under the Act.

33. Mr. Roy. however, pointed out that certain difficulties would arise in case, it is held that the joint Hindu family is an intermediary. It has been contended that if the Karta of the Mitakshara family refuses to exercise the choice of retention of coparcenary property within permissible limit by submitting returns in Form "B" on behalf of the joint family the other coparceners who are not intermediaries shall not be entitled to exercise that choice of retention. Similarly, if the Karta dies and the coparceners fail to appoint one of them as the Karta. in that case also the same difficulty will arise. It may be that in certain cases, the

coparceners might be put to certain difficulties in the matter of retention of land by the joint Hindu family or in the matter of compensation, but in our opinion, these difficulties taking place on the happening of certain events cannot be taken into consideration in ascertaining whether a coparcener is an intermediary or not.

34. After giving our best consideration in the matter we are of the view that a coparcener is not an intermediary but the collective body of the coparceners constituting the joint Hindu family is an intermediary within the meaning of the West Bengal Estate Acquisition Act. The joint Hindu family should, therefore, be treated as a single individual or a single unit for the purpose of retention of land and also for compensation under the Act.

35. In the result, the judgment and decree of the learned Subordinate Judge are affirmed and the appeal is dismissed. But in the peculiar facts and circumstances of the case involving substantial points of law, we do not make any order as to costs in this appeal.

Arun K. Mukherjea, J.

36. I agree.