
(1965) 12 MAD CK 0048
In the Madras High Court

Sangiliveerappa Balasubramanian Pandian alias Kuttiraja and
Others

APPELLANT

Vs

Kannuthayi alias Muthathal Nachiyar and Others

RESPONDENT

Date of Decision : 09-12-1965

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 46,
59

Citation : (1967) ILR (Mad) 454 : (1967) 2 MLJ 169

Hon'ble Judges : M. Natesan, J

Bench : Division Bench

Judgement

M. Natesan, J.—These appeals u/s 51 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948(hereinafter referred to as the Act) relate to the Sivagiri Zamin in Tirunelveli District which was notified and taken over by the Government under the Act on 3rd January, 1961.

2. Sivagiri Zamin is an ancient ancestral impartible Estate, impartible by custom and included in the Schedule to the Madras Estates Act of 1904. On the date of the notification of the Estate under the Act, one Varaguna Rama Pandia Chinnathambiar was the zamindar or proprietor of the estate and, therefore, the principal landholder of the Estate under the Act. He had then two sons by his first wife and one son by his second wife. He had also two illegitimate sons by his concubine. Long after the notification, by his second wife, he had another son called Kuttiraja and he is the first appellant in these appeals, his mother being the second appellant. The principal landholder, Varaguna Rama Pandian died on 16th August, 1955, after the notification and vesting of the estate in the Government, and the question that arises of consideration in these appeals is the right of the creditors of the deceased in respect of debts incurred by him personally prior to the notification of the Estate, to proceed against his share in the compensation and other amounts under the Act in the hands of his heirs and representatives. The genealogy given will be helpful in following the Controversy.

3. It will be evident from the genealogy that the principal landholder, that is, the deceased and his three sons born prior to the notification, are the sharers under the Act, each being entitled to 1/4 of the 4/5 share in the compensation available to the sharers u/s 45 of the Act. By the decision of this Court in V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, , it was held that the 1/5 share of the deceased was divided property in his lands, vis-a-vis the pre-notification-born sons, and the persons entitled to take his share on his death were, his son born after the notification, his two widows and two illegitimate sons, that is, individuals, Nos. 5 to 9 in the pedigree. The two widows were held entitled each to 3/16 share in the 1/5 share of the deceased. The after-born son Kutti Raja was held entitled to a 6/16 share therein and the two illegitimate sons were found entitled the remainder therein, each to 2/16 share. Special Tribunal Appeal Nos. 42 to 45 are directed against Original Petition Nos. 88, 89, 97 and 103 of 1963. by some of the creditors of the principal landholder claiming payment out u/s 46 of the Act of the amounts due to them from the principal landholder's 1/5 share in the first installment of the balance of compensation which was deposited on 29th June, 1962. The claims of these creditors had been recognised u/s 46 of the Act in earlier proceedings during the lifetime of the principal landholder himself. Special Tribunal Appeal No. 27 of 1964 is directed against the order in Original Petition No. 90 of 1963, application preferred by the appellants herein, claiming their shares as declared in V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, , in the 1/5 share of the principal landholder in full, denying the claims of the creditors u/s 46. The contention of the appellants is that the claims of the personal creditors of the Zamindar got extinguished on his death, the debts not being enforceable u/s 4 of the Madras Impartible Estates Act. This contention was overruled by the Tribunal and hence the appeals.

4. The arguments for the appellants may be summed up thus: The claims of the creditors in question are not against the impartible estate u/s 45(3) of the Act and had been admitted only u/s 46 of the Act. The estate being an impartible estate, the character of impartibility is continued in the compensation amount to which the estate got transferred, and in spite of its being divided under the provisions of the Act, the share of the principal landholder therein would retain its impartible character. On his death no part of it could be treated as his estate and proceeded against by his creditors, and Section 59(1) of the Act limited the liability of the compensation amount for debts, to the extent the liability could have been enforced prior to the notification. Prior to the abolition personal debts could not survive the death of the Zamindar. Ergo, there could be no execution against his share in the compensation. But the Tribunal basing itself on the decision V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, , relating to the Very share, upheld the right of the creditors to proceed against the share of the principal landholder's interest in the compensation and other amounts.

5. It is an admitted fact the Sivagiri Zamin was an ancient customary impartible estate, and was later governed by the Madras Impartible Estates Act, 1904. But the question is whether notwithstanding the abolition of the estate under the Act and the repeal of the Madras Impartible Estates Act by the Section 66 of the Abolition Act and notwithstanding the division of the compensation amount, amongst the sharers under the provisions of the Abolition Act, the compensation and other amounts apportioned under the Act carried their parental impartibility. The poser looks like answering itself, still the problem is not so simple. It will be convenient at this stage to refer to some of the principal provisions of the Abolition Act having a bearing on the question in issue. u/s 3, (b) with effect on and from the notified date and save as otherwise expressly provided in the Act, the entire estate stood transferred to the Government and vested in them free of all encumbrances. By Section 3(3), on the notification.

The principal or any other landholder and any other persons Whose rights stand transferred under Clause (b) or cease and determine under Clause (c), shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act.

Under Section 3(g).

Any rights and privileges which may have accrued in the estate, to any person before the notified date, against the principal or any other landholder thereof, shall cease and determine, and shall not be enforceable against the Government or such landholders, and every such person shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act.

The result of the several provisions of Section 3 is whatever rights the principal landholder or other persons are entitled to under the Act are by virtue of the provisions of the Act, that is, under the statute. Their rights and privileges in the equivalent of the estate are just those rights and privileges the Act recognised or granted, no more and no less. Section 42 which provides for claims being made for and against the compensation amount thus:

Every person claiming the compensation so deposited or any portion thereof, including the principal or any other landholder, members of his family claiming any portion of such compensation whether by way of a share or by Way of maintenance or otherwise, and creditors, Whether their debts are secured or not, shall apply to the Tribunal within six months from the date on Which the amount Was so deposited or within such further time as the Tribunal may in its discretion, allow.

It will be seen that Section 42 provides for claims being made against the compensation amount not only by secured creditors who may have a claim against the estate, but also by others. Section 43 empowers the Tribunal to enquire into the validity of the claims received by it and determine the persons entitled to the compensation amount and the amounts they are entitled to. Section 44 provides for apportionment of the compensation as a preliminary to

the determination and Section 45 provides for the made of apportioning the compensation in the case of impartible estates like the one now under consideration. The following important provisions of Section 65 are relevant for the present:

45. (1) In the case of an impartible estate Which had to be regarded as the property of a joint Hindu family for the purpose of ascertaining the succession thereto immediately before the notified date, the following provisions shall apply.

(2) The Tribunal shall determine the aggregate compensation payable to all the following persons, considered as a single group:

(a) the principal landholder and his legitimate sons, grandsons and great-grandsons in the male line living or in the womb on the notified, date, including sons, grandsons and great-grandsons adopted before such date (who are hereinafter called "sharers") and

(b) other persons who immediately before the notified date, were entitled to maintenance out of the estate and its income either u/s 9 or 12 of the Madras Impartible Estates Act, 1904, or under any decree or order of a Court, award, or other instrument in writing or contract or family arrangement Which is binding on the principal landholder (who are hereinafter called "maintenance-holders");

(Proviso omitted)

(3) The Tribunal shall next determine which creditors if any, are lawfully entitled to have their debts paid from and out of the impartible estate and the amount to which each of them is so entitled; and only the remainder of the aggregate compensation shall be divisible among the sharers and maintenance-holders as hereinafter provided:

* * * * * (6) The balance of the aggregate compensation shall be divided among the sharers, as if they owned such balance as a joint Hindu family and a partition thereof had been effected among them on the notified date.

Under Clause (3) of Section 45, the creditors that are provided for are those who are entitled to have their debts paid from out of the assets of the impartible estate, that is, they will be the persons whose debts are binding, on the estate u/s 4 of the Act. These debts binding on the estate are first taken out of the compensation amount as a paramount claim for payment and the rest only is made divisible among the sharers and maintenance-holders.

6. Then comes Section 46:

After the compensation has been apportioned among the persons referred to in Section 44, Sub-section (1), or where it is more convenient so to do pending such apportionment, the Tribunal shall take into consideration the applications of the creditors other than those dealt with in Section 45 Sub-section (3), and decide the amount to which each such creditor is entitled and the person or persons out of whose share or shares of the compensation such amount should

be paid.

Now, Section 45(3) having provided for the payment of the creditors whose debts are binding on the estate, Section 46 provides for the payment of the other pre-notification creditors.

7. We shall first take up for consideration the first part of the argument that the compensation amount continued to retain its character of impartibility even after the apportionment of the amount between the sharers. Learned Counsel submits that Section 66 only provides that the Madras Impartible Estates Act, 1904 shall be deemed to have been repealed in its application to the estate with effect on and from the notified date. It is contended that the estate as such has vested in the Government and it is in relation to the estate that has vested that the repeal operated and the compensation amount which represented the estate could and, therefore, would retain the character of impartibility. Reliance is placed for this contention on the decision of this Court in *Sri Ravu Janardhana Krishna Ranga Rao Bahadur Vs. The State of Madras and Others*, . Particular reliance is placed on the following observations therein:

We are unable to follow his argument that the repeal of the Madras Impartible Estates Act brought about an extinguishment of the incident of impartibility. So far as the Bobbili Estate is concerned, it did not become an impartible estate by virtue of its inclusion in the Schedule to Madras Act II of 1904. It was an ancient impartible estate and the utmost that could be said to its inclusion in the Schedule that its impartibility was recognised. Nor are we able to appreciate his argument that the custom of impartibility which admittedly attached to the Estate lasted and could last only so long as the Estate was in the shape of immovable property, and in particular landed property, and that as soon as the estate or a part of it is acquired by the Government the compensation amount payable for such acquisition must be deemed to be not impressed with the custom of impartibility.

But the observations in question are on the claim of the younger brother of the Zamindar of Bobbili the principal landholder, to a half share of the compensation amount remaining after the satisfaction of the claims of the genuine creditors of the estate and of the maintenance holders. It was contended for the claimant that, in view of the repeal of the Impartible Estates Act on the notification of the estate, under general law ignoring the rule of impartibility and the rule of primogeniture incidental thereto, he as the brother was entitled to a half share of the compensation amount. It was argued that the compensation amount represented in the circumstances, the equivalent of an ancestral estate to which the incident of impartibility could no longer attach. Having taken the place of ancestral property and having, lost the special feature of impartibility, the compensation amount, it was claimed was divisible as between the persons having the right of survivorship based on the right of birth. It was in meeting these arguments that the aforesaid observations were made. The learned Judges, Rajamannar, C.J., and Venkatarama Ayyar, J., held that only persons who

had an interest in the property which was acquired were entitled to a share in the compensation awarded on the acquisition of the property by the Government. In view of the several pronouncements of the Judicial Committee as to the rights of junior members in an impartible estate, the younger brother had no right in the impartible estate or the compensation paid on its acquisition. The right to maintenance which he had was not attributable to any then present interest in the estate. It was pointed out that the material time for the purpose of determining the rights of parties, was the date of the notification by virtue of which the estate was statutorily transferred to the Government, and that the claimant had no interest in the estate at the time of the notification. Their Lordships in that case were dealing with a claim to a share in the compensation amount which ignored the provisions of the Abolition Act regarding apportionment of the compensation. It was a claim *de hors* the Abolition Act, relying upon the Abolition Act to the extent only that the compensation amount was in lieu of the estate which had been taken over by the Government, and the Impartible Estates Act stood repealed *pro tanto* with the notification. The question as to the character of the compensation amount on the apportionment of the sum under the provisions of the Act in the hands of the sharers was not the subject of consideration. The case in question dealt with the character of the compensation amount before it was dealt with under the several provisions as to its distribution under the Abolition Act.

8. Reference was made by learned Counsel for the appellants to the decision in *Gopalakrishna v. Krishna* (1955) A.W.R. 590 : AIR 1955 Andh 267. 479, where the decision in *Sri Ravu Janardhana Krishna Ranga Rao Bahadur Vs. The State of Madras and Others*, , was followed. There again the question in the present form did not arise for consideration. One of us (Chandra Reddi, J., as he then was) who was a member of the Bench summed up the argument in *Sri Ravu Janardhana Krishna Ranga Rao Bahadur Vs. The State of Madras and Others*, , thus:

It was argued there that with the taking over of the impartible estates under the Act and the conversion of the impartible estate into money the incidents of impartibility attached to the estate had ceased and consequently compensation amount should be regarded as the property of the joint family consisting of the members of the family.

The emphasis, it will be seen, is that in the claim made in *Sri Ravu Janardhana Krishna Ranga Rao Bahadur Vs. The State of Madras and Others*, , the case was that the compensation amount belonged to all the members of the family. This will include persons who under the law governing impartible estates had no interest in the property on the date of the notification.

9. The aforesaid decisions are authorities for the position that the Impartible Estates Act cannot be totally and completely ignored for all purposes, and despite the repeal of the Act by Section 66(1) of the Abolition of the Estates Act, the concept of the original estate as to be kept in mind for certain purposes. To

instance: the principal landholder as defined in the Act is a person who held the estate immediately before the notified date and in respect of an impartible estate, a person entitled to the possession of the estate immediately before that date. u/s 18(4) of the Act every building other than that referred to in sub-sections (1), (2) and (3) of Section 18 vests in the person who owned it immediately before the notified date, and in *Pushpavathi Vijayaram v. P. Visweswar* AIR 1964 S.C. 118, 127, the Supreme Court held that the person who owned the estate under Clause (4) of Section 18 is the landholder or proprietor as defined under the Impartible Estates Act of 1904. It was contended in that case that the buildings falling u/s 18(4) vested in the person who owned them immediately before date and that took in the members of the plaintiff's family. Their Lordships overruled the claim to bring in a large class of persons as owners u/s 18(4). The following observations have some bearing on the question now under consideration:

10. Gajendragadkar, J., (as he then was) delivering judgment for the Court observes:

There is also another aspect of this matter Which points to the same conclusion. Section 45 of the Act provides for the apportionment of compensation in the case of certain impartible estates, and the class of persons who are entitled to claim apportionment is limited by Section 45(2)(a) and (b). If the construction for which Mr. Setalvad contends is accepted, it will lead to this anomalous result that whereas the apportionment of compensation can be claimed by the narrower class of persons specified by Section 45, a much larger class of persons Would be entitled to claim the benefit of Section 18(4). That obviously could not have been the intention of the Legislature.

Notwithstanding the repeal reference will have to be made to the Impartible Estates Act for the purpose of ascertaining the debts binding on the estate and the persons entitled to maintenance under the Madras Impartible Estates Act, 1904. Effect can be given to the provisions under Sections 18 and 45 only after the notified date and the provisions of the Impartible Estates Act will have to be looked up, but that is only for ascertaining the persons having interest in or claims against the estate who are to be recognised under the Abolition Act.

11. When we examine the provisions of the Abolition Act regarding the apportionment of the compensation it becomes manifest that the compensation and other amounts on apportionment cannot continue to be impartible. To start with, Section 45, Clause (6) provides for the division of the compensation among the sharers as if they owned such balance as a joint family and a partition had been effected among them on the notified date. The compensation amount is actually partitioned among the sharers who are the principal landholder and his legitimate sons, grandsons and great grandsons in the male line living or in the womb on the notified date. They are entitled to be paid out their respective shares subject to claims of creditors provided for in the Act. The Act places no restraint on the recipients of the amounts, with regard to their right therein.

12. In our view, it is difficult to maintain after such apportionment that in the hands of the principal landholder, his share in the compensation amount gets stamped with the original character of the estate and remains impartible. Such a contention, in our view, is inconceivable and if accepted can give rise to all kinds of conundrums and difficulties. Is the compensation amount to be considered impartible in the hands of the principal landholder only or do the other sharers also take their shares with the character of impartibility attached to it? Is the money in the hands of the principal landholder to devolve or descend according to the law of lineal primogeniture? If so can the eldest son of the proprietor, a sharer with equal rights, claim the father's share under the law of primogeniture in preference to the other sons? If by reason only, of the origin of the money as the equivalent of the impartible estate taken over by the Government the compensation amount is to be held impartible, should not the reasoning be logically carried over to the portions of the compensation amounts drawn by the maintenance holders? Is this reasoning to be extended to the lands which the principal landholder gets under the provisions of Section 47 of the Act? That will be creating a new type of impartible title in moneys and scattered extents of ryotwari holdings throughout the State, if a succession of life estates for impartibility is conceded. To us it seems that it is a contradiction in terms to speak of apportionment of the compensation and contend that the divided amount carry the character of impartibility. Whatever may be the nature or character of the compensation amount before its deposit for apportionment by the Tribunal, it will lose its impartible character when it is apportioned and dealt with under the provisions of the Act. To hold that these moneys are impartible will be to wholly ignore the character and incidents of impartible estates.

13. The character in which the balance of compensation is shared u/s 45(6) of the Act came up for detailed consideration in V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, , to which reference has already been made. It is by that decision the present appellant's shares in the compensation amount came to be fixed and settled. The dispute in that case was in relation to the one-fifth share of the principal landholder in the balance of compensation. There being no testamentary disposition by the principal V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, landholder, the dispute arose on whom the interest of the principal landholder in the compensation amount devolved under the law and in what proportion. The principal landholder, on the date of his death, had his four sons, inclusive of the first appellant born after the notification. There were the two widows who under the Hindu Women's Right to Property Act, 1937, had rights in the property of the deceased and there were also the two illegitimate sons. The dispute arose in the case at the instance of the assignees of the first two sons who contended that all the four sons of the deceased would share in his interest in the compensation. The right of the illegitimate sons to any share in the compensation was denied. Summarising the position, the learned Judges observe at page 777:

The question now before us does not relate to the distribution of the compensation amount as such. There is no doubt that the right to the compensation amount will vest only amongst sharers that is, the principal landholder and his legitimate sons, etc., as if there had been partition on the date of the notification. But once it has so vested, each one of the sharers Would be entitled to What he obtained as his property, Whether it be regarded as joint family property between himself and his sons, or as his separate property. When, therefore, one of the sharers died after the notified date, the distribution of his share of compensation amount could not be under the provisions of the Act. The Act does not provide for it, but it will be under the ordinary law governing testamentary disposition or succession, as the case may be. In the instant case under the provisions of Section 45, one-fifth of the compensation amount Would belong to Varaguna Pandian, as if there Was a partition between him and his three legitimate sons on the notified date. When he died in 1955, that share Would devolve according to the Hindu Law, the course of devolution varying as the property is viewed either as separate or joint family property.

These observations are directly against the contention that the amount in the hands of the principal landholder should be deemed to be impartible. Proceeding further it is observed at pages 780 and 781:

Section 45(6) states that the compensation amount would be divisible between the sharers, as if there is a partition on the notified date. Therefore, whatever might be the rights of the principal landholder or his sons in the impartible estate before the date of the notification, the compensation amount is treated as (i) property owned by the sharers as if they constituted members of the joint Hindu family and (ii) the share of each of the sharers determined as if there had been partition between them on the notified date. In other Words, two results follow from the statutory provision: (i) that the compensation amount is joint family property of the sharers and (ii) that there had been a partition of that assets on the date of notification between them.

... So far as the principal landholder is concerned, his estate was taken over. So far as the sons and grandsons are concerned, their chance of succession to the estate and their rights to maintenance have disappeared. In providing compensation for those persons, the statute creates a fiction by treating the compensation amount as joint family property.

Holding that while the fiction of partition could not be extended to other coparcenary properties of the sharers, it was held that so far as the compensation amount was concerned the sharers must be deemed to have been divided. In this view, as the three sons stood divided from the principal landholder, the persons entitled to take his share were held to be his undivided son, the present first appellant, his two widows and his two illegitimate sons. The first three sons were held to have no interest in the share of the deceased Zamindar. The division of the compensation amount among the heirs of the deceased was made as if it was divisible property in his hands, and it is on that

title the present applicants lay claim. But impartible property is property which by its very nature must be taken by one individual only. Section 2(a) of the Madras Impartible Estates Act defines Impartible Estate as an estate descendible to a single heir and subject to the other incidents of impartible estates in Southern India. Proprietor of an impartible estate is defined as meaning the person entitled to possession thereof as single heir under the special custom of the family or locality in which the estate is situated or if there be no such family or local custom under the general custom regulating the succession to impartible estate in Southern India.

14. No doubt with reference to the very same estate, there is an unreported decision in Rangaswami Achari v. Rani Kannathai A.A.A.O. No. 56 of 1958 wherein our learned brother "Veeraswami, J., has taken the view that the divided share as on the notified date did not lose the character of impartibility. After referring to the division provided for in V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, , the learned Judge remarks that a further division declared by this Court in that decision can make no difference. The question that arose in that case was the liability for attachment of the 1/5th share in the interim payment representing the share of the deceased principal landholder of the estate. To the execution proceedings the two widows, the three sons who are sharers and the after-born son, the present first appellant, were made parties as the legal representatives of the deceased Zamindar. The attachment was resisted on the ground that the interim payment referable to the 1/5th share of the deceased accruing after the death of the principal landholder was not liable for attachment, as it continued to have the character of impartibility. The Courts below has taken the view that there was nothing in the Abolition Act which deprived the compensation and the interim payment of the character of impartibility. Referring to Sub-section 6 of Section 45, the learned Judge observed that by a fiction of law an estate, which is impartible, was regarded as property belonging the joint Hindu family for the purpose of ascertaining the sharers and their respective shares. Proceeding it is observed:

Sub-section (6) goes no further. It does not deal with the nature and character of the share so ascertained and divided under the provision of Section 45. There is nothing in Sub-section (6) of that section which removes from the ascertained share the character of impartibility. Nor is there any other provision in Madras Act XXVI of 1948 which, as far as I can see, brings about the result.

Reliance has been placed by the learned Judge for the above view on the decision in Sri Ravu Janardhana Krishna Ranga Rao Bahadur Vs. The State of Madras and Others, , and another unreported decision of this Court in Pandia Raja v. Anantarama Pandian S.T.A. No. 63 of 1965, which will be referred to presently. The decision proceeds upon the admitted premises that Sivagiri Zamin Estate is an ancient impartible estate and the character of this impartibility did not depend upon the provisions of the Act.

15. But, in our view, the decision cannot rest merely on the original character of the estate. It cannot be held without reference to the metamorphosis the estate had undergone and the impact of the Act on what is left of it as equivalent, that on the repeal of the Impartible Estates Act by Section 66 of the Abolition Act the customary impartibility of the estate was revived. The two essential features of an impartible estate are: (i) even where the holder has got the estate as ancestral estate, succession to the estate would be governed by the law of primogeniture; it must descend on a single heir; and (II) absence of any right to call for partition, a corollary of the first. The character of an impartible estate is thus summed up in *Pushpavathi Vijayaram v. P. Visweswar* AIR 1964 S.C. 118, 124.

16. If the holder has got the estate as an ancestral estate and he has succeeded to it by primogeniture, it will be a part of the joint estate of the undivided Hindu family. In the illuminating judgment delivered by Sir Dinshah Mulla for the Board, the relevant previous decisions bearing on the subject have been carefully examined and the position of law clearly stated. In the case of an ordinary joint family property, the members of the family can claim four rights: (i) the right of partition; (ii) the right to restrain alienations by the head of the family except for necessity; (iii) the right of maintenance; (iv) the right of survivorship. It is obvious that from the very nature of the property which is impartible the first of these rights cannot exist. The second is also incompatible with the custom of impartibility as was laid down by the Privy Council in the case of 3 CWN 415 (Privy Council) Even the right of maintenance as a matter of right is not applicable as laid down in the second Pittapur case *Rama Rao v. Raja of Pittapur* (1918) L.R. 45 L.A. 148 : (1918) 35 M.L.J. 392 : I.L.R.(1918) Mad. 778 . The fourth right, viz., the right of survivorship however, still remains and it is by reference to this right that the property, though impartible, has, in the eyes of law, to be regarded as joint family property.

17. Now u/s 45 of the Act, the designated junior members of the family as sharers are entitled to apportionment of the compensation amount disruptive of the theory of impartibility. There is no question of the devolution of even what remains of the estate by primogeniture. At the apportionment, the eldest son of the proprietor, the next in the line of succession takes an equal share with his father as a sharer, so the other sons. While the sharers take their share of the compensation amount without any restriction as to the estate therein, the decision in *V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others*, , has in clear and unambiguous terms held that the share will devolve according to ordinary Hindu law, the course of devolution varying as the property is viewed as separate or joint family property. So the primary requisite for an impartible estate, that is, survivorship and descent on a single heir, has not been recognised even with reference to the proprietor's share of the compensation. In *V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others*, in so many words it is stated that the chance of succession has

disappeared. The learned Judge (Ramachandra Ayyar, J., as he then was) states:

So far as the principal landholder was concerned, his estate was taken over. So far as the sons and grandsons are concerned, their chance of succession to the estate and their rights to maintenance have disapproved.

What then is left for the share to be considered impartible? The question is whether in the face of the provisions of the Act holding that the principal or any other landholder or other persons whose rights can stand transferred to the Government shall be entitled only to such rights and privileges as are recognised and conferred under the Act, and the Act providing for apportionment of the compensation without any restraint or limitation under which they have to draw the compensation amount, can it be held that the original custom of impartibility is revived? In this connection, it will be useful to refer to the following principle enunciated by Lord Davey in *New Windsor Corporation v. Taylor* L.R. (1899) A.C. 41, 49.

My lords, I hold it to be an indisputable proposition of law that where an Act of Parliament has according to its true construction, to use the language of Littleton, J. embraced and confirmed a right which had previously existed by custom or prescription, that right becomes henceforward a statutory right, and that the lower title by custom or prescription is merged in and extinguished by the higher title derived from the Act of Parliament.

In *Craies on Statute Law*, sixth edition, after referring to the above passage from the judgment of Lord Davey, it is stated at page 339:

The result of the doctrine is that the repeal of the statute dealing with a right previously existing by custom, charter, prescription or franchise does not revive the old right as it stood before the repealed statute was passed, unless an intention to do so is clearly indicated.

In this case far from there being absence of any intention apparent in the Act to revive the custom, one finds the provisions in the Act totally incompatible with the continued existence of the custom of impartibility in the substituted assets. We are concerned here only with the compensation amount relating to the impartible estate which has been notified and taken over by the Government and not with the properties, if any, of the impartible estate outside its geographical limits.

18. The appellants' title to share in the compensation amount is, as heirs of the principal landholder in defined fractions. They are entitled to fractional interests in his 1/5th share of the compensation amount as decided in *V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others*, . The contention of the appellants in fact amounts to this: while the compensation amount could be apportioned among the sharers and divided among the heirs of any sharer destructive of all principles of impartibility, so far as the creditors of the sharers are concerned, the creditors' rights got

extinguished on the death of the sharer. Learned Counsel in effect contends that while the core of the custom may no longer exist, it must be partially recognised and would survive against the creditors to extinguish their debts. But the impartibility relied upon is one based on custom and on the ground that the character of impartibility of Sivagiri estate did not depend upon the provisions of the Madras Impartible Estates Act, 1904 which has been repealed. In our view if a custom is applicable, it must be applied in all its parts. It cannot be revived in a truncated form to the remnants left of the estate. It will be legislating or making out a new custom if some only of the incidents of an ancient custom are revived for being applied to a totally changed situation. The repealing provision does not warrant any such revival and the Abolition. Act, while providing for division of the compensation u/s 45(5) as if the balance that is divided was held as joint Hindu family property and partition thereof has been effected among the sharers on the notified date, contains no saving clause. The Act, by providing compensation to the sons and grandsons of the principal landholder, creates a fiction treating the compensation amount as the joint family property of the proprietor and his descendants. As observed in V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, , while the fiction could not be extended so as to hold that there was a general partition in the family of the sharers, the operation could not be belittled either by holding that it has not done what it purported to achieve. The following passage in East End Dwellings Co., Ltd. v. Finsbury Borough Council L.R. (1952) A.C. 109, 132, 133, extracted with approval by the Supreme Court in Swamiappa Mudaliar Vs. K.R. Ponnammal and Another, , is apposite in this context and may be usefully referred to:

if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

19. In our view, though the question in the present form did not arise for consideration in V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, , the reasoning of the decision and the conclusion therein is authority adverse to the contention raised by learned Counsel for the appellants. The logical corollary to the decision in V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, , is that the sharers held the compensation amount apportioned among them untrammelled by the limitations of an impartible estate.

20. The decision in Pandia Raja v. Anantharama Pandia Special Tribunal Appeal No. 63 of 1965, on which reliance is placed by learned Counsel for the appellants is, in our view, distinguishable on facts. The claimant in that case to a share in

the compensation was a purchaser prior to the notification of only the right, title and interest of the zamindar, that is, a purchaser of the proprietor's life estate. To his claim for compensation after the death of the principal landholder, the learned Judges held that what the claimant had purchased at the Court auction prior to the notification was not any interest in the zamin estate as such; but only the right, title and interest of the zamindar in the estate which in an impartible estate was confined to the enjoyment of the income for life. He was not an alienee of the corpus of the estate and there was no enlargement of the rights of the purchaser by reason of the notification and taking over of the estate. The rejection of the claim in that case in the circumstances cannot help the contention of the present appellants in this case.

21. Learned Counsel next contends that the Abolition Act itself places a limitation on the enforceability of the debts in question. Reliance is placed by learned Counsel on the provisions of Section 59(1) of the Act. It runs:

(1) No claim or liability enforceable immediately before the notified date against the principal or any other landholder of an estate, or against any other person whose rights stand transferred to the Government in pursuance of Section 3, Clause (b), shall on or after that date, be enforceable against the interest he had in the estate; and all such claims and liabilities shall after the date on which the deposit in pursuance of Section 54-A is made be enforceable?

(a) against the interim payment or the compensation or other sums paid or payable to him under this Act, to the same extent to which such claims and liabilities were enforceable against his interest in the estate immediately before the notified date; and

(b) against his other property, if any, to the same extent to which such claims and liabilities were enforceable against such property, immediately before the notified date.

(2) No Court shall, on or after the notified date, order or continue execution in respect of any decree or order passed against the principal or any other landholder or any other person aforesaid, against the interest he had in the estate; and execution shall be ordered or continued in such cases in conformity with the provisions of Sub-section (1), only as against the interim payments or against the compensation or other sum or sums paid or payable to him as aforesaid, or against his other property, if any.

The emphasis is on the language of Sub-clause (a) that the enforceability of claims can only be to the same extent to which they were enforceable against the interest of the principal or other landholder in the estate immediately before the notified date. But to understand its true scope, this section must be read along with the other provisions of the Act, and particularly Section 58-A. Section 5-A as it were provides a moratorium for a period and stays execution proceedings against the principal or any other landholder, against his estate or his other immovable property or against him personally by arrest and detention

before the date of the deposit of advance compensation in pursuance of Section 54-A. After such deposit, such execution may be ordered or continued as specified in and in accordance with the provisions of Section 59. Section 59 is under the marginal heading Transitional provision in regard to their liabilities of landholder, etc., and is found in the Miscellaneous group of sections in the Act. The contention of learned Counsel for the appellants is that the debts which were not binding on the impartible estate u/s 4 of the Madras Impartible Estates Act, 1904 could before the notification be enforced only against the income of the estate as such and even this right would get extinguished on the death of the proprietor. So, it is contended in view of the provisions of Section 59(1)(a) the claim could not be pursued after the death of the principal landholder. Learned Counsel for the appellants contends that the word extent in Section 59(1)(a) and (6) on the facts of the present case would relate to the nature of the liability of the estate, absolute or for life only for the debt and not to the quantum of the debt as Counsel for the respondents would have it. Learned Counsel for the creditors points out that Section 59(1) is not confined in its applicability to impartible estates. Learned Counsel submit that an estate taken over may be an impartible estate which for the purpose of ascertaining succession is regarded as the property of a joint Hindu family, impartible estates held as the absolute property of the proprietor, ordinary zamin and inam estates held by sole proprietors or owned by joint families or by co-owners. The individual liability of the persons interested in the compensation for any particular debt may be fractional. The word extent in the context qualifies only the claim or liability and not the interest in the estate. We are inclined to agree with this interpretation, though the language is not quite clear.

22. Section 59 which provides for enforcement of claims and comes in after Section 58-A giving moratorium for a period, in our view in the context only emphasises and indicates that the enactment draws a line at the date of the notification and fixes that date as the point with reference to which the rights and liabilities which are the subject-matter of enquiry and adjudication under the Act should be determined. It reiterates the effect of the notification, that the claim against the land-holder and others who had an interest in the estate could no more be enforced against that interest, and points out to the compensation and other amounts as available for being proceeded against. If only debts enforceable against the estate prior to the notification could be claimed under the provisions of the Act in relation to an impartible estate, we fail to see the need for any distinction made in respect of debts u/s 45(3) and 46. Section 45(3) provides that the Tribunal shall determine which creditors, if any,

are lawfully entitled to have their debts paid from and out of the "assets of the impartible estate and the amount to which each of them is so entitled.

The remainder only of the aggregate compensation goes for division among the sharers and maintenance holders. This is a specific provision in respect of debts which would bind the impartible estate u/s 4 of the Madras Impartible Estates

Act, 1904. After these binding debts are paid out of the estate, division of the compensation amount amongst the maintenance holders and sharers, as defined under the Act, takes place. After such division and on the apportionment of the compensation, Section 46 comes into play. Section 46 is applicable to all estates, including impartible estates. Section 46 specifically provides for the Tribunal taking into consideration the applications of the creditors others than those dealt with in Section 45, Sub-section (3), and decide the amount to which each such creditor is entitled. This section provides further that the person or persons out of whose share or shares of the compensation such amount should be paid, is also to be determined by the Tribunal. The creditors u/s 46 are the creditors who have a claim personally against the principal or other land-holders. If the effect of Section 59(1)(a) is to make unenforceable the claims which were not binding on the estate, we fail to see for what other debts Section 46 provides for. In our view, the extent of enforceability in Section 59(1)(a) could refer only to the quantum of liability determinable u/s 46 and the extent of the liability of the individual sharers, where there are several owners of the estate, say as in a joint family estate, or an estate owned in shares. Thus, where the several land-holders of an estate, where there can be several, are liable for debts, provision is made u/s 46 for the payment to the creditor of each land-holder out of his individual share.

23. The rights and claims of creditors of an Impartible Estate have been examined at some length and summed up thus in *Navaneethakrishnaswami Devasthanam v. Rukmani & Co.* (1955) 2 M.L.J. 339,

But if the impartible estate regarded as the property of a joint Hindu family for the purposes of succession, undoubtedly Section 45 and the procedure laid down for the distribution of the compensation will apply. The creditor u/s 45(3) of the Act has therefore to establish that he is lawfully entitled to have his debt paid from and out of the assets of the impartible estate. If he is so entitled the amount to which he is entitled has to be determined under this clause. If the debt whether secured or unsecured, is one which is payable out of the assets of the impartible estate, then alone is he entitled to be paid out of the total compensation amount deposited. But if it is not so payable, he cannot proceed against the entire compensation. He may be entitled only to be paid from and out of the share of the sharer who is liable to pay the debt. Considerable difficulty was felt in defining the expression "to have their debts paid from and out of the assets of the impartible estate". If the debt was one, whether secured or unsecured, binding on the estate within the meaning of Section 4 of the Madras Impartible Estate Act it is undoubtedly a debt payable out of the assets of the impartible estate and there is no difficulty in the matter. But if the debt, however, was not one which is binding on the estate u/s 4 of the Act but was binding on the holder for the time being, could it be treated as a debt payable out of the assets for the partible estate, in view of the fact that the holder for the time being is still alive and the Impartible Estates Act is repealed in its application to the estate... On the whole, though not without hesitation, we have

reached the conclusion, that even on the second question the test to be applied to determine the validity and binding nature of the debt is to consider whether, at the time it was incurred, it could be said to be a debt binding on the estate within the meaning of Section 4 of the Act, and the fact that today When the claim against compensation is put forward, the person who incurred the debt is alive and the question of successor Who could impeach the validity of the debt does not arise can make no difference. If the debt, When it was contracted, whether secured or unsecured, could not be said to be a debt falling Within Section 4 of the Act so as to bind the estate, it could not be enforced against the compensation amount but Would be payable only from out of the share of the principal land-holder.

24. No doubt there is no reference to Section 59 in the above decision. But the decision in no uncertain terms holds that debts not falling within Section 4 of the Impartible Estates Act would be payable out of the share of the principal landholder. In our view, Section 59 neither detracts from nor adds to the rights of the creditors, secured or unsecured, declared under Sections 42 to 46 of the Act. To accede to the contention of learned Counsel for the appellants and hold that on the death of the principal landholder the liability against his share of the compensation got extinguished is to nullify the provisions of Section 46 and render otiose the distinction which the Legislature has made between debts binding on the estates and debts not so binding. The debt is payable out of the share and so would survive his death against his interest in the compensation amount. The heirs taking the interest would be bound by the debts to the extent of the assets taken.

25. Learned Counsel for the appellants sought to raise a point that the interest as claimed ought not to have been allowed in Special Tribunal Appeal No. 45 of 1964. Learned Counsel would read Section 59(3) of the Act as not providing for any interest after the date of deposit of advance compensation u/s 54-A of the Act. No such point was taken before the Tribunal, and it is a contention which prima facie appears untenable. However, as no ground has been taken even in the appeals before us, we are not going into the question.

26. In the result, we see no reason to differ from the conclusion of the Tribunal below that the claim of the creditors did not become extinct on the death of the principal landholder, and that their claims can be enforced against the 1/5th share of the principal landholder in the compensation and other amounts in the hands of his heirs. The appeals, therefore, fail and are dismissed with the costs of the first respondent in Special Tribunal Appeal Nos. 43 and 45 of 1964.