

(1972) 02 KAR CK 0015
In the Karnataka High Court
Case No : First Appeal No. 50 of 1965

Shivadeviamma and Others

APPELLANT

Vs

Sumanaji and Others

RESPONDENT

Date of Decision : 04-02-1972

Acts Referred:

Hindu Succession Act, 1956 — Section 14 (1), 4
Mysore High Court Act, 1962 — Section 7, 7 (1), 7 (2)

Citation : AIR 1973 Kar 87 : AIR 1972 Kar 87 : (1973) 1 MysLJ 321

Hon'ble Judges : H.B. Datar, J;G.K. Govinda Bhat, J;E.S. Venkataramiah, J

Bench : Full Bench

Advocate : B.P. Holla, for the Appellant; K.R. Karanth and K.R.D. Karanth, for the Respondent

Judgement

Govinda Bhat, J.—u/s 7 of the Mysore High Court Act, 1961 (hereinafter called "the Act") a Bench consisting of Honniah and Venkataramiah, JJ., by order dated November 3. 1970. referred to a Full Bench the following questions of law:--

(1) Does Section 14 (1) of the Hindu Succession Act, 1956, apply to the case of life interest acquired before or after the commencement of the said Act, under Sections 35 and 36 of the Madras Aliyasanthana Act. 1949 (Madras Act No. IX of 1949). by a female who has completed fifty years of age (a Nissanthathi Kavaru) and possessed by her and does such female hold such property absolutely and not as a holder of a life interest?

(2) Are provisions of Section 36 (3). (4) and (5) of Madras Aliyasanthana Act 1949 (Madras Act IX of 1949), inconsistent with Section 14(1) of the Hindu Succession Act. 1956. in so far as they relate to females governed by Aliyasanthana Law and do those provisions cease to apply to such females even though they may have completed fifty years of age by virtue of Section 4 of the Hindu Succession Act. 1956?

(3) Has a female, governed by Aliyasanthana Law who has completed fifty years

of age, the power to bequeath under a will her divided interest in the property acquired by her at a partition u/s 35 of the Madras Aliyasanthana Act. 1949 (Madras Act IX of 1949)?

2. On the questions referred, there is a decision of a Division Bench of this Court of which I was a member. The said decision, *Amba Shedthi v. Paddakke Shedthi* reported in (1969) 2 Mys LJ 377. decided on 12th September 1968 was brought to the notice of the Bench consisting of Honniah and Venkataramiah, JJ. and was noticed by them. But they referred the questions of law concluded by the decision of an earlier Division Bench on the grounds which may be stated in their own words?

"We find that the several questions argued before us "have not been examined in the decision in *Amba Shedthi*"s case. We. Therefore, feel that the question decided in that case requires to be reconsidered by a larger Bench, in view of the decision of this Court in *Mallawwa V. Kallappa*. (1966) 2 Mys LJ 633 mentioned earlier and the two decisions of the Supreme Court referred to above. Having regard to the importance of the questions Involved, we think that this is a fit case to be decided by a Full Bench."

3. The Division Bench is the final Court of appeal in an Indian High Court, unless the case is referred to a Full Bench, and one Division Bench should regard itself bound by the decision of another Division Bench on a question of law. If the Division Bench does not accept as correct the decision on a question of law of an earlier Division Bench, the only right and proper course to adopt is to refer the matter to a Full Bench, for which Section 7 (1) provides. It is the uniform practice in all the High Courts in India that when one Division Bench differs from an earlier view on a question of law of another Division Bench, a reference is made to a larger Bench.

4. It some times happens that an earlier decision given by a Division Bench is not brought to the notice of a Division Bench hearing the same question and a contrary decision is given without reference to the earlier decision. The correct procedure to be followed when two conflicting decisions of the same Court are placed before a later Bench has been discussed in several cases. In the Patna High Court the practice was to follow the earlier decision and not the later. In *Katragadda Virayya Vs. Katragadda Venkata Subbayya*, it was held by the Andhra High Court that "under the circumstances aforesaid the Division Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the view expressed in the two conflicting Benches. The same is the view of the Nagpur High Court in AIR 1943 340 (Nagpur) This was the State of the law when the Act came to be enacted by the Mysore Legislature in the year 1961. The Supreme Court has resolved the conflicting decisions under the circumstances aforesaid in its decision in *Jaisri Sahu Vs. Rajdewan Dubey and Others*, wherein it has been laid down that "the better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should

follow the one Bench decision or the other.

5. Where it appears to a Division Bench of a High Court that there are decisions of other High Courts in India which are strongly persuasive and take a different view from the view which prevails in that High Court, the Division Bench hearing the case passes the order making the reference to a Full Bench. Vide *Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel*, .

6. Where it appears to a Division Bench hearing the case that a question of law of importance arises in the decision of the case on which there is no Division Bench decision of the same High Court, the Division Bench may, if it thinks fit, refer the said question of law to a Full Bench.

7. What I have said above is the uniform practice governing in all the High Courts in India in the matter of reference of a question of law by a Division Bench to a Full Bench of the High Court.

8. The Act makes provision for regulating the business and exercise of powers of the High Court of the State of Mysore in relation to the administration of justice and to provide for its jurisdiction. It inter alia, provides for constitution of Benches and classification of matters that may be heard and determined by one Judge, by a Bench of two Judges and by a Full Bench. Full Bench has been defined to mean "a Bench consisting of not less than three Judges of the High Court". (Section 2 (9)). Section 5 provides that save as otherwise provided in the Act. all First Appeals shall be heard by a Bench consisting of not less than two Judges of the High Court. Section 8 provides that all Second Appeals shall be heard by a Single Judge of the High Court. But if such Judge is satisfied that a substantial question of law is involved in the case, or that in the interest of justice, the case is to be heard and disposed of by a Bench of Judges, he may refer the Second Appeal for hearing and disposal to such Bench. There is no provision in the Act for a single Judge to refer a question of law to a larger Bench. His power is to refer the Second Appeal or Revision Petition, as the case may be, for hearing and disposal by a Bench of Judges, as stated earlier, the Division Bench is the final Court of appeal.

9. Section 7 which provides for making reference to a Full Bench, does not provide for the Division Bench referring the appeal or revision, as the case may be, in its entirety for hearing and disposal to a Full Bench. What it provides is for a Division Bench to refer to a Full Bench the question of law or usage having the force of law. Sub-section (2) of Section 7 provides that the decision of the majority of Judges comprising a Full Bench of the High Court shall be the decision of the High Court.

10. In the Rules of High Court, Madras, Appellate Side, there is Rule 6 which empowers the Chief Justice that he may direct that any application, petition, suit, appeal, or reference shall be heard by a Full Bench as defined in the said Rules. I believe there are similar Rules in all the Chartered High Courts and other High Courts in what was formerly British India. In view of the existence of such a

Rule, the practice prevailing in the said High Court is that a Division Bench passes an order that the papers be placed before the Chief Justice of the High Court with a request to form a Special or Full Bench to hear and dispose of the case or the questions raised in the case. For making such a request to the Chief Justice no authority of the Constitution or of the Charter of the High Court is needed. Such a Bench is constituted by the Chief Justice. The Chief Justice of a Court may, as a rule, out of deference to the views expressed by his colleagues, refer the case or the questions of law. But that does not mean, however, that the source of the authority is in the order of reference. Vide *Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel*, .

11. In the instant case the Division Bench referred the three questions of law to a Full Bench in exercise of the powers conferred by Section 7. I repeat that the source of the authority is in the order of reference and not in any reference by the Chief Justice who has merely constituted a Full Bench to hear the cases which are required to be heard by a Full Bench.

12. Section 7 of the Act which is the source of the authority for making the reference reads thus:--

"7. Reference to Full Bench.--(1) where in any proceeding pending before it, any question of law or usage having the force of law arises, a Bench consisting of not less than two Judges of the High Court may, if it thinks fit, and shall, if it differs from the view taken by a similar Bench of the High Court on the said question, refer to a Full Bench of the High Court the question of law or usage having the force of law.

(2) The decision of the majority of Judges comprising a Full Bench of the High Court shall be the decision of the High Court."

Section 7 of the Act. in my opinion, has merely codified the uniform practice governing in all the High Courts in India. The second part of Sub-section (1) of Section 7 enacts the rule of practice, that if one Division Bench differs from the view taken by a similar Bench of the High Court on a question of law it shall refer to a Full Bench the said question of law or usage having the force of law. The first part of the said section, instead of stating all the circumstances under which a Division Bench may make a reference to a Full Bench has by employing the expression "if it thinks fit", left the matter to the discretion of the Division Bench. Like all judicial discretions the discretion to make a reference in exercise of the power conferred by the First part of subsection (1) of Section 7 has to be exercised in accordance with settled legal principles governing practice in the High Court. I have already enumerated those principles, governing the practice.

13. The order of reference does not expressly state that it differs from the view taken in *Amba Shedthi's* case (1969). 2 Mys LJ 377 which was binding unless the case is referred to a Full Bench. In the absence of conflict of authority, a reference, casting a doubt on the correctness of the reported decision of a Division Bench of that High Court, without formulating a reasoned criticism of the

view accepted therein or offering an alternative to it, disturbs the comity of the Court. That would only lead to an uncertainty of the law and with all due respect, should be avoided.

14. In *Gourishankar v. Raja Azamshar* AIR 1956 Nag 115 an appeal came originally before a learned single Judge who referred the same for decision by a Division Bench as he was not quite certain about the correctness of the decision in an earlier Bench decision of the same High Court. When the appeal came up before a Division Bench, this is what Hidayatullah, J. (as he then was) stated:--

"The correctness or otherwise of the decision in AIR 1942 103 (Nagpur) was not canvassed before us. The order of reference does not indicate as to which of the two propositions laid down in that decision the learned Judge was in doubt. Nor are we placed in possession of the reasons which persuaded the learned Judge to doubt the correctness of the decision of the Division Bench. It may not be out of place to mention that for the first proposition in AIR 1942 103 (Nagpur) there is also the authority of another Division Bench (Pollock & Sen, JJ.) in AIR 1947 48 (Nagpur)

The decision of a Division Bench is binding on another Division Bench as much as it is binding on a single Judge. We cannot pronounce on the correctness of a decision of another Division Bench. Had it been necessary to reconsider AIR 1942 103 (Nagpur) the only course open to us would have been, to make a reference again to my Lord the Chief Justice with a recommendation that the appeal be placed before a Full Bench. (Vide Rule 12, Chapter 1. Part I of the Rules of this Court and AIR 1943 340 (Nagpur)

It is hardly fair to the Bench called upon to consider the correctness of a decision that they should not be made aware of the reasons which impelled the referring Judge to doubt its correctness. We venture to state, with all due respect, that, in the absence of conflict of authority, a reference, casting a doubt on the correctness of a reported decision of the Court, but not formulating a reasoned criticism of the view accepted therein or offering an alternative to it disturbs the comity of the Court. This would only lead to an uncertainty of the law and with all due respect should be avoided".

I am in respectful agreement with the above statement.

15. The order of reference does neither state that the Bench of two Judges differs from the view taken by the earlier Division Bench in *Amba Shedthi's* case. (1969) 2 Mys LJ 377 nor do they formulate a reasoned criticism of the view accepted therein. They do not also state in express words that they doubt the correctness of the decision in *Amba Shedthi's* case (1969) 2 Mys LJ 377.

16. The strength and efficiency of the judgment of a Court of appeal rests on the existence of the judgment of the lower Court. On the same reasoning, the strength and efficiency of the opinion of a Full Bench rests on the reasoned criticism of the view accepted therein by a later Division Bench which makes the

reference.

17. The order of reference does not state that there are decisions of other High Courts in India which are strongly persuasive and take a different view from the view which prevails in this High Court. It is relevant to state that people governed by Aliyasanthana Law are also found in the State of Kerala. We are not aware of any decision of the Kerala High Court taking a contrary view.

18. The reason which impelled the Division Bench for making the reference is not that there is an earlier decision given by a Division Bench which was not brought to the notice of the Division Bench that heard "and decided Amba Shedthi's case (1969) 2 Mys LJ 377. The decision in (1966) 2 Mys LJ 633 on which much reliance was placed by the learned counsel for the appellants and which persuaded the Division Bench to refer the questions of law to Full Bench had no relevance to the questions of law raised. Amba Shedthi's case was concerned with the properties allotted to an Aliyasanthana female whose estate became limited as a "Nissanthathi Kavaru" under the Madras Aliyasanthana Act, 1949. None of the other cases referred to in the order of reference dealt with the question decided in Amba Shedthi's case.

19. The reason for making the reference appears to be that the question involved is one of importance and therefore the learned Judges thought it a fit case to be decided by a Full Bench. That might be a valid ground if there was no Division Bench decision of this Court directly governing the case. I am not aware of any case reported in the Law Reports where a Bench of a High Court makes a reference of a question of law to a Full Bench when there is a direct decision of an earlier Division Bench of the same High Court by which the later Division Bench is bound, unless the later Division Bench differs from the earlier view.

20. It is not the practice of this Court to refer a question of law to a Full Bench merely for the reason that the question raised is one of importance. If that were so several hundreds of cases, particularly in matters where the Constitutional validity of statutes of the Centre. or the State, are challenged and which naturally affect large number of persons in the State, ought, as a rule of practice, be referred to a Full Bench to be heard and decided. To cite a few instances in this High Court, the Mysore Buildings Tax Act, 1964 was challenged as unconstitutional in a large number of writ petitions. A Division Bench of this Court in Bhuvaneshwariah v. State of Mysore. (1964) 2 Mys LJ 470 : AIR 1965 Mys 170 struck down the said Act as unconstitutional and that decision was affirmed by the Supreme Court. The validity of the Gift Tax Act, 1958. in so far as it levied tax on gifts of agricultural lands was challenged in D. H. Nazareth v. The Second Gift Tax Officer. South Canara 1962 Mys LJ 442 : AIR 1962 SC 269. A Bench of this Court upheld that challenge and declared the tax as unconstitutional. The Mysore Agricultural Debtors' Relief Act (Mysore Act 27 of 1966) was challenged in a large number of writ petitions in Writ Petition No. 1743 of 1969 etc., before a Division Bench of this Court in Thippeswamy v. State of Mysore. (1970) 1 Mys LJ 43 and Mysore Act 27 of 1966. was struck down as

unconstitutional. The Central Sales Tax Act, 1956 as amended by Central Act 28 of 1969 was challenged as unconstitutional by a large number of writ petitions before a Bench of this Court in *Basappa & Bros. v. Dy. Commr. of Commercial Taxes, Belgaum Division I. Dharwar.* (1971) 27 STC 241 (Mys).

21. Sri B. P. Holla, learned counsel for the appellants contended that once a reference is made u/s 7, the Full Bench constituted by the Chief Justice has no "jurisdiction to say that the order of reference is bad in law or to consider the merits of the reference. In support of that contention he relied on the decision in *State of Uttar Pradesh and Others Vs. Firm Deo Dutt Lakhan Lal*, In the said case the appeal originally came before a learned Single Judge and by an administrative order of the Chief Justice of the Allahabad High Court the appeal was posted before a Full Bench. As seen from paragraph 21 of the reported judgment, the administrative order of the Chief Justice was made under the Rules of the High Court of Allahabad, This is what has been stated therein:---

"Sri Section N. Kacker. appearing in Special Appeals Nos. 918 and 931 contended that there is conflict between the two Full Bench decisions and that in any case referring the special appeals to a larger Bench was not correct or Justified. The special appeals have been referred to this Bench by an administrative order of the Chief Justice and it has no jurisdiction to consider its merits. It derives its jurisdiction over the special appeals from the order of the Chief Justice passed under Rules of the Court, and it has not been alleged that it is against any provision of Rules of Court. The Chief Justice passed the order on a judicial order passed by a Bench, that to resolve the conflict between the two Full Bench decisions they may be referred to a larger Bench, e.g. a Bench Of at least five Judges. It is not open to any member of this Bench to question that order of the Division Bench, and I can only express surprise at the suggestion made by counsel that he can do so and that this Bench can hold that the order passed by the Chief Justice referring the special appeals to a Bench of five Judges was not proper or legal."

It is obvious that there is a Rule in the Allahabad High Court corresponding to Rule 6 of the Rules of Practice of the High Court of Madras. Appellate Side. That decision has no bearing to the case in question, since this is a reference made u/s 7 of the Act and the source of the authority for the reference is the order of the Division Bench. Therefore, the contention urged by the learned counsel, in my opinion, is clearly untenable.

22. I do not say that the Division Bench which made the reference has no jurisdiction to make the reference to a Full Bench nor that this Full Bench cannot answer the questions referred to it, As stated earlier, in the absence of the reasons for casting a doubt on the correctness of the decision in *Amba Shedthi's* case. (1969) 2 Mys LJ 377 or a reasoned criticism of the view accepted therein. I am of the opinion that we should refer the case back to the Division Bench for a clear order of reference in the light of the interpretation to Section 7 of the Act.

Datar, J.

23. I agree.

Venkataramiah, J.

24. I have had the advantage of going through the opinion of my learned brother Govinda Bhat. J. But I regret my inability to agree with it. In the said opinion there is no doubt much to emulate, but a good deal to disagree. Hence, I am constrained to write a dissenting opinion. While doing so, I have tried to steer clear of the fact that I was a member of the Division Bench Which referred the above case for the opinion of the Full Bench.

25. Under Entry 3 in List II of the Seventh Schedule of the Constitution of India, the jurisdiction of the High Court and the respective powers of the Judges of the High Court in relation to the administration of justice can be regulated by law made by the appropriate State Legislature. Pursuant to the said power, the Mysore Legislature enacted the Mysore High Court Act. 1961 (Mysore Act No. 5 of 1962) (hereinafter referred to as the Act) to make provision for regulating the business and the exercise of powers of this High Court in relation to the administration of justice and to provide for its jurisdiction. Sections 4 to 10 of the Act deal with the powers of the Judges of this Court. Section 4 prescribes that where under any law an appeal against a judgment, decree or order or sentence passed by a single Judge of this Court in exercise of an original jurisdiction lies to this Court, then the appeal shall be heard by a Bench of two Judges, Section 5 deals with the powers of a Division Bench. It states that a First appeal, criminal appeal and all cases referred to the High Court for confirmation of a sentence of death, shall be heard by a Bench consisting of not less than two Judges of the High Court. The proviso to that section authorises the hearing of a Criminal appeal from a judgment in which no sentence of death or imprisonment for life or imprisonment for a period exceeding seven years is passed by a Single Judge. Section 6 directs that all second appeals shall be heard by a single Judge. The proviso thereto authorises a single Judge before whom a second appeal comes up for hearing to refer the case to a Bench of Judges if he is satisfied that a substantial question of law is involved in the case or in the interests of justice the case is to be heard and disposed of by a Bench of Judges. Section 7 to which I will have occasion to make reference again deals with the reference to a Full Bench. Section 8 deals with the power of a Single Judge to hear and dispose of a revision petition either himself or to refer the same to a Bench, if he thinks fit to do so. Section 9 deals with the other powers of a Single Judge and Section 10 deals with other powers of a Bench of two Judges. Whenever a case is disposed of by a single Judge or Division Bench or a Full Bench, in accordance with the provisions of the Act, it is deemed that the judgment rendered by the concerned Judge or the Bench, is the judgment of the High Court. A reading of these provisions, except in the case of appeals falling u/s 4 of the Act. does not show that a single Judge or a Division Bench or a Full Bench disposing of the cases coming up before them, is superior to another Judge or other Benches of the

High Court. To put it in other words, a Full Bench cannot consider itself as exercising powers of an appellate or revisional Court over a Division Bench and a Division Bench cannot consider-itself as exercising similar appellate or revisional powers over a single Judge. The powers of a single Judge, a Division Bench and a Full Bench are regulated by the Act and all of them are exercising the jurisdiction vested in the High Court.

26. The question for consideration in this case is whether a Full Bench to which certain questions of law are referred by a Bench consisting of not less than two Judges, can either decline to answer the questions so referred or remit the case back to the Bench which referred the matter with directions. Section 7 of the Act reads:--

"7. Reference to Full Bench.-

(1) Where in any proceeding pending before it. any question of law or usage having the force of law arises, a Bench consisting of not less than two Judges of the High Court may. if it thinks fit. and shall, if it differs from the view taken by a similar Bench of the High Court on the said question, refer to a Full Bench of the High Court on the said question, refer to a Full Bench of the High Court the question of law or usage having the force of law.

(2) The decision of the majority of Judges comprising a Full Bench of the High Court shall be the decision of the High Court."

What follows from a true construction of the said section is (i) that a Bench consisting of not less than two Judges of the High Court may, if it thinks fit, refer any question of law or usage having the force of law, which arises for decision in a case before it, for the opinion of a Full Bench, and (ii) that when the Bench consisting of not less than two Judges differs from the view taken by a similar Bench of the High Court on the said question of law, it shall refer the question to a Full Bench for its opinion. Whereas the second limb of Section 7 (1) is obligatory, the first limb of Section 7 (1) leaves it to the discretion of the Bench either to refer the matter to a Full Bench or not. The only limitation placed on the exercise of the power under the first limb of Section 7 (1) is that the Bench may refer a question of law to a Full Bench if it thinks fit. Sub-section (2) of Section 7 states that the decision of the majority of the Judges comprising the Full Bench of the High Court shall be the decision of the High Court. Hence, when once a Division Bench refers a question of law to the decision of a Full Bench, it becomes functus officio in so far as the question of law referred to the Full Bench is concerned and the decision of the majority of Judges comprising the Full Bench, alone would be the decision of the High Court. The Full Bench which is constituted by the Chief Justice for the purpose of hearing a case referred to it, is therefore bound to hear the case and render its decision on the question of law referred to it. It cannot, for I do not find necessary words in Section 7 to take a contrary view, refer back the case to the Bench which referred the question to write an order of reference in a different way or to consider the matter afresh.

27. The above appears to be the true meaning of Section 7 when the meaning of a statutory provision is quite clear and unambiguous, it would not be right to refer to the history of the law contained in the said provision and to interpret it in the light of its historical background. In the Mysore High Court Act of 1884, there was a corresponding provision with regard to the constitution of a Full Bench, Sub-sections (2) and (3) of Section 15 of that Act provided that any Bench of Judges of the High Court may refer to a Full Bench of the said Court any question of law or usage having the force of law, the construction of any document or admissibility of any evidence in any proceeding pending before it and that on such reference the decision given by the majority of Judges comprising any Full Bench of the High Court or other Bench of the High Court consisting of not less than three Judges shall be the decision of the High Court. It is therefore to be seen that even the words "if it thinks fit" appearing in Section 7 (1) of the Act were not there in Sub-section (2) of Section 15 of the Mysore High Court Act, 1884. That does not however mean that the power to refer a case to a Full Bench is exercisable by a Bench in an arbitrary way, There is an inherent limitation on the exercise, of that, because an order of reference is to be passed by Judges who are not expected to conduct themselves in an arbitrary way while administering justice. But when once the question is referred to a Full Bench, even if there is any irregularity in the order of reference made by a Bench, unless it is likely to result in grave injustice to the parties or is likely to amount to a violent disobedience of the law, it may not be correct for the Full Bench to refuse to answer the question referred to it.

28. In a case which went up In appeal from this Court, that is in R. Viswanathan Vs. Rukn-Ul-Mulk Syed Abdul Wajid, when a contention was raised regarding certain irregularity in the order of reference to a Full Bench, the Supreme Court after construing the provisions of the High Court Act which were in force at that time observed that even though there was a procedural irregularity in making a reference, it did not affect the competence of the Full Bench to hear the reference u/s 15 (3). The Supreme Court decided the above case on the basis of the statutory provision governing the question but not on the practice prevailing in other courts.

29. I have gone through the decisions referred to in the opinion of my learned brother. In Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel, the court observed as follows:

"When it appears to a single Judge Or a Division Bench that there are conflicting decisions of the same Court, or there are decisions of other High Courts in India which are strongly persuasive and take a different view from the view which prevails in his or their High Court, or that a question of law of importance arises in the trial of a case, the Judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with a request to form a special or Full Bench to hear and dispose of the case or the questions raised in the case....."

The above pronouncement appears to have been made on the basis of the long standing practice in the Courts in India. It is to be seen therefrom that one of the grounds on which a question can be referred to a larger Bench is that a question of law of importance arises for decision in a case. In the instant case, a perusal of the order of reference clearly shows that the Division Bench which made the order of reference was not prepared to dispose of the case on the basis of the decision of this Court in (1969) 2 Mys LJ 377. That appears to be so from the following extract of the order of reference:--

"It is no-doubt true that the contention of the I defendant is opposed to the view of this Court expressed in the decision reported in (1969) 2 Mys LJ 377. In that case, this Court held that the Parliament never intended to apply Section 14 of the Act to Aliyasanthana females who were Nissanthathi Kavarus, but that provision only applied to those estates which were commonly known as Hindu Woman's estate or Hindu Widow's estate prior to the enactment of the Act. If that be so, there is no difficulty in holding that the I defendant's contention is not tenable."

After referring to some decisions which were cited before the Division Bench, it proceeded to observe as follows:---

"We find that the several questions argued before us have actually been examined in the decision in Amba Shedthi's case. We, therefore, feel that the question decided in that case requires to be reconsidered by a larger Bench, in view of the decision of this Court in (1966) 2 Mys LJ 633 mentioned earlier and the two decisions of the Supreme Court referred to above. Having regard to the importance of the Question involved, we think that this is a fit case to be decided by a Full Bench."

I do not find any irregularity in the above order of reference. It satisfies all the requirements of Section 7 (1) of the Act. The only ground on which the correctness of the order of reference is assailed is that the order of reference does not contain the reasons for disagreeing from the view taken in Amba Shedthi's case. In support of the above view, a decision of the Nagpur High Court in AIR 1956 Nag 115 is relied on. It is no doubt true that in the course of the said decision, Hidayatullah, J. (as he then was) observed that it was hardly fair to the Bench called upon to consider the correctness of a decision that they should not be made aware of the reasons which Impelled the referring Judge to doubt its correctness. But that was not a case in which a Full Bench declined to answer the question on the ground that reasons had not been given by the Bench which referred the case. The next decision relied upon is in Jaisri Sahu Vs. Rajdewan Dubey and Others, In that case the Supreme Court observed that when a Bench of the High Court gave a decision on a question of law: it should in general be followed by other Benches unless they have reasons to differ from it, in which case the proper course to adopt would be to refer the question for the decision of a Full Bench. The above observation was made by the Supreme Court when it was considering the question relating to the practice to be followed when

there was a conflict among the decisions of the Benches of the same High Court. It was not dealing with a case in which the Question had been raised in the present form. The other decisions referred to in the course of the opinion of my learned brother also do not deal with the question in the form in which it is raised in this case. In none of the cases either cited at the Bar or referred to in the opinion of my learned brother, a Full Bench to which a question of law was referred, had declined to answer the question on the ground that the order of reference was irregular on account of the fact that it did not contain the reasons for differing from an earlier Division Bench decision.

30. It may be relevant to refer at this stage to a decision of the High Court of Allahabad in *State of Uttar Pradesh and Others Vs. Firm Deo Dutt Lakhan Lal*, in which the validity of an order of reference by a Division Bench to a Full Bench was questioned before the Full Bench, when the case was taken up for hearing. Dealing with the question, Desai. C. J, observed as follows:--

"Sri S. N. Kacker, appearing in Special Appeals Nos. 918 and 931 contended that there is conflict between the two Full Bench decisions and that in any case referring the special appeals to a larger Bench was not correct or justified. The special appeals have been referred to this Bench by an administrative order of the Chief Justice and it has no jurisdiction to consider its merits. It derives its jurisdiction over the special appeals from the order of the Chief Justice passed under Rules of the Court, and it has not been alleged that it is against any provision of Rules of Court. The Chief Justice passed the order on a judicial order passed by a Bench that to resolve the conflict between the two Full Bench decisions they may be referred to a larger Bench e.g., a Bench of at least five Judges. It is not open to any member of this Bench to question that order of the Division Bench, and I can only express surprise at the suggestion made by counsel that he can do so and that this Bench can hold that the order passed by the Chief Justice referring the special appeals to a Bench of five Judges was not proper or legal."

What is stated by the Allahabad High Court in the above case is equally applicable in the instant case.

31. There is one other point to which I would like to make reference at this stage. As already stated, a Division Bench would become functus officio in so far as the question of law referred to a Full Bench is concerned immediately the order of reference is made, for it is only the decision of the Full Bench on the said question that would be the decision of the High Court. When the case goes back to the concerned Division Bench from the Full Bench without the opinion of the Full Bench on the question referred to it, it may be urged before the Division Bench that the Division Bench cannot deal with the case until the Full Bench has answered the question. That apart, having regard to the co-ordinate jurisdiction exercised by a single Judge, a Division Bench and a Full Bench in regard to matters which they can decide under the Act, the Division Bench may decline to make a fresh order of reference in accordance with the direction of the

Full Bench calling upon the Division Bench to give reasons for disagreeing with the view expressed in Amba Shedthi's case (1969) 2 Mys LJ 377 for it is only the opinion given by the Full Bench on the question of law referred that is binding on the Division Bench and not other orders or directions which the Full Bench may make. If the practice prevailing in this Court is of any use to understand the question involved in this case, it may be stated here that in many cases which are referred to a Division Bench under the proviso to Section 6 and proviso to Section 8 (2) of the Act, the orders of reference are very short and they do not contain the questions which are required to be decided by a Division Bench. The proviso to Section 6 and the proviso to Section 8 (2) of the Act are more or less couched in the same language in which the first part of Section 7 (1) is worded.

32. As already stated, the opinion expressed by my learned brother is no doubt worthy of emulation. It would be better if the order of the reference contains the grounds on which a Division Bench differs from the view expressed by another Division Bench. But it does not follow from the language of Section 7 (1) that if an order of reference does not contain the grounds on which the Bench referring the case disagrees with an earlier decision, the Full Bench can refuse to hear and decide the questions referred to it.

33. I am therefore, of the opinion that by not answering the questions referred to the Full Bench, the Full Bench would be failing to exercise the jurisdiction vested in it u/s 7 of the Act. I, therefore, hold that the case has to be heard by the Full Bench and the questions referred to it must be decided by the Full Bench without sending back the case to the Division Bench for reconsidering the matter.

ORDER

Per curium:

Govind Bhat, J.

34. In view of the decision of the majority of Judges comprising the Full Bench, the matter is referred back to the Division Bench for a clear order of reference in the light of the interpretation to Section 7 of the Act.