INCOME-TAX REFERENCE.

Before Sir Owen Beasley, Kt., Chief Justice,
Mr. Justice Ramesam and Mr. Justice Sundaram Chetti.

THE COMMISSIONER OF INCOME-TAX, MADRAS, PETITIONER,

1934, May 2.

v.

SRI RAJA VYRICHERLA NARAYANA GAJAPATHI RAJU BAHADUR GARU, ZAMINDAR OF CHEMUDU, ETC., RESPONDENT.*

Indian Income-tax Act (XI of 1922), sec. 14 (1)—Hindu undivided family—Member of—Sum received by assessee as a—Impartible estate—Holder of—Maintenance received by assessee as brother of—Liability to assessment of.

A sum received as maintenance by an assessee as the brother of the last holder of an ancestral impartible estate entitled under the law to receive maintenance out of such estate is a sum received by him as a member of a Hindu undivided family within the meaning of clause 1 of section 14 of the Indian Income-tax Act (XI of 1922).

The right to maintenance which the son of a zamindar still possesses is not the creature of custom but it is an incident to the ordinary joint family property which has been left untouched by custom despite its encroachment on the other incidents.

PETITION under section 66 (2) of the Indian Income-tax Act (XI of 1922).

Advocate-General (Sir A. Krishnaswami Ayyar) with him, *P. Somasundaram* for assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

Cur. adv. vult.

* Original Petition No. 15 of 1934.

COMMISSIONER OF INCOME-TAX v. ZAMINDAR OF CHEMUDU.

RAMESAM J.

JUDGMENT.

RAMESAM J.—The facts of this case are not the subject of dispute. The Zamindari of Kurupam is an impartible estate in the Vizagapatam District being one of the zamindaris mentioned in the schedule to the Impartible Estates Act. The assessee is a brother of the last Zamindar of Kurupam (being the second son of his predecessor) and uncle of the present zamindar who is a minor under the Court of Wards. By an award in 1920, he was given an annual maintenance of Rs. 6,000 by his elder brother; and this award was made the subject of a decree. The question now referred to us is:

"Whether the sum of Rs. 6,000 received as maintenance by the petitioner as the brother of the late Raja of Kurupam entitled under the law to receive maintenance out of the ancestral impartible estate of Kurupam is a sum received by him as a member of a Hindu undivided family within the meaning of clause 1 of section 14 of the Act."

This identical question has been the subject of a decision by a Bench of the Allahabad High Court in *Maharaj Kumar of Vizianagram, In re*(1) in connection with another zamindari in the same district, viz., Vizianagram, and, as we substantially agree with the conclusion arrived at there, it is not necessary to deal with the matter very elaborately. It will be enough to indicate the salient points. The nature of an impartible estate has been the subject of consideration in a series of decisions by the Privy Council. In *Baijnath Prasad Singh* v. *Tej Bali Singh*(2) Lord DUNEDIN considers these decisions and groups them in chronological order. The first group extending from

(1) (1934) 149 I.C. 306; A.I.R. 1934 All. 818.
(2) (1921) I.L.R. 43 All. 228 (P.C.).

1865 to 1888 need not be referred to now. In that year the decision in *Sartaj Kuari* v. *Deoraj Kuari*(1) was passed by the Judicial Committee and it was held that an impartible zamindari is alienable at the pleasure of the holder of the zamindari. This was followed and applied in the case of a zamindari from this Presidency, viz., *Sri Raja Rao Venkata Surya Mahipathi Rama Krishna Rao Bahadur* v. *The Court of Wards*(2), where it was held that the holder of an impartible estate can devise the whole of the estate or a portion of it by will. In spite of these decisions there are other decisions passed alongside of these holding that the impartible estate still continues to be joint family property. It is enough to refer to one of such decisions, viz., *Sri Raja Lakhshmi Devi Garu* v. *Sri Raja Surya Narayana Dhatrazu Bahadur Garu*(3). There Lord DAVEY observed :

"Even if impartible it may still be part of the common family property and descendible as such . . . The real question, therefore, is whether it has ceased to be part of the joint property of the family of the first zamindar."

These observations of Lord DAVEY were relied on with approval by Lord DUNEDIN in *Baijnath Prasad Singh* v. *Tej Bali Singh*(4). The next decision to which one may refer is another decision of Lord DUNEDIN in *Rama Rao* v. *Raja of Pittapur*(5) known as the *Second Pittapur case*. At page 784 we have got the following observation :

"It follows that the right to maintenance, so far as founded on or inseparable from the right of coparcenary, begins where coparcenary begins and ceases where coparcenary ceases."

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(1) (1888) I.L.R. 10 All. 272 (P.C.). (2) (1898) I.L.R. 22 Mad. 383 (P.C.).
(3) (1897) I.L.R. 20 Mad. 256 (P.C.). (4) (1921) I.L.R. 43 All. 228 (P.C.).
(5) (1918) I.L.R. 41 Mad. 778 (P.C.).

COMMISSIONER OF INCOME-TAX v. ZAMINDAR OF CHEMUDU.

RAMESAM J.

The learned Advocate for the Commissioner of Income-tax relies on this sentence and argues that, as there is no coparcenary, therefore, there is no undivided family. The inference does not follow. Though persons may not have coparcenary rights in joint family property they may still be members of an undivided family, for instance, the female members of an undivided family and disqualified heirs, such as persons who are blind, deaf, dumb, and so on. However, at page 785, Lord DUNEDIN observes :

> " Just as the impartibility is the creature of custom, so custom may and does *affirm* a right to maintenance in certain members of the family."

Lower down he says :

> " In the matter in hand their Lordships do not doubt that the right of sons to maintenance in an impartible zamindari has been so often recognised that it would not be necessary to prove the custom in each case . . . "

For example, in the case of *Raja Yarlagadda Mallikarjuna Prasada Nayadu* v. *Raja Yarlagadda Durga Prasada Nayadu*(1) the judgment says :

> " As to the zamindari estate, the Board held that it was impartible and the consequence is that the plaintiffs as the younger brothers of the zamindar *retain* such right and interest in respect of maintenance as belong to the junior members of a raj or other impartible estate descendible to a single heir."

These quotations show that in the view of Lord DUNEDIN the right to maintenance which the son of a zamindar still possesses is not the creature of custom but it is an incident to the ordinary joint family property which was left untouched by custom, despite its encroachment on the other incidents. The next quotation from *Nilmony Singh Deo* v. *Hingoo Lal Singh Deo*(2), viz.: " We

(1) (1900) I.L.R. 24 Mad. 147 (P.C.). (2) (1879) I.L.R. 5 Calc. 256.

can find no invariable or certain custom that any below the first generation from the last raja can claim maintenance as of right" shows that beyond the first generation there is the possibility that custom has made some encroachment. There it was held by their Lordships that in each case the custom must be proved. The decisions in *Konammal* v. *Annadana*(1) and *Shibaprasad Singh* v. *Prayag Kumari Debee*(2) do not carry the matter further. The result is that we must find that there is a joint family. It has been argued that the income from which the maintenance is paid belongs solely to the zamindar but we have nothing to do with this. The question in the case is not whether the income belongs to the zamindar or whether it belongs to the joint family of which the assessee is a member but whether the assessee received his payment as a member of a Hindu undivided family. Undoubtedly he does receive this payment of Rs. 6,000 because he is a member of the undivided Hindu family. The question must therefore be answered in the affirmative. This is substantially the same as the answer given by the Allahabad High Court. The assessee will have Rs. 250 costs from the Income-tax Commissioner and the deposit of Rs. 100 will be returned to him.

BEASLEY C.J.—I agree and have nothing to add.

SUNDARAM CHETTI J.—I agree.

A.S.V.

(1) (1927) I.L.R. 51 Mad. 189 (P.C.).
(2) (1932) I.L.R. 59 Calc. 1399 (P.C.).