Institution of joint Hindu family flourished well until the advent of the British regime and continued to be accepted as an important aspect of Hindu society almost up to the second World War. However, the legislature step by step made inroads in the institution of joint Hindu family. Of all the statutes it is the Hindu Succession Act, 1956, which brought about radical changes by opening succession to a number of heirs. It also conferred testamentary power to dispose off coparcenary interest which means the abrogation of survivorship at the option of the coparcener. Although sections 6 and 30 are the

1. It was in 1850 that for the first time a rule forming part of the Hindu law of succession was abrogated by the Central legislature. See Caste Disabilities Removal Act 1850; Bengal Regulation VII of 1932. In the area of testamentary succession following enactments were enacted - Hindu Wills Act, 1870, Hindu Transfer And Bequests Acts 1914-1921 (Madras), and Hindu Disposition of Property Act, 1916. In South India Law of Malabar Joint families was reformed and codified in the erstwhile Travancore and Cochin States and in Madras — See Madras Marumakkattayam Act, 1932; Madras Allygsanant Act, 1932. In the area of Intestate succession first legislation - Hindu Inheritance (Removal of Disabilities) Act, 1928 was passed followed by the Hindu Law of Inheritance (Amendment) Act, 1929, Hindu Women's Rights to Property Act, 1937. In the area of joint family, sastric law was first modified by the Hindu Gains of Learning Act, 1930, which narrowed down the scope of 'unobstructed heritage' in Mitakshara law; Hindu Succession Act, 1956.

2. Mother, widow, daughter, daughter's daughter, daughter's son, son's daughter, son's son's daughter, son's widow, son's son's widow.
two sections that principally interfere with the joint family law, but the grave consequences of these sections are sufficient to complete a near annihilation of the institution of joint family.

In this chapter we will discuss the implications of Sections 6 and 8 of the Hindu Success Act, 1956.

(I) Section 6

Section 6 which lays down the rules governing devolution of interest in Mitakshara coparcenary property reads:

"When male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act.

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession as the case may be under this Act and not by survivorkship ...."

The main body of the section has an innocent countenance and proclaims that where a Hindu dies having at the time of his death an interest in the Mitakshara coparcenary, then his interest shall devolve by survivorship, according to Hindu law and not under the provisions of Hindu Succession Act. Thus it codifies the old Hindu law. At first glance one gets the
impression that Mitakshara coparcenary has been left as it is. But the proviso that follows gives a serious blow to what the preceding main clause apparently appears to have left untouched. When the proviso is attracted, the interest of the deceased Hindu in Mitakshara coparcenary shall devolve not by survivorship but by testamentary or intestate succession as the case may be under the Act. The schedule appended to the Act contains a list of twelve heirs belonging to Class I. Of these, eight are females, one is a male claiming through a female\(^3\) (daughter's son) contemplated by the proviso and the remaining three are male coparceners. The chances of a person dying without leaving behind a mother, a widow, a daughter or any of the other five female heirs or the son of a pre-deceased daughter being remote, succession in most of the cases would be governed by the proviso and not by the law of survivorship. Thus the benefit of the retention of the law of survivorship would be available only in exceptional cases. From this we find that the Hindu Succession Act attempts half heartedly to reconcile the incompatible concepts by retaining the doctrine of survivorship and also providing certain female heirs and predeceased daughter's son, the right to inherit concurrently with male heirs.

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3. The presence of these nine heirs of the deceased given in Class I of the Schedule prevents his interest devolving by survivorship to other coparceners.
Thus when a case falls under the proviso, the undivided coparcenary interest of the deceased coparcener is to be ascertained. To know the interest of the deceased coparcener, Parliament was left with no option but to import the fiction of notional partition, vide Explanation 1 to Section 6 which states-

"For the purpose of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not."

This notional or deemed partition is meant only for a specified purpose, which is to find out the interest of the deceased which is to go by succession to the heirs specified in Class I of the Schedule. It was, therefore, considered that it neither effects a severance of status nor does it demarcate the interest of the other coparceners or of those who are entitled to a share on partition. Notional or deemed partition is merely a device for demarcating the interest of the deceased coparcener. The Explanation enacts in effect that there shall be deemed to have been a partition before his death and such property as would have come to his share would be divisible amongst his heirs. It introduces a legal fiction of a partition before his death since without such fictional partition his share cannot be determined. What
is provided in Section 6, is not a partition at all but devolution of interest of a person in coparcenary property. The notional partition mentioned therein is solely for the purpose of ascertaining the extent of such interest as would be the subject matter of the devolution when the deceased Hindu died undivided from his coparceners. A full Bench of Andhra Pradesh High Court in P. Govinda Reddy v Goila Abulamma observed:

"Section 6 is concerned with the devolution of a deceased coparcener's interest alone. It has nothing to do with the disruption of the joint-Family status. The coparcenary will continue notwithstanding the death of a coparcener until partition is effected".

Under the Hindu Succession Act, 1956, no rules of partition have been provided. Consequently courts have to follow the general Hindu law to find out what would have been the share of the deceased if a partition had taken place immediately before his death. Explanation I provides machinery for determining the quantum of such shares in the joint family property, and the share so determined thus devolves, by virtue of the proviso, on the personal heirs of the deceased instead of vesting in the other coparceners by survivorship. The legal fiction which brings about such notional partition,

does not prevail any further. Such a partition does not bring about disruption of the coparcenary. It is only the interest of the deceased which is separated. The coparcenary, minus the interest of the deceased, continues with its own incidents. The surviving coparceners continue as such.

The actual working of the modality provided for by Explanation I to section 6 has been the subject of conflicting judicial interpretations. Various High Courts, during the course of interpretation widened and even changed the scope of the main provision of section 6. In the process of judicial interpretation during the period from 1956 to 1978, the following three interpretations are worth noticing:

(1) At the notional partition (at which shares would be counted but not allotted) no share would be counted for widow, the old law of partition notwithstanding. For example where a coparcener dies leaving behind his widow, a son and two daughters, no share would be counted for the widow and the interest of the deceased would be 1/4 and this would be divided among the son, widow and two daughters. The widow would get 1/8 of the whole property.

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At the notional partition under section 6, no living person would actually get a share; only the share of the deceased coparcener, so calculated, would go to his living Class I heirs. For example where a coparcener dies leaving behind his widow, two sons and two daughters, his undivided interest in the coparcenery would be 1/4 which would go by succession to the widow two sons and two daughters each getting \((\frac{1}{4} \times \frac{1}{5}) = \frac{1}{20}\) of the whole property. Remaining \(\frac{3}{4}\) would remain with the joint family.

At the notional partition all living coparceners as well as females entitled to a share, under the law of partition, would get the share due to them, and in addition to this the share of the deceased coparcener would by succession, go to his living Class I heirs. For example where a coparcener dies leaving behind his widow, one son and two daughters, his undivided \(\frac{1}{3}\) interest would go to his widow, son and two daughters in equal share by succession.
and each getting \((1/3 \times 1/4) = 1/12\). In addition to this \(1/12\), widow and son would get \(1/3\) in their own right i.e., they will get \(1/3 + 1/12 = 5/12\) each.

The third view propounded in *Rangubai v Laxman*\(^{11}\) and followed by other High Courts,\(^{12}\) has been confirmed by the Supreme Court in *Guru pad Khandappa Magdum v Hirabai Khandappa Magdum*\(^{13}\) and this settles the conflict of judicial opinion among the various High Courts. In this case where a coparcener died leaving behind his widow, two sons and three daughters, the Supreme Court held that:

- **(a)** at a notional partition the deceased as also his wife and two sons would be actually allotted \(1/4\) share each;
- **(b)** the \(1/4\) allotted to the deceased would by succession, go equally to his widow, his two sons and three daughters — each taking \(1/4 \times 1/6 = 1/24\); and
- **(c)** finally widow and the two sons would get \(1/4 + 1/24 = 7/24\) each and each of the three daughters would get \(1/24\).

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12. Supra f.n. 10.
Chandrachud, C.J. observed that:

"Explanation I to Section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of a Hindu Mitakshara coparcener "shall be deemed to be" the share in the property that would have been allotted to him if a partition of that property had taken place immediately before his death. What is therefore required to be assumed is that a partition in fact taken place between the deceased and his coparceners immediately before his death. That assumption once made, is irrevocable. In other words assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on that assumption and ascertain the share of the heirs without reference to it. The assumption which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all the stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's imagination to boggle. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another, and had received a share in the partition which had taken place during the life time of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that

15. Emphasis supplied.
17. Emphasis supplied.
cannot be recalled just as a share allotted to a coparcener in an actual partition cannot be generally recalled. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition." 18

The learned Chief Justice fortifies his arguments that section 6 of Hindu Succession Act is nothing but the culmination of a process of social legislation that begins with the Hindu law of Inheritance (Amendment) Act, 1929 with a view to ameliorate the lot of Hindu women. In this respect, it is submitted that the Supreme Court has over looked the basic fact that the Mitakshara coparcenary has not been abolished, and neither a coparcener's wife nor his daughter is a coparcener. We respectfully cannot reconcile with the learned Chief Justice's observation that -

"Even assuming that two interpretations of Explanation 1 are reasonably possible, we must prefer that interpretation which will further the intention of the legislature and remedy the injustice from the Hindu women have suffered over the years".

18. at p.1243.
The reason of dissent is that the judiciary should not step in where the legislature stops in taking a measure of social reform to its logical end. As Hindu Succession Act did not contemplate to abolish the Mitakshara coparcenary so there was no need for the judiciary to hold the notional partition as real partition. If the intention of the legislature were to abolish the coparcenary as has been held by the Supreme Court, it would have been much simpler for it to specifically provide for such abolition rather than adopt the involved provisions contained in the proviso and explanation 1 to section 6.

This decision virtually lays down that if a coparcener dies leaving behind a female heir or a male claiming through a female in terms of the proviso to section 6, there is an automatic statutory partition,\(^\text{19}\) and the Mitakshara coparcenary comes to an end. It is submitted that Supreme Court is trying to abolish Mitakshara coparcenary by judicial legislation what the Kerala State is purporting to do by a statute.\(^\text{20}\) We perfectly agree with the views expressed by Professor Paras Diwan,\(^\text{21}\) that the notional partition as contemplated in section

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6 does not amount to an automatic statutory partition nor does severance of status take place on the death of a coparcener. The fiction of notional partition is used as a mere device to find out the share of the deceased coparcener and it should be confined to that purpose alone.\textsuperscript{22}

The leading judgement of the Supreme Court\textsuperscript{23} makes it necessary to explain Explanation 2 to Section 6 also which reads:

"Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

Explanation 2 to section 6 makes it clear that neither a person who has separated himself from the coparcenary before the death of the deceased nor any of his heirs can claim a share in the interest of the Mitakshara coparcenary property on intestacy under the proviso to the section. This Explanation only reproduces the law which was already in force before the Act came into force. The principle underlying the said view of law is that persons who continue to remain joint with other members of the family should be


\textsuperscript{23} \textit{AIR} 1978 SC. 1239.
preferred in the matter of intestate succession to a person who has gone out of the family by taking away his share. This is in consonance with the notions of the joint family system prevailing in India. The said disability was a consequence of a voluntary act on the part of the separated member.

The proviso to section 6 is an exception to the rule incorporated in the main part of section 6 and Explanation 2 is an exception to the rule incorporated in the proviso to section 6. While construing a provision of this type we have to construe it strictly and if the case of any person cannot be brought within the four corners of the exception it should be held that it would not affect the interest of such a person. So in Ganta Appala Naidu v Ganta Narayana, where a son and his father were the only members of a coparcenary and the son had separated himself by seeking and obtaining partition, when the father died leaving behind only some female heirs besides the son, it was held that:

(a) what the father had left was not undivided coparcenary interest;
(b) neither section 6 nor its Explanation 2 applied;

and

AIR 1972 A.P. 258.
the property left by the father would go by succession to all his heir including the divided son.

In view of the ruling in Gurupad's case, it is submitted that those who get share at the statutory partition under section 6 would not be deemed to have "separated" themselves from the coparcenary before the deceased coparcener's death. Separation referred to in Explanation 2 to section 6 will be confined to voluntary separation in the lifetime of the deceased and will not cover the statutory disruption of the coparcenary taking place under the law as settled by the Supreme Court.

It is clear from the aforementioned discussion that the efforts made by the Parliament in preserving the Mitakshara coparcenary under section 6 of the Hindu Succession Act 1956 got a death blow from the Supreme Court in Gurupad v Hirabai's case wherein Chandrachud C.J. observed that the fact that it is a mere notional partition should not "boggle" our imagination, and Explanation 1 to Section 6 compels the assumption of a fiction that in fact 'a partition of the property had taken place' immediately before the death of the coparcener.

25. AIR 1978 SC 1239.
26. Ibid.
27. Emphasis supplied.
It is submitted that the fiction of notional partition cannot be treated as real partition and it cannot be stretched beyond the purpose for which it was enacted whatever the intention of the judges of social reform may be.

Assessment

The vital question for determination, for assessment purposes under the Income-tax Act, 1961, is whether the property inherited by the male heirs under the proviso to section 6 of the Act is to be treated as their individual property or that of the Hindu undivided families headed by them.

In C. L.T. v Smt. Nagarathnamma28 where the Karta of the Hindu undivided family consisting of himself, his wife, daughter and three minor sons was a partner in two firms and the income derived from firms was assessed as income of Hindu undivided family in his hands died after coming into force of the Hindu Succession Act. He died intestate and his interest devolved on his wife, daughter and three sons in equal shares. For assessment purposes question which arose for decision was whether the share which devolved on the heirs of Karta by virtue of section 6 was assessable as the income of the Hindu

The subject was explained by the High Court thus: when a male Hindu dies after the commencement of the Hindu Succession Act having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property devolves by succession on his heirs if he had left behind him a surviving female relative or a male claiming through a female specified in Class I of the Schedule to the Hindu Succession Act. For the purpose of the computation or determination of the share of the male Hindu, Explanation 1 of Section 6 of the Hindu Succession Act assumes that a notional partition in the family had taken place immediately before his death. Notwithstanding the death of the male member of Hindu undivided family, the Hindu undivided family continues, but the property of the Hindu undivided family gets diminished to the extent of the share of the male dying. Therefore, on the death of the Karta the share of the joint family is reduced and the share of the deceased Karta is not liable to be included in the income of the Hindu undivided family.

See C.W.T. v. Kantilal Mani Lal, (1973) 90 I.T.R. 289 (Guj.) — The concept of notional partition u/s 6 of the Hindu Succession Act does not affect the family. The family would continue with the surviving coparceners as it would have done under the ordinary Hindu law but diminished by the share of the deceased coparcener which goes to the heirs. See also C.I.T. (Gujarat) v. Shanti Kumar Jagbhaj, (1976) 105 ITR 7:5 — Property obtained u/s 6 should be excluded from the joint family assets and the assessment should be made in their separate individual capacity of the members with regard to the income tax from the property obtained.
This indicates that where a male dies his interest in the property which devolves upon his heirs by virtue of the proviso to section 6, would in the hands of all his heirs including his sons be their separate property and is to be assessed as their individual property.

It is worth noticing that when a Hindu male coparcener dies his interest under section 6 of the Hindu Succession Act, devolves upon the heirs, given in Class I of the schedule, the widow and the son\textsuperscript{30} get more than other heirs mentioned therein because they get in dual capacity one as their share in the coparcenary equal to the deceased and secondly equal share in the interest of the deceased along-with other heirs mentioned in Class I. The widow of the deceased holds the shares inherited in dual capacity as her separate property in her own right. But the position of the son would be different in that he would keep the share in the interest as his separate property and his share in coparcenary as Hindu undivided family qua his family.

But the recent observations of the Supreme Court in Gurupad v Hirabai,\textsuperscript{31} must have their resultant effect on

\textsuperscript{30} Son includes grandson and great grandson of the predeceased's son and son's son.

assessment of Hindu undivided families. In view of this decision it would not be wrong to suggest that there would be no Hindu undivided family henceforth, as there would be automatic actual partition of the Hindu undivided family properties on the demise of a coparcener. The income of the erstwhile Hindu undivided family will belong individually to each female heir in Class I of the schedule or a male claiming through such a female and in the case of the other male heirs the income will be either the income of the individual or of the Hindu undivided family of which he is the Karta depending upon whether one view or the other has been held by the high court of the area. In any case the larger Hindu undivided family will in law cease to possess any property and shall as a consequence have no income. All the same an option is still available to the Hindu undivided family in so far as the income-tax law is concerned under section 171 of the Income-tax Act an Hindu undivided family which has hitherto been assessed as undivided shall be deemed for the purposes of the Act to be joint except where a finding of partition has been given under section 171. This finding can be given only on an application being made by a member of the family and if no application is made, the Hindu undivided family can continue to be assessed as such despite the automatic

32. Ibid.
33. Emphasis supplied.
partition envisaged in the Supreme Court's decision in \textit{Gurupad's} case. The members of the family thus have a choice to be assessed separately or jointly as they may wish.

As discussed earlier Supreme Court's decision in \textit{Gurupad v Parab} does not seem to lay down the correct law on the subject. Even the legislative intention does not appear to have been correctly presumed. It is, therefore, imperative that either the Supreme Court reconsiders the decision in a suitable case or the legislature steps in to remedy the situation.

(II) \textbf{section 8:}

Section 8 of the Hindu Succession Act, 1956, applies to all cases of intestacy of a male Hindu except those to which the main provision of section 6 applies. Under the Act no special provision is made for the devolution of the separate property of a member of joint Hindu family. All property devolves in

\begin{itemize}
  \item \textit{Supra f.n. 31.}
  \item Ibid.
  \item The property of the male Hindu dying intestate shall devolve according to provisions of this chapter —
    \begin{enumerate}
      \item firstly, upon the heirs, being the relatives specified in Class I of the schedule;
      \item to (d) \textit{xxx xxx xxx}
    \end{enumerate}
\end{itemize}
accordance with the provisions of section 8 of the Act. Section 8 does not qualify the word "property" either by the words "separate" or "self-acquired" or by the words "coparcenary" or "joint family". Where there are no coparceners to whom the property can go by survivorship under section 6, section 8 will hold the field and succession has to be in accordance with the provisions of section 8. It must, thus, be taken that section 8 is intended to apply -

1. to all kinds of separate property possessed by the deceased;
2. to his undivided interest in a Mitakshara coparcenary, if governed by the proviso to section 6;
3. to all the properties of the Dayabhaga Hindu, whether coparcenary or otherwise.

It was a well-established principle of Hindu law that when a son inherits separate or self-acquired property of his father, it assumes the character of joint Hindu family property in his hands qua his sons. But now this principle has been subject of varied judicial interpretations. In the process of interpretation of section 8 of the Hindu Succession

37. Supra f.n. 38.
Act, 1961 by the various High Courts two conflicting views emerged, viz.:

(1) The property that a male heir obtains by inheritance, according to section 8 in his hands, is his 'separate' property and is not subject to the Mitakshara doctrine 'right by birth'.

(2) The property inherited by the son on the death of his father, is the estate belonging to Hindu undivided family and is subject to the Mitakshara doctrine 'right by birth'.

Hereunder we may discuss some of the notable cases on both the conflicting points:

(1) In C.I.T. V Ram Rakshpal, partition took place between the father Durga Prasad and his son Ram Rakshpal and both started their own separate business. Income of the son's


40. (1968) 67 I.T.R. 164 (All.).
business was assessed as the income of his Hindu undivided family. Father died leaving behind his widow, married daughter, Ram Rakshpal and Ram Rakshpal's son. The assets left by Durga Prasad devolved upon widow, daughter and Ram Rakshpal in equal share by succession under the Hindu Succession Act, 1956. Daughter took her 1/3 share and the other two continued the business in partnership and the share of profit of Ram Rakshpal was assessed as the income of the Hindu undivided family by the I.T.C. applying the principle of Hindu law that any property coming from father, father's father and father's father's father is ancestral property. Appellate Assistant Commissioner also rejected the appeal but the Appellate Tribunal allowed the appeal by holding that the property inherited by Ram Rakshpal from his father is exclusively his separate property and therefore the income was assessable as the individual income of Ram Rakshpal and not of the Hindu undivided family. The department referred the following question to the Allahabad High Court for opinion:

"Whether 1/2 share held by Ram Rakshpal in the partnership firm of his father is held by him as a Karta of the H.U.F. or in his individual capacity".

Department relied on the following two passages from Dr. J.D.M. Derrett's *Introduction to Modern Hindu Law*:

41. 1963 Edn., at pp. 252-53.
"Since on the death of the father his separate property (or divided share) passes to his sons as ancestral property between them and the sons and grand-sons of each of them (the 'male-issue') — a position which persists notwithstanding the reforms of the Hindu Succession Act — it is not uncommon, where a father dies in the lifetime of the grand-father, to find a grand-son who is a member of a coparcenary in two distinct capacities." ⁴²

"Under the Hindu Succession Act the sons, along with other intestate heirs indicated in Class I of the schedule must take the property of their intestate father as tenants in common in all circumstances, but their male issue will have a birth right as before." ⁴³

It was further stressed that the Hindu Succession Act deals only with the rules relating to distribution of property and has left the remaining part of the Hindu law of succession and inheritance untouched.

M.H. Beg, J. did not agree with the view. He elucidated and clarified the position after coming into force of the Hindu Succession Act on the point thus:

⁴² at p.252.
⁴³ at p.253.
"Section 8 of the Act obviously embodies the concept of individual owners of property succeeding each other as owners of that property. The word succession is obviously understood to mean a stepping into the shoes of the previous owner or holder of the property".

It was further observed:

"Section 8 lays down a line of devolution of property upon heirs who are divided into two classes mentioned in the schedule to the Act. In Class I the son shares only with the grand-son through a pre-deceased son an equal right in the inheritance together with other heirs. The grand-son through a son who is alive does not find a mention at all anywhere in the schedule. While Section 8 lays down the scheme and indicates the order of succession, section 9 of the Act makes it clear that the heirs of Class I take simultaneously and exclude all other heirs. Section 9 also prescribes that the heir in first entry of Class II will be preferred to the heirs in the second entry, and, similarly, the heirs in the second entry will be preferred to the third entry."

"Section 10 of the Act contains certain rules of distribution of property among the heirs in Class I of the Schedule. In other words, the Hindu Succession Act makes a clear distinction between the rules regulating the succession of heirs and the rules of distribution and provides for both separately. 144

144. Emphasis supplied.
It was further observed:

"... as regards the subjects dealt with by the provisions of the Act itself, which provides a self-contained and comprehensive code relating to both testate and intestate succession of persons defined as "Hindus" in the Act, the matter must be decided exclusively with reference to the provisions of the Act."^45

Justice Beg did not agree with the department that the Hindu Succession Act deals only with rules relating to distribution of property and has left the remaining part of Hindu law of succession and inheritance untouched. It was thus held that in view of the provisions of Hindu Succession Act, 1956, the income from assets inherited by a son from his father from whom he has separated by partition cannot be assessed as the income of Hindu undivided family and so Ram Rakshpal is to be assessed as an individual.\(^47\)

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^45. Supra f.n. 40 at pp.172-73.

^46. Ibid., at p.170. The rule of Hindu law that the property which a man inherits from any of his three immediate ancestors is ancestral property qua his male issue is not applicable after coming into force of the Hindu Succession Act, 1956.

In Commissioner of Wealth Tax V Chander Sen and Commissioner of Income-tax V Khushi Ram Rangi Ram, where the Hindu undivided family consisting of Rangi Ram and his son Chander Sen owned immovable property and business, divided the business, and continued it in partnership. On Rangi Ram's death Chander Sen inherited his share in the business. For purposes of Wealth-tax and Income-tax Chander Sen claimed that the amount inherited by him and the interest accrued on it is his individual asset and not of the Hindu undivided family consisting of himself and his sons of which he is the Karta. It was held that under the provisions of section 8 of the Hindu Succession Act, 1956, the property of Rangi Ram who died intestate devolved on his son Chander Sen in his individual capacity and not as Karta of his own family. The property did not constitute an asset of Hindu undivided family of Chander Sen and his sons.

In Addl.C.I.T. (Mad. II) V V.P.A. Manicka Madaliar, the assessee invested a sum of Rs.50,000 out of the amount inherited by him from his father on the father's death after partition in the family by virtue of section 8 of Hindu Succession Act, 1956, as his capital in the firm. On the question whether the loss arising to the assessee from the

49. (1978) 114 I.T.R. 521 (Mad.).
firm was his individual loss or loss of the Hindu undivided family of which he was the Karta, the appellate Tribunal relied on C.I.T. v Ram Rakshpal, and Ghasiram Agarwal and held that the capital invested by the assessee in the firm was his separate property and hence the loss accruing as a result of the assessee's membership in the firm was also his personal loss. On a reference to the High Court by the department, the decision of the Tribunal was upheld.

This view was approved in Additional C.I.T. (Mad.I) v P.L. Karuppan Chettiar where the facts in brief were that there was a Hindu undivided family consisting of Planiappa Chettiar, his wife, son Karuppan and Karuppan's wife. In 1954 partition took place between the father and son. Thereafter Karuppan his wife and subsequently born sons and daughter constituted a Hindu undivided family and continued to be assessed as such. On Planiappa's death in 1963, his wife and Karuppan inherited the properties left by Planiappa under section 8. The Income-tax Officer included in the computation of the total income, the income received from

50. (1968) 67 I.T.R. 164 (All.).

51. (1968) 69 I.T.R. 235 (Assam) so far as the separate property of a Hindu is concerned, it devolves as his separate self-acquired property on his heirs and does not pass by survivorship even if he happens to be joint.

52. (1978) 114 I.T.R. 523 (Mad.).
the properties inherited by Karuppan from his father. Assesssee family appealed to the Appellate Assistant Commissioner contending that the properties inherited by Karuppan, the Karta of the family did not belong to the Hindu undivided family, but these were the individual properties of Karuppan and thus income thereof is to be assessed as of Karuppan. But the contention was not accepted and an appeal appellate Tribunal following the decision of C.I.T. v Ram Rakshpal\(^5\) held that the properties did not form part of joint family properties so that the income therefrom could be assessed as the income in the hands of the family consisting of himself, his sons and other members.

Being dissatisfied with the decision department referred the following question to High Court for opinion.

"Whether on the facts and circumstances of the case, the properties inherited by Karuppan from his divided father constituted his separate and individual properties and not the properties of the Hindu undivided family of which he is the Karta".

Before answering the question, Full Bench of the Court referred to the salient provisions of the Act and by referring to the preamble to the statute which reads -

53. (1968)\(IR\) 164 (All.)
"An Act to amend and codify the law relating to intestate succession among Hindus",
came to the conclusion that what was intended by enacting the Statute was to provide for intestate succession among Hindus. Then referring to section 4(1) of the Act which reads:

4(1) save as expressly provided in this Act -

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act,

it was observed that the same limitations are contained in section 4(1)(b) as are in section 4(1)(a) and concluded from this:

"that the statute has no intention whatever of abrogating the principles of Hindu law in toto or in a comprehensive manner and that it intends only to affect those principles to the extent to which provision had been made in the Act which abrogates or strikes a discordant note to the principles of the established Hindu Mitakshara law".
Interpreting section 8 it was observed:

"... if the mode of division provided by the section is different from that which obtained before the Hindu Succession Act came into operation, in accordance with the principles of Hindu law in view of what is categorically stated in section 4 of the Act, it is section 8 of the Act that should prevail and not the principles of Hindu law. If there is difference in the scope and effect regarding the mode or method of devolution that is provided in section 8, it is section 8 which should be applied and not the principles of Hindu law. We should, therefore, try to formulate what are the principles of Hindu law applicable in the circumstances of this case.... Not only was Karuppan alive at the time of the death of Palanippa, but at the time of his death, Karuppan's son was also alive. In such circumstances, under the Hindu law, the property will devolve on the son and the grand-son will also have an interest in the property; and the two together will form a Hindu undivided family (We are of course assuming that there were no females).

The question is whether when succession opens u/s 8, Karuppan and his son will take the property in the same manner. Clearly, this is not so. When we search for the relatives mentioned in Class I of the schedule, which is attracted by virtue of section 8, we find no son's sons are mentioned at all though the grand-son of a deceased son is mentioned. What would be the effect when such a grand-son comes into the picture need not be dealt
within this case. But where the son as well as his son are the persons concerned, by applying section 8, we have to come to the conclusion that the son alone, namely, Karuppan in this case will inherit the property to the exclusion of the grandson. This being the effect of the statutory provision, no interest will accrue to the grandson in the property which belonged to Palaniappa.

It was further observed:

"Even assuming Palaniappa's property is ancestral property in the hands of Karuppan, still because of the effect of the statute, Karuppan's son will not have an interest in the property. This is directly derogatory of the law established according to the principles of the Hindu law and this provision in the statute must prevail in view of the unequivocal expression of the intention in the statute itself which says that to the extent to which provisions had been made in the statute, those provisions shall override the established provisions in the text of Hindu law. This is what M.H. Beg J. as he then was, said in the decision Commr. of Income-Tax V Ram Rakshpal (1968) 67 I.T.R. 164 (All.)."

Thus under the circumstances after dealing with the effect of section 8 it was observed:

"it is clear that here Karuppan alone took the property of his father Palaniappa which the latter

54. Ibid., at p.531.
had obtained in the partition, and irrespective of the question whether it was ancestral property in the hands of Karuppan or not, he would exclude his son. Since the existing grandson at the time of the death of the grandfather has been excluded, we think that an after born son of Karuppan will also not get any interest which Karuppan inherited from his father. Thus the principles of Hindu law are not applicable. It is impossible to visualise or envisage any Hindu undivided family in regard to the property which Karuppan got.”

Hence the High Court answered the question referred to it in the affirmative i.e., in favour of the assessee and against the department. It means that the property inherited by the son from his father from whom he is separated, is his individual property and it cannot be assessed as the income of Hindu undivided family of himself, his sons and other members of his family.

(2) The opposite view was held in C.I.T. V Babubhai Mansukhbhai. The assessee who died during the pendency of the proceedings was Babubhai Mansukhbhai. The assessee’s father Mansukhbhai, died intestate in 1963 leaving behind self acquired properties which devolved upon his wife and

55. Ibid., at p.532.
his son, the assessee. The assessee inherited one half in the form of loan advanced to parties and bank deposits. The assessee contended before the I.T.O. income of his inherited property should be assessed as income of the Hindu undivided family of himself, his sons and wife, which was rejected. Appellate Assistant Commissioner also rejected the appeal. Appellate Tribunal on appeal agreed with the contention of the assessee and on the department's initiative following question was referred to the High Court for opinion.

"Whether on the facts and in the circumstances of the case, the correct status of the assessee in respect of the properties inherited by him on the death of his father was as representing his Hindu undivided family or as an individual".

It was held that in the case of the Hindus governed by the Mitakshara law, where a son inherits the self-acquired property of his father, the son takes it as the joint family property of himself and his son and not as his separate property. The correct status for the assessment to income tax of the son in respect of such property is as representing his Hindu undivided family. In the course of judgement, Divan C.J. dissented from the views taken by the High Courts in C.I.T. v Ram Rakshpal,57 Chasiram Agarwala v C.G.T.;58 C.W.T.

57. (1968) 67 I.T.R. 164 (All.).
V Chander Sen and C.I.T. V Khusi Ram Rangi Ram. 59

The learned judge observed that both Sections 6 and 30 deal with undivided share of a Hindu in a Mitakshara coparcenary property. They do not deal with the separate property. Neither section 6, nor section 6 deals with the character of the property of a Hindu when it devolves on his son by inheritance under proviso to section 6 or u/s 8. Section 8 merely provides the mode of devolution of separate property and who are the heirs of Hindu dying intestate. Proviso to section 6, Hindu Succession Act provides for cases in which the coparcenary interest will devolve by succession (thus bringing section 6 into application) and not by survivorship. Divan, C.J. very rightly observed that so far as the separate property was concerned, it devolved according to the provisions of the chapter in which section 8 was located but nothing in section 8 or in that chapter dealt with the character of the property in the hands of the person on whom the property devolved by succession. The learned judge said:

"Neither section 6 nor section 8 affect this principle of Hindu law as to in what capacity or in what character the son would enjoy the property once he receives it from his father in succession".

Similar views were expressed by the Punjab and Haryana High Court in Brij Lal V Deulat Ram, 60 where on the death of

60. (1977) 79 P.L.R. 27.
the father (Kheta Ram) in 1957, his estate devolved upon his widow, two sons and two daughters, the question for decision arose as to whether the grandson of the deceased from one of his sons (Daulat Ram) had a right by birth in the property devolving upon his father on the death of his grandfather. To answer this question the High Court considered the provisions of sections 4 and 8 of the Hindu Succession Act, 1956, to find out whether the rule of Hindu law of Mitakshara had been abrogated by section 4 of the Act and whether property devolving u/s 8 of the Act would be the separate property of the son or it would be the ancestral property in his hands in which his sons would have equal right with the father.

Harbans Lal, J. elaborated the law on the point thus —

"The law is well established that under the Mitakshara School of Hindu law by which the parties are admittedly governed, all property inherited by a male Hindu from his father, father's father and father's father is ancestral property. According to para 223 of Mulla's Hindu Law the essential feature of ancestral property under Mitakshara law is that the sons, grandsons and great grandsons of the person who inherits it, acquire an interest in it by birth. So to say, such property is a coparcenary property of the members of the coparcenary with his father, son and grandson.
having a share in the said property. The only question now for determination is whether this established principle of Hindu law was abrogated by Section 4 of the Act. There is no doubt that under sub-sections (a) and (b) of section 4 of the Act, any rule of Hindu law which is inconsistent with the provisions of this Act or for which an express provision has been made in this Act will stand abrogated. According to section 8 of the Act, the property of a male Hindu dying intestate shall devolve upon heirs mentioned in Class I and II of the Schedule annexed to the Act. According to Class I of this Schedule, the widow, sons and daughters were heirs and property was rightly inherited by them. So far as the daughters are concerned, the estate inherited by them will be their exclusive property and the question of the same being coparcenary property does not arise. So far as the share inherited by Daulat Ram from his father Kheta Ram is concerned, it must be treated as ancestral property and as such according to the established principles of Mitakshara law it must partake the character of coparcenary or joint Hindu family property.

It was thus further observed:

"Sections 6 and 8 of the Act only postulate as to how the property left by a male Hindu will be inherited by the surviving heirs. It does not in any manner say as to how the property will be treated in the hands of the heirs. The Act being

61. Ibid., at pp. 30-31.
silent in this matter, section 4 of the Act cannot be interpreted to have abrogated the established principles of Mitakshara law.\textsuperscript{62}

Hon'ble Judge did not agree with the decision of the District Judge who had held that section 4 of this Act had abrogated Mitakshara law in such matters on the ground that under the provisions of the Act, son's son of the deceased owner was not an heir along with the son under section 8 of the Act and held the argument as fallacious and it was further observed:

"Section 8 of the Act which deals with the succession to the property of a Hindu male dying intestate has modified the Mitakshara law to this extent only that only after his death the property shall devolve not only on the son as a member of the coparcenary or otherwise but also on the widow and daughters.\textsuperscript{63} But for this provision daughters and widow will not be entitled to any share under the Mitakshara law. It is clear from a perusal of section 4 of the Act that the entire Mitakshara law has not been abrogated by the Act but only to the extent the same is inconsistent with the provisions of the Act. If there is a conflict between Mitakshara law and the Act, the provisions of the Act will prevail. Where any field has been left uncovered by the provisions of the Act, the Mitakshara law will still continue to hold the field.\textsuperscript{64}"

\textsuperscript{62} Emphasis supplied.
\textsuperscript{63} Emphasis supplied.
\textsuperscript{64} Emphasis supplied.
Thus on the basis of these arguments it was held that when the property devolves u/s 8 upon the heirs of CLASS I of the Schedule, the share in the hands of the son would be ancestral property and his son would have a right by birth in it and if any other interpretation is adopted, the result will be that as soon as a male Hindu dies, the property left by him and inherited by his son will also become self acquired property and the entire Mitakshara law will have to be held to have come to an end and this cannot be the intention of section 4 of the Act.

The view taken by the Allahabad, Madras and Assam High Courts, that the property inherited by a male Hindu from his father u/s 8 of the Hindu Succession Act, 1956 would be the individual property of the son and not that of the Hindu undivided family, does not appear to be logically sound. No doubt before the passing of the Hindu Succession Act, widows had only a life interest in the Hindu undivided family property whereas now they have been given absolute ownership as also the property they inherit under section 8 of the Act. Also unmarried daughters who had no interest or

65. supra f 7 66 at p 31.
right except the right to maintenance and marriage either in the Hindu undivided family property or the property of their father, have now been given equal share with the son in the deceased father's interest in the Hindu undivided family property as also his separate property and this share is their absolute property. Likewise married daughters who had no right in the Hindu undivided family or separate property of their father have been given equal and absolute right in such properties. Whereas the female heirs who had a limited or no interest in the Hindu undivided family property or in the separate property of the deceased have not only been given a right of inheritance but also absolute ownership thereof, it could not be imported to mean that the son will also hold the property as his absolute property and his sons would have no interest in it on the ground that son and other heirs of the deceased are inheriting under the same provision of the Act and thus no distinction could be made among the heirs given in Class I of the schedule concerning the character of the inherited property.

It is submitted that the argument that Class I of the Schedule to the Hindu Succession Act mentions son alone and son's son is not mentioned, therefore the property inherited by him from his father would be his separate property and his son would have no interest in it is not correct. The
argument is based on the fallacious assumption that under the old Hindu law son and grandson together inherited the separate property of a Hindu. The old Hindu law of inheritance also did not say that son and son's son together inherited separate property. It only said that when a Hindu inherited his father's property his son gets an interest in it by birth, i.e., if a son is already there he becomes a coparcener with his father in that property, and if he is not there but is born later on, he becomes a coparcener with his father from the date of his birth. But, of course, if he has no son, son's son and son's son's son, it will be his separate property in respect of all others.

It is further submitted that when once this fallacious assumption was made that under the old Hindu law son and grandson together inherit the separate property of a Hindu, it was easy to say that since this was not so under the Hindu Succession Act the whole of the Hindu law stood abrogated by virtue of section 4. Once we realize that under old Hindu law as well as under the Hindu Succession Act son alone succeeds to the separate property of a Hindu, the whole argument crumbles, and section 4 of the Hindu Succession Act does not come into application. Since no provision as to the character of the separate property inherited by a son is made in the Hindu Succession Act 1956, the old Hindu rule that the separate property of the
father inherited by the son would be ancestral property qua his sons has not been abrogated. This is exactly what has been held by the Gujarat and Punjab & Haryana High Courts that section 8 merely provides the mode of devolution of separate property among the heirs of Class I and nothing in that section or in that chapter dealt with the character of the property in the hands of the person on whom the property devolved and it was correctly said by learned Judge, Diven, B.J. in C.I.T. V Babubhai Mansukhbhai.

"Neither section 6 nor section 8 affect this principle of Hindu law as to in what capacity or in what character the son would enjoy the property once he receives it from his father in succession".

It was very rightly observed by the learned judge that so far as the separate property was concerned, it devolved according to the provisions of the chapter, in which section 8 was located but nothing in section 8 or in that chapter dealt with the character of the property in the hands of the person on whom the property devolved by succession.

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70 Brijlal v Daulat Ram, (1977) 79 P.L.R. 27.
71 Supra f.n. 69 at 422.
If the view propounded by the Allahabad, Madras and Assam High Courts is accepted, the result will be that as soon as a male Hindu dies, the property left by him and inherited by his son will become his individual property, and the entire Mitakshara law will have to be held to have come to amend and this could never be the intention of section 4 of the Hindu Succession Act, 1956. Thus the view that after coming into force of the Hindu Succession Act, 1956, there is nothing like an "ancestral property" since the son succeeding to his father's property takes it as his separate property, would virtually lead to the abrogation of the Hindu joint family.

It may be emphasised that the foundation of the Mitakshara coparcenary and the Hindu undivided family is laid when a Hindu inherits the separate property of his father, father's father or father's father's father. On such inheritance, he holds the property as joint family or Hindu undivided family property in which his sons acquire an interest by birth. If we are allowed to say that when a Hindu inherits his father's property u/s 8 of the Hindu Succession Act, he holds it as his separate property, we

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72. Supra f.n. 66.
73. Supra f.n. 67.
74. Supra f.n. 68.
are led to the inevitable conclusion that no new Mihakshara Hindu joint family can come into existence after the coming into force of the Hindu Succession Act. This amounts to saying that the Hindu Succession Act has abolished the Mitakshara joint family.75 It is thus submitted that the views of Gujarat and Punjab and Haryana High Courts76 are more weighty, logical and cogent than the views expressed by Allahabad, Madras and Assam High Courts.77

76. Supra footnotes 69 and 70.
77. Supra footnotes, 66, 67 and 68.