

Kalwa Devadattam and Two Others v. Union of India and Others

Civil Appeals Nos. 641 and 642 of 1961

[1964] 3 SCR 191 | 1963-04-19

HUF partition, subsisting tax liability, civil-court bar and recovery from joint-family property

Indian Income-tax Act, 1922: sections 25A, 30 and 67 | Madras Revenue Recovery Act, 1864 (recovery context) | Code of Civil Procedure, 1908 (connected private-debt execution dispute)

Three-judge Bench; judgment delivered by J. C. Shah, J. | A. K. Sarkar, J. | M. Hidayatullah, J. | J. C. Shah, J.

Historical partition and recovery provisions

The ruling applies the 1922 Act. A claimed family partition, a recorded section 25A partition and the members' recovery liability are distinct questions. Do not infer that a partition deed alone extinguishes tax already chargeable.

Separate-suit question expressly left open

In the private-creditor appeal the Court did not resolve the competing views on execution against sons after a genuine partition. That issue was unnecessary because the partition here was held sham.

Last source page begins another case

PDF p. 24 first completes this judgment, then begins Raizada Topandas v. Gorakhram Gokalchand. That separate case is not part of this note.

01 FACTS OF THE CASE

Nagappa and his sons constituted a Hindu undivided family carrying on business. Income-tax and related liabilities were assessed for 1944-45, 1945-46 and 1946-47. Recovery proceedings attached 51 immovable properties and sold 38. The sons sued to declare the assessments unenforceable against those properties and restrain recovery, relying on a partition deed dated 14 March 1947, preceding the assessment orders. They also claimed that items 46-51 were separately owned because their maternal grandmother had supplied the purchase money. The Revenue disputed the partition's reality, the separate ownership and the civil court's jurisdiction. A connected appeal concerned a private creditor's execution of a decree against Nagappa made before the purported partition. Both suits had failed in the High Court.

Source: [Judicial facts and issues / PDF pp. 5-9](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court distinguished the creation of tax liability by the charging provision from its later quantification by assessment. Liability had arisen while the family was undivided, before the alleged partition. Section 25A addressed assessment and recovery following partition; without an order recording division into definite portions, subsection (3) deemed the family to continue. Even where partition was recorded, subsection (2)'s proviso retained joint and several liability for the tax. The Court assumed for argument that Nagappa's statement might have required the officer to inquire into partition, but no partition order had been made. An error in assessment was to be challenged through the statutory appeal under section 30, not a civil suit prohibited by section 67. As to items 46-51, the Revenue bore the prima facie burden when purchases stood in the sons' names, but after evidence from both sides the decisive question was what that evidence established. The grandmother-funding account was rejected and the purchases were inferred to have been made with joint-family earnings. For the private debt, the Court expressly declined to settle conflicting authorities about execution after a genuine partition. The deed and its registration were not conclusive: continuing family management, unreal allocations and the parties' conduct showed that the alleged partition was sham and never intended to operate.

Source: [Tax liability and civil-court bar / PDF pp. 9-14](#); [Ownership evidence and companion appeal / PDF pp. 14-24](#)

03 JUDICIAL DECISION

The tax-recovery suit failed on three independent grounds identified by the Court: section 67 excluded a civil suit to set aside or modify the assessments; absent a section 25A order the family remained assessable as undivided; and even a recorded partition would not remove the members' joint and several liability. The evidence also established that items 46-51 belonged to the joint family. In the companion appeal, the finding that the purported partition was sham disposed of the challenge to the private creditor's execution. The Court did not decide whether a separate suit would have been necessary had the partition been genuine.

Source: [Independent tax grounds / PDF pp. 13-14](#); [Connected appeal and final order / PDF pp. 18-24](#)

04 OUTCOME / IN WHOSE FAVOUR

Both appeals were dismissed with costs. The Revenue's position prevailed in the tax-recovery appeal, while the private decree-holder prevailed in the connected execution appeal. No remand or fresh partition inquiry was ordered. The result should not be described as a general resolution of the competing execution rules for every genuine family partition.

Source: [Operative dismissal above the next report / PDF p. 24](#)

05 AKHB REVIEW POINT

AKHB analysis: construct a chronology separating the earning period, accrual of tax liability, asserted partition, statutory recognition and assessment/recovery orders. Obtain the actual partition order rather than treating a deed as its substitute. Analyse assessment validity, the correct appeal route and recovery liability separately. For assets standing in relatives' names, identify the purchase-money evidence and the court's factual findings instead of relying on abstract burden-of-proof language. Keep the tax appeal distinct from the companion private-debt appeal, and do not convert the latter's expressly reserved question into a binding ruling. Before present-day use, verify the governing statute, applicable personal-law amendments and later judicial treatment independently.

Source: [Primary reasons underlying editorial analysis / PDF pp. 9-24](#)

SOURCE & VERIFICATION

[Supreme Court Reports scan - public eSCR mirror](#)

The entire 24-page source file was read. This decision occupies SCR pp. 191-214, including editorial headnotes at the beginning; its operative dismissal ends near the top of PDF p. 24. The remainder of that last page begins the separate Raizada Topandas v. Gorakhram Gokalchand report and is excluded from this note. The exact original file is retained without cropping.

[Open cited source rendition](#)

Downloaded original SHA-256 matches the source catalogue. Decision date is 19 April 1963; the SCR reporting year is 1964.

Party names, decision date, Civil Appeals 641 and 642 of 1961, bench, operative order and source hash were checked against the existing published corpus; no matching published decision was identified.

All 24 source pages were read; editorial headnotes and the next report's opening on the last page were distinguished from the Court's reasons.

The source's hypothetical assumption that an inquiry duty arose is not a finding that a partition order was actually made. The Court also left the genuine-partition execution conflict undecided.

STATUTORY SCOPE

The Court construed the Indian Income-tax Act, 1922 and historical Hindu-law and execution rules. This note does not equate section 25A with every later partition provision or section 67 with every later civil-court bar. Present statutory applicability and subsequent changes to sons' liability for ancestral debts require separate verification.

LATER TREATMENT

Source checked 2026-10-12. Comprehensive later judicial treatment and present statutory applicability have not been checked. This is a source-verified historical note, not current-law or citator clearance.

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This AKHB research note was prepared with AI assistance from the identified primary report; independent human review is not represented.

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