

Apoorva Shantilal Shah v. Commissioner of Income Tax, Gujarat-I, Ahmedabad

Civil Appeal No. 35 of 1982

[1983] 2 SCR 492 | 1983-03-03

Whether a Mitakshara father could validly effect partial partitions of joint-family property between himself and his minor sons and obtain recognition under the then section 171, and whether alleged unequal distribution independently justified the tax authorities' refusal.

171(1)–(3) and Explanation (a)–(b) (historical recognition and enquiry) | 171(4)–(8) (quoted historical assessment/recovery framework) | 171(9), inserted by Finance (No. 2) Act, 1980 (quoted but inapplicable to the 1973 partitions and AY 1975-76) | 256(1) (reference below)

Two-judge bench | P.N. Bhagwati, J. | Amarendra Nath Sen, J.

Assessment years: 1975-76

Pre-amendment partition case with express minor safeguards

This holding concerns December 1973 partial partitions and AY 1975-76 under the then section 171. The father's power required bona fides and fairness; minors could challenge prejudice, and the tax officer could reject sham or fictitious partitions. The later section 171(9) cutoff concerns partial partitions after 31 December 1978, applied for AY 1980-81 onward as upheld in the bounded M.V. Valliappan check. Do not present this decision as current permission for tax-recognised partial partitions. Comprehensive later treatment, current personal/tax law and 2025 mapping are not verified.

01 FACTS OF THE CASE

The assessee was a Mitakshara Hindu undivided family consisting of Apoorva Shantilal Shah, his wife and their two minor sons. During AY 1975-76 assessment proceedings, the father as karta sought recognition under section 171 of two partial partitions of Gujarat Steel Tubes Ltd. shares: 200 shares on 24 December 1973 and 1,777 shares on 29 December 1973. The partitions were recorded in memoranda (physical page 4/SCR 495).

The Income-tax Officer refused recognition. He objected that the partitions were initiated by the father rather than the minors, that after allocations to the sons the remaining shares were not wholly allotted to the father separately or to the father and wife jointly as HUF members, and that the distribution appeared unequal. The Officer also raised the wife's entitlement to an equal share on a partition between father and sons. The Appellate Assistant Commissioner found genuine partial partitions and, taking earlier distributions into account, found equality; he considered that any aggrieved minors could challenge the arrangement on majority (physical pages 4-5).

The Tribunal restored the refusal on the view that these partial partitions were outside Hindu law. Six questions were referred under section 256(1), covering the father's consent for minors, validity under Hindu law and section 171, the asserted family arrangement and the Department's competence to challenge the exercise of the power. The Gujarat High Court answered against the assessee on 9 July 1981 in Income Tax Reference 28 of 1980. Civil Appeal 35 of 1982 brought that judgment to the Supreme Court (physical pages 3, 5-8).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court distinguished Hindu-law validity, the identity and continued existence of a family as to remaining property, and tax recognition. It examined Charandas Haridas and Kalloomal Tapeswari Prasad and the recognised possibility of a partition partial as to property, persons or both. The historical discussion and quotations of 1922-law decisions were used to analyse the question; the assessment before the Court remained under section 171 of the 1961 Act (physical pages 13–18/SCR 504–509).

The father's recognised power to bring about a complete partition between himself and minor sons was not logically restricted to a total partition where a bona fide partial partition served the family's interests. Even if consent were required, the father as natural guardian could normally consent for the minors; an inevitable conflict of interest could not be assumed in every such case. These propositions were qualified, not absolute. The power had to be exercised bona fide, fairly and justly, particularly in the minor sons' interests. On majority the sons could challenge an improper partition and seek appropriate relief, including a proper partition; in appropriate cases a proper guardian could challenge it during minority where it prejudiced them (physical pages 18–20).

The Court then quoted section 171's enquiry and finding procedure, assessment and recovery provisions, and Explanation. Under Explanation (a), physically divisible property required physical division, mere division of income did not suffice, and property incapable of physical division required such division as it admitted of; mere severance of status was insufficient. Explanation (b) expressly recognised partial partition as to persons, property or both. The Court therefore held these partitions legally capable of recognition under the statutory version applicable to AY 1975-76 (physical pages 20–24).

The judgment also reproduced the later section 171(9), inserted by the Finance (No. 2) Act, 1980 with effect from 1 April 1980, dealing with partial partitions after 31 December 1978. It treated that amendment as immaterial to the present 1973 partitions and 1975-76 assessment. Its statement about non-retrospectivity is read in that case-specific setting; the Court did not decide the constitutional validity of the later regime or establish that all pre-1 April 1980 partitions remained recognisable (physical pages 22–24).

On alleged inequality, the Court noted the AAC's finding of equal distribution when earlier allocations were counted. It also held that unequal allocation did not by itself permit the tax authorities to reject an otherwise valid partial partition. The civil remedy of prejudiced minors remained available, and validity could be adjudicated by the competent court on all relevant facts. Crucially, the Income-tax Officer retained power to enquire into genuineness and reject a sham or fictitious partition. Here there was no finding that the partitions were sham, fictitious, non-genuine or not acted upon; recognition consequently had to follow (physical pages 24–25).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The appeal was allowed and the High Court judgment and order were set aside. The partial partition was held valid; the Income-tax Officer was directed to recognise it and make the assessment on the basis that the shares had been partially partitioned between the parties. There was no order as to costs (physical page 25/SCR 516 B-C).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee HUF

Assessee appeal allowed; High Court judgment set aside; recognition and assessment on partial-partition basis directed; no order as to costs

Final reasoned ruling on Hindu-law competence and historical section 171 recognition, subject to safeguards and genuineness enquiry

Concerns December 1973 partial partitions and AY 1975-76 before the relevant section 171(9) regime. It does not remove minors' civil remedies, authorise sham partitions, determine current coparcenary law, or certify present-day tax recognition.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Separate three questions: whether the family arrangement is valid under the applicable personal law, whether the tax statute recognises that class of partition for the relevant dates, and whether a genuine effective partition actually occurred. The judgment preserves the tax officer's genuineness enquiry and the minors' right to a fair arrangement and civil challenge. It does not make a father's declaration conclusive, nor does it decide away the wife's rights by allowing the tax appeal.

The original decision itself sets out the later section 171(9). A bounded subsequent primary reading of the five-judge M.V. Valliappan judgment (27 July 1999), cover and physical pages 9–17, verifies that the later cutoff framework was upheld: the amendment applied for AY 1980-81 onward to partial partitions after 31 December 1978. This is a later statutory-framework comparison, not a claimed express overruling of Apoorva. The 1983 observation about the amendment's inapplicability must not be used as a general route around that later regime.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Date, bench, appeal and actual judicial author

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4

Paragraphs: SCR 492 heading; 494 G–495 B

Source role: reported metadata and judicial text

2.

Topic: Family, AY 1975-76, both 1973 partitions, objections and six questions

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: SCR 495 C–497 F

Source role: judicial text

3.

Topic: Earlier authorities and partial partition under Hindu law

Source url: [Open cited source](#)

Pdf pages: 13; 14; 15; 16; 17; 18

Paragraphs: SCR 504–509

Source role: judicial text

4.

Topic: Father's power, consent, best interests and minors' remedies

Source url: [Open cited source](#)

Pdf pages: 18; 19; 20

Paragraphs: SCR 509 F–511 E

Source role: judicial text

5.

Topic: Historical section 171, definitions, later subsection (9) and temporal limit

Source url: [Open cited source](#)

Pdf pages: 20; 21; 22; 23; 24

Paragraphs: SCR 511 F–515 B

Source role: judicial text

6.

Topic: Inequality, genuineness enquiry, recognition direction and costs

Source url: [Open cited source](#)

Pdf pages: 24; 25

Paragraphs: SCR 515 C–516 C

Source role: judicial text

7.

Topic: Later section 171(9) cutoff framework and constitutional validity

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12; 13; 14; 15; 16; 17

Paragraphs: SCR 1154–1162

Source role: bounded later statutory framework judgment

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Amarendra Nath Sen, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (section 171 as applicable to AY 1975-76 and the 1973 partial partitions)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Mitakshara Hindu law: father's partition power, natural guardianship and protection of minor sons; Finance (No. 2) Act, 1980: later section 171(9), stated commencement 1 April 1980 and partition-date cutoff after 31 December 1978; Indian Income-tax Act, 1922, section 25A and earlier case law: historical discussion, not governing assessment provision

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 25 PDF pages; SHA-256

e7cef38a29e8e2bc9e26b5272a97fdc33efcefee7472ffd143771078e4d72f1e. Original bytes preserved.

Unnumbered judicial body begins physical page 4/SCR 495 B and ends page 25/SCR 516 C. Pages 1–3 contain reporter headnotes and appellate metadata. No neighbouring judgment.

Open cited source rendition

This is the individual/HUF Apoorva case, not Shantilal Private Limited's commodity-contract case.; The judicial author is Amarendra Nath Sen, identified at physical page 4, despite an asterisk next to Bhagwati in catalogue metadata.; The source twice prints Income-tax Act, 1971 (pages 10 and 20); these are apparent printed slips. The opening, referred questions and statutory context expressly identify the 1961 Act.; The father's power is conditioned by bona fides, fairness, the minors' best interests and their right of civil challenge, including through a proper guardian during minority.; The tax officer's enquiry into sham or fictitious partitions survives. This is not a direction to accept any labelled family arrangement.; Section 171(9) is quoted with a post-31 December 1978 cutoff. The judgment's non-retrospectivity statement concerns its 1973 partitions/AY 1975-76 and must not be generalised to protect every partition before 1 April 1980.; The AAC found equality after considering earlier allotments. The alternative inequality reasoning does not validate prejudicial civil arrangements or extinguish the wife's rights.; No present-day Hindu succession/coparcenary or 2025 tax-law mapping is verified.

The current assessee's sole assessment year is expressly 1975-76. Years 1947-48 and 1948-49 concern the earlier Charandas Haridas precedent and are not added to this case. The later section 171(9) discussion does not convert this into an AY 1980-81 assessment.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 and no present-law certification. Identify the applicable statutory version and procedural route separately.

LATER TREATMENT

Source checked 2026-10-04. not_verified. Actual bounded subsequent statutory-framework check: Union of India v. M.V. Valliappan, [1999] 3 SCR 1146, physical page 1 and judicial pages 9–17/SCR 1154–1162. The five-judge judgment upholds section 171(9) and addresses the cutoff and AY 1980-81 onward. No direct citation, express overruling of Apoorva, comprehensive later-treatment search, current personal-law validation or 2025 mapping is claimed.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 25](#)

SHA-256: e7cef38a29e8e2bc9e26b5272a97fdc33efcefee7472ffd143771078e4d72f1e

[later statutory framework judgment bounded check - PDF pages: 17](#)

SHA-256: 826dc5b80505768bd6b0fc1c3a78f44e9d4d8b8e827dff19f0120f5d9492a4ed

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