

Commissioner of Income Tax, Bhubaneshwar and Anr. v. Parmeshwari Devi Sultania and Ors.

Civil Appeal No. 142 of 1997

[1998] 2 SCR 253 | 1998-03-06

Whether a third party could maintain a partition suit for gold already retained under section 132(5), where the decree would remove the gold from tax proceedings, and whether former section 132(11) was available to that third party.

293 | 132(4) | 132(4A) | 132(5) (historical) | 132(6) (historical) | 132(7) (historical) | 132(11) (historical) | 132B (historical retained-assets regime)

Two-judge bench | Sujata V. Manohar, J. | D.P. Wadhwa, J.

Assessment years: See the source-scope notes; no year inferred.

Jurisdictional dismissal; alleged title and final tax liability were not decided

This partition suit was barred because its decree would alter existing tax retention proceedings. The Supreme Court did not decide the will's genuineness, beneficial ownership or a final tax computation. All jewellery quantities and monetary figures retain their different source roles; no assessment year is supplied. The third-party objection remedy under former section 132(11) is historical: the bounded 2011 compilation records its omission, with subsections (5), (6) and (7), from 1 June 2002. Constitutional writ remedies and a modern replacement procedure were not decided. Comprehensive later treatment remains unverified.

01 FACTS OF THE CASE

Search operations at Babulal's residential/business premises, related company premises and bank lockers ran from 23 to 26 March 1990. His step-sister, the plaintiff, claimed that 2,128 grams of the seized gold came from her mother Mani Devi's stridhan, allegedly 200 tolas at her death in 1938, held by their father until his death on 10 February 1990. On the alleged will's distribution by number of daughters, the plaintiff claimed 5/14 of the ornaments. These were asserted ownership and succession facts, not findings establishing her title (physical pages 4–6).

Babulal had first admitted Rs 7,00,000 of concealed income, offering Rs 3,50,000 each in his and his brother's names for undisclosed gold investment beyond the 515 tolas disclosed in wealth-tax returns. He later put forward the family-jewellery explanation. The ITO rejected it and ordered all seized assets retained under section 132(5): stated tax, interest and penalty liabilities were Rs 56,95,079 against seized assets valued at Rs 20,49,694. Those figures describe the retention order, not a fresh Supreme Court assessment (physical page 6).

The plaintiff unsuccessfully sought release from the ITO, corresponded with the Commissioner and then filed a partition suit against relatives and the tax defendants. The Subordinate Judge rejected Revenue's jurisdictional objection, and the Orissa High Court dismissed its revision on 24 October 1994. Revenue appealed that maintainability ruling (physical pages 4–5 and 10–12).

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

02 DISCUSSION BY THE HON'BLE COURT

Section 293 required attention to the suit's substantive effect, not merely the form of its prayer. A partition decree based on this alleged ownership would remove the ornaments from the section 132(5) retention order and their potential application under section 132B. The bar covered proceedings as well as orders and could not be avoided by seeking relief that would modify them indirectly. Neither the summary nature of the retention order nor the tax authority's inability to grant a civil partition decree answered that bar (physical pages 12–14 and 18).

The ITO had not been satisfied that the ornaments belonged to someone other than Babulal, so former section 132(7) did not require proceedings or notice to the plaintiff on this record. She knew of the tax proceedings and could object under former section 132(11): its words "any person" included a third party, not just the searched person. Her prior release request and correspondence did not lead the Court to find that she had used that statutory objection remedy (physical pages 13–14 and 18).

The Court applied the express-jurisdiction-bar principle discussed in *Dhulabhai* and distinguished a cited sales-tax case in which no assessment or order had been challenged. The genuine character of the will was expressly immaterial to this appeal. The ruling concerns this collateral civil suit; it does not adjudicate constitutional writ jurisdiction or finally determine beneficial title to the ornaments (physical pages 12 and 14–18).

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

03 JUDICIAL DECISION

The Supreme Court allowed Revenue's appeal, set aside both the High Court and Subordinate Judge rulings, and dismissed the plaintiff's suit. The operative ending did not award a quantified sum, determine ownership or state a costs direction (physical pages 18–19).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on civil-suit maintainability

Revenue appeal allowed; lower-court rulings set aside; partition suit dismissed

Final jurisdictional/procedural ruling, not a final tax computation or adjudication of the alleged will and title

The suit would directly or indirectly alter existing section 132 proceedings and the retention order; no general adjudication of all civil disputes involving a taxpayer, every third-party claim or constitutional remedies.

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

05 AKHB REVIEW POINT

Test the practical effect of the decree sought against the actual tax proceeding and order. A partition label does not avoid section 293 if success would undo retention of the very assets held under the Act. Preserve the distinction between an officer's rejection of a third-party explanation and a civil adjudication of ownership.

The remedy discussed is historical: the bounded 2011 statutory compilation records that subsections 132(5), (6), (7) and (11) were omitted by the Finance Act, 2002 from 1 June 2002 (physical pages 670–671 and 673). Section 293 and its amendment footnotes were separately checked on page 999. Do not direct a present claimant to the omitted subsection or infer a modern replacement remedy from this note; comprehensive later law and treatment remain unverified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, appeal and plaintiff's alleged succession facts

Source url: [Open cited source](#)

Pdf pages: 1; 4; 5

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: Search dates, admissions, alternative explanation and retention figures

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Historical section 132 and section 132B extracts

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Lower-court reasoning and effect of a decree on retention

Source url: [Open cited source](#)

Pdf pages: 11; 12

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: Third-party objection remedy and substance of the suit

Source url: [Open cited source](#)

Pdf pages: 13; 14

Paragraphs: Unnumbered judicial text

Source role: judicial text

6.

Topic: Express-bar authorities, final reasoning and dismissal of suit

Source url: [Open cited source](#)

Pdf pages: 15; 16; 17; 18; 19

Paragraphs: Unnumbered judicial text

Source role: judicial text

7.

Topic: Bounded statutory omission of former section 132 machinery

Source url: [Open cited source](#)

Pdf pages: 670; 671; 673

Paragraphs: Section 132 historical footnotes 64–66 and 77

Source role: historical statutory compilation

8.

Topic: Bounded section 293 text and historical amendment footnotes

Source url: [Open cited source](#)

Pdf pages: 999

Paragraphs: Section 293 and footnotes 11–14

Source role: historical statutory compilation

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

D.P. Wadhwa, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 19 PDF pages; SHA-256

7387089d693550ec9066a1c07473cf5ff1ceb5a65c9daaf3190316d3e5b05901. Original bytes preserved.

Complete unnumbered judicial text physical pages 4–19/SCR 256–271, beginning with D.P. Wadhwa J.; preceding editorial headnotes distinguished. Sections quoted on pages 7–10 and earlier-case narratives on pages 14–18 kept separate from this plaintiff's facts.

Open cited source rendition

No assessment year or date of the section 132(5) order is supplied in the judgment; none is inferred from the March 1990 search dates.; The plaintiff's alleged 200 tolas of historical stridhan, the 2,128 grams sought in the suit and Babulal's 515-tola wealth-tax disclosure refer to different descriptions and quantities. They are not silently equated or converted.; Rs 7,00,000 is the disclosed concealment narrative, including two offers of Rs 3,50,000; Rs 56,95,079 and Rs 20,49,694 are respectively the ITO's stated liabilities and value of seized assets. The Supreme Court did not reassess or reconcile those amounts.; The reporter's opening summary omits Babulal's initial admission before the changed ownership explanation; the complete judicial narrative on pages 5–6 and 18 controls.; The historical subsection (11) quotation on page 9 prints an incomplete subsection cross-reference; pages 13–14 expressly identify subsection (5), as does the separately checked 2011 historical footnote.; The alleged will and ownership were not decided; the Court dismissed the suit for the statutory bar. The case did not award partition, release the gold or pronounce every possible form of judicial review unavailable.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year.

LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial and statutory treatment is not verified. The only later statutory check is the bounded Department-hosted 2011 compilation reading of section 132 omission footnotes on physical pages 670–671 and 673, and section 293 on page 999. No later judgment has been independently reviewed for treatment of this decision; no current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 19

SHA-256: 7387089d693550ec9066a1c07473cf5ff1ceb5a65c9daaf3190316d3e5b05901

official department hosted historical statutory compilation - PDF pages: 1251

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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