Privy Council Appeal No. 44 *of* 1940

Commissioner of Income Tax, Punjab, North-West Frontier and Delhi Provinces, Lahore - - - *Appellant*

v.

Dewan Bahadur Dewan Krishna Kishore, Rais Lahore *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH JULY, 1941

Present at the Hearing:
LORD ATKIN
LORD RUSSELL OF KILLOWEN
LORD ROMER
SIR SIDNEY ROWLATT
SIR GEORGE RANKIN

[*Delivered by* SIR GEORGE RANKIN]

This appeal arises out of a reference made to the High Court of Lahore under section 66 of the Indian Income-tax Act (XI of 1922) in respect of the year of assessment 1937-8. The assessee is Dewan Bahadur Dewan Krishna Kishore. His family is governed by the Mitakshara but by custom the rule of primogeniture controls the devolution of the impartible property in the Punjab to which this appeal relates. He is the present holder of the impartible estate having succeeded as the eldest son of the previous holder. He has a younger brother who established against him in arbitration proceedings a right to maintenance which has now been fixed at Rs.600 per month. He has also four sons who live with him, are maintained by him, and are with him joint and undivided members of a Hindu family. He has certain personal and individual income chargeable to tax as well as income which is not taxable being derived from a *jagir*. No question now arises as to these classes of income. The problem laid before the High Court for solution has reference only to the income which is derived from the impartible estate and the question is confined to this: whether in respect of that income the assessee is chargeable as an individual? The contention of the assessee is that such income is only chargeable as the income of a Hindu undivided family of which he is the *karta* or managing member. If so, less super-tax is payable upon it; the Hindu family, as the law stood in the year of assessment, being favourably treated as regards the graduation of the tax.

The question as framed by the Commissioner of Income-tax, Punjab North-West Frontier and Delhi Provinces, who is appellant before the Board, was in these terms:—

> Whether the income of the impartible estate to which the assessee has succeeded by rule of primogeniture prevailing in his family governed by the Mitakshara is chargeable in his hands in the status of " individual " the assessee being the head of the family consisting of himself and his sons?

A second question framed was merely formal and consequential: it asked whether if the income was chargeable as his individual income, his other " personal " income is to be " clubbed together " with it for a combined assessment?

The sections of the Act to which the question directly refers are sections 3 and 55 which in language almost, but not quite, parallel impose the tax and the additional duty or super-tax. Section 55 prescribes that there shall be charged an additional duty in respect of the total income of the previous year, " of every individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm ". The differences of wording in sections 3 and 55 though important for some purposes are not significant for the present purpose. The opening words of section 9 and the first sub-section of section 14, however, are as follows:—

> 9 (1). The tax shall be payable by the assessee under the head " Property " in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner. . . .
>
> 14 (1). The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.

By a decision of the High Court of Lahore given in 1932 with reference to the year of assessment 1929-30 it was held that the income from this impartible estate was chargeable to tax as the income of a Hindu undivided family; and also that the younger brother's allowance was no part of the income of the family though chargeable against the recipient as his income. (*Krishan Kishore* v. *Commissioner of Income-tax*, 1932 I.L.R. 14 Lahore 255.) This ruling was carried out until the assessment now in question came to be made for the year 1937-8. In consequence of a Madras decision (*Commissioner of Income-tax, Madras* v. *Raja of Bobbili*, I.L.R. 1937 Madras 797) the assessee was notified by the Income-tax officer in January, 1938, that it was proposed to assess the income from the impartible estate as his individual income. He promptly petitioned the Commissioner to state a case " at this interlocutory stage " for the opinion of the High Court and the Commissioner did so on 6th September, 1938. The result is that their Lordships have not before them any order of assessment or other formal statement in detail of income classified under the different heads mentioned in section 6 of the Act. In the case stated the Commissioner says only that the income of the impartible estate " comprises mainly rent of property and interest ". To this Dalip Singh J. in his judgment adds: " this latter source is however small and the income consists mainly of rent from house property ". There is a reference in a further passage of the judgment to " interest from securities if any " as distinct from income arising from property and coming under section 9 of the Act. But there is no material before their Lordships to justify them in accepting as a fact that the income of the impartible estate other than that arising from house property is interest receivable on any of the kinds of security mentioned in section 8.

The question as framed refers to the assessee as head of " the family consisting of himself and his sons ". The maintenance paid to the younger brother is assumed to be an admissible deduction, as was held in the previous case of 1930. It may be inferred from the Commissioner's language and collected from the report of the previous case that the younger brother lives separately from the elder. This would not necessarily import division in any sense and certainly it nowhere appears that he has relinquished his right to succeed by survivorship to the estate so as to bring about a partition in respect thereof. On these matters the implications of fact and law which underlie the case as stated have not been made explicit. Their Lordships pick no quarrel on these points but desire to make it clear that they have neither occasion to examine them nor the materials for a conclusion. They proceed upon the case as stated.

The learned judges of the High Court have rejected the claim of the Commissioner to tax the assessee as an individual upon the income of the house property under section 9 of the Act. The ground of their decision is that " the owner " of the buildings and lands appurtenant thereto is not the assessee but the Hindu undivided family. With this

reasoning their Lordships agree. They think that the learned judges were right in refusing to follow the Bombay case wherein it was held that the words " property of which he is the owner " are to be read as meaning " of which annual value he is the owner " (*Commissioner of Income-tax, Bombay* v. *Abubacker Abdur Rahman,* I.L.R. 1939 Bombay 284). However difficult it may be in some cases to apply the simple and ordinary phrase " owner of property " to the facts it is not permissible to substitute a phrase which is of dubious and noticeably different meaning. Again, the distinction between property owned by an individual Hindu and property owned by a Hindu undivided family must be made by applying the Hindu law and if the distinction in certain cases be somewhat fine and difficult to draw it is all the more necessary to keep close to the Hindu law. Their Lordships cannot accept the suggestion that because the statute to be interpreted is an Income-tax Act broader or more general notions of ownership than the Hindu law affords are to determine the matter. The Act is an Indian Act and the distinction takes its meaning from the Hindu law. Since the decision of the Board in *Baijnath's* case, 1921 L.R. 48 I.A. 195, it has been settled law that property though impartible may be the ancestral property of a joint family, and that in such cases the successor falls to be designated according to the ordinary rule of the Mitakshara. The concluding words of the judgment delivered on behalf of the Board by Lord Dunedin in *Baijnath's* case are to that effect, and in that case as well as in the case of *Shiba Prasad Singh,* 1932 L.R. 59 I.A. 331, 345, which followed it, " the keynote of the position " is—not that property which is not joint property devolves by virtue of custom as though it had been joint—but that the general law regulates all beyond the custom, that the custom of impartibility does not touch the succession since the right of survivorship is not inconsistent with the custom; hence the estate retains its character of joint family property and devolves by the general law upon that person who being in fact and in law joint in respect of the estate is also the senior member in the senior line.

> " The birthright of the senior member to take by survivorship still remains. Nor is this right a mere *spes successionis* similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is a right which is capable of being renounced and surrendered ".

The later cases are to the same effect. Though the co-ownership of the junior member may be " in a sense " only, carrying no present right to joint possession, if the question be whether the Hindu undivided family or the present holder is owner of the estate the answer of the Hindu law is that it is joint family property. The assessee as an individual cannot therefore be charged in respect of it under section 9 of the Act. But their Lordships do not affirm that the family consists for this purpose solely of the assessee and his sons.

This answers the main contention of the Commissioner before the High Court. On this appeal learned counsel for the Commissioner intimated a contention that the assessee as an individual might be charged in respect of the income from house property not under section 9 but under section 12 which deals with " other sources "—a contention which as their Lordships understand proceeds upon the footing that the Hindu undivided family is not chargeable under section 9 or at all; because, though it owns the property it derives no income therefrom; since the income belongs to the present holder as an individual. No such contention is raised in the case as stated; nor has the Commissioner referred to it in the opinion which the statute requires him to give; nor was it dealt with in the High Court. Hitherto the assessments on the family would appear to have been made under section 9 as to the house property. It is neither convenient nor conducive to accuracy that new and important points of law should be raised for the first time at their Lordships' Board, or that decisions should be given upon matters not duly submitted to the High Court. Their Lordships will therefore express no opinion as to this new

line of attack. If it is persisted in, as for example by an order of assessment made in respect of income as coming under section 12, the assessee will doubtless be able to test its legality hereafter.

The important question remains whether the income which consists of interest is income of the family or of the individual. The High Court have held in general terms—apart from the particular provisions of sections 8 or 9—that the income of an impartible estate is income of the family and not of the present holder. The same matter had been fully considered in the High Court of Madras in the *Bobbili* case, I.L.R. 1937 Madras 797, where a different conclusion was reached. It has been the subject of much argument on this appeal and their Lordships think it right to give their decision upon it, especially as they have arrived at a result which will not be affected whether the income in question be found to come under section 8 or section 12. In their Lordships' view the income of an impartible estate is not income of the undivided family but is the income of the present holder notwithstanding that he has sons from whom he is not divided.

In its simplest form the question is whether such interest comes to the hands of the assessee as being the person beneficially entitled to it or as being a manager on behalf of himself and others. In *Jagadamba Kumari* v. *Narain Singh,* 1923 L.R. 50 I.A. 1, the last holder had out of the income accumulated considerable property movable and immovable and the question was whether this formed an accretion to the impartible estate by reason that it had been entered in the same books of account as the estate transactions. Lord Buckmaster on behalf of the Board said:—

> " In fact when the true position is considered there is no accretion at all. The income when received is the absolute property of the owner of the impartible estate. It differs in no way from property that he might have gained by his own effort or that had come to him in circumstances entirely dissociated from the ownership of the raj. It is a strong assumption to make that the income of the property of this nature is so affected by the source from which it came that it still retains its original character ".

And their Lordships went on to contrast the income of an impartible estate with that of an ordinary joint estate:—

> It is possible that this confusion is due to the consideration of the position of an ordinary joint family estate. In such a case the income equally with the corpus forms part of the family property and if the owner mixes his own moneys with the moneys of the family . . . his own earnings share with the property with which they are mingled the character of joint family property, but no such considerations necessarily apply to the income from impartible property.

Mr. Parikh in a learned and careful argument for the assessee contended that this language was to be explained by the fact that in the particular case before the Board the Raja had no sons, and that no maintenance was payable out of the income from the estate. But the language of the judgment seems too general to have been directed to a speciality of that particular case. It may be said perhaps that savings out of the income might be the Raja's although the income was not originally received by him as his income. But that again does not seem to be the point of the judgment. The line of decisions must be considered.

The principle of *Sartaj Kuari's* case, 1888 L.R. 15 I.A. 51, that there is no coparcenary was logically extended by the second *Pittapur* case, 1918 L.R. 45 I.A. 148, to negative any right to maintenance in a junior member of the family save by custom.

> " An impartible zemindary is the creature of custom and it is of its essence that no coparcenary exists. This being so, the basis of the claim (*sc.* to maintenance) is gone. . . . This proposition, it must be noted, does not negative the doctrine that there are members of

> the family entitled to maintenance in the case of an impartible zemindary. 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."

It was held, moreover, that proof of special custom would be required to extend the right beyond the sons of the last holder. This was pointedly followed by the Board in the *Jeypore* case, 1919, 24 C.W.N. 226, and followed again in 1927 in the *Dhalbhum* case, L.R. 54 I.A. 289, after *Baijnath's* case in 1921 had set to the doctrine of *Sartaj Kuari's* case this limit, that it applied to " presently existing rights " but not to chances of succession. The second *Pittapur* case was trenched upon in *Baijnath's* case by saying that " any observations which go to the question of maintenance apart from the question of real right may be treated as *obiter dicta* " but it was re-stated that the right of a junior member to maintenance was not " of the nature of a real right " as he was not " a person who was in some way an actual co-owner of the estate." In *Shiba Prasad Singh's* case the Board expressly notice that the ordinary right of a junior male member to maintenance out of the joint family property is incompatible with the custom of impartibility, and include it in the reflection " To this extent the general law of the Mitakshara has been superseded by custom, and the impartible estate though ancestral is clothed with the incidents of self-acquired and separate property. . . . Though the other rights which a coparcener acquires by birth in joint family property no longer exist, the birth right of the senior member to take by survivorship still remains ".

Again in holding quite generally that movable property cannot be incorporated with an impartible estate, the Board said that " the income even of such an estate is not an accretion to the estate " and they selected for quotation a sentence in the judgment in *Jagadamba's* case, " The income when received is the absolute property of the owner of the impartible estate " adding that it does not attach to the estate as does the income of an ordinary ancestral estate attach to that estate (p. 353). The circumstance that the last holder had died childless does not seem to be the basis and turning point of these reflections.

The High Court's decision in the present case seems to have turned entirely upon a passage in the judgment of the Board delivered by Lord Blanesburgh in *Collector of Gorakhpur* v. *Ram Sundar Mal,* 1934 L.R. 61 I.A. 286, 302. This had also been considered in the *Bobbili* case but the Madras High Court did not think that it touched the present question. The question in the *Gorakhpur* case was whether one Indarjit had succeeded by survivorship to an impartible estate. The objection taken to his son's claim was that his branch of the family had long been separated from that of the last holder. That they had long been separate in food and worship was clear enough, the common ancestor being very remote. The claimant's branch or some of its members had for many years possessed a babuai property which had been carved out of the impartible estate by a previous holder thereof. Considering whether this fact tended to show separation or jointness of the branches, the Board referred to *Baijnath's* case as having negatived the doctrine that an impartible zemindary could not be in any sense joint family property. They add:—

> " One result is at length clearly shown to be that there is now no reason why the earlier judgments of the Board should not be followed, such as, for instance, the *Challapalli* case (*Raja Yarlagadda Mallikarjuna Prasada Nayudu* v. *Raja Yarlagadda Durga Prasada Nayudu* ((1900) L.R. 27 I.A. 151), which regarded their right to maintenance, however limited, out of an impartible estate as being based upon the joint ownership of the junior members of the family, with the result that these members holding zamindari lands for maintenance could still be considered as joint in estate with the zamindar in possession. Such was the position of the junior branch in this case under the babuai grant of Dharamner."

On the strength of these observations, which they consider to contradict the previous decisions (the second *Pittapur* case and *Shiba Prasad Singh's*

case in particular), the High Court of Lahore have now held that the members of the joint family have a right to maintenance which arises from their right in the property of the joint family " of which they are co-owners ". They consider that the Board have negatived the view that there is no right to maintenance save such as is impressed by custom and conclude that the income of the estate cannot be said to be " the income solely of the incumbent ". They say:

> " The members of the joint family have the right to receive maintenance from the estate and this right arises because they are owners of the estate and is not a right to maintenance from the joint family, though not from the property—as is the case of female members of a joint family. The distinction is really quite clear: in the one case the female member has a right to maintenance from the joint Hindu family but this right does not confer any right in the estate or property of the joint family: in the other case the members of the coparcenary have a right to maintenance arising from their right in the property of the joint Hindu family of which they are co-owners. It follows from this again that the income of the impartible estate cannot be said to be the income solely of the incumbent of the impartible estate, there being vested in the junior members of the family a right to maintenance out of that income arising by reason of their right in the property and not imposed by custom upon one member of the joint Hindu family, namely, the incumbent of the impartible estate."

Before attributing these effects to the passage cited above from the *Gorakhpur* case there is a good deal to consider. The character of the income as received by the holder of the estate was not even indirectly before the Board, and if it had been, there is all the difference between the case where junior members have a right to maintenance and one where they are in enjoyment of a maintenance (*korposh*) grant of lands. The passage seems to recognise by the words " however limited " that the right is in some sense less extensive than in the case of partible property. The statement that it is " based upon " the joint ownership is insufficient to show the intention to exclude custom as having no effect whatever, and it is only reasonable to interpret the reference to joint ownership in the light of *Baijnath's* case. General considerations of theory have their proper place but impartibility and primogeniture when introduced into the Mitakshara involve competition and compromise between different lines of theory: if the doctrine that " there is no coparcenary " may be pushed too far in one direction the doctrine that the junior members " are in a sense co-owners " may be pushed too far in another: the special incidents of joint family property which is impartible being overlaid in either case by rigid theory.

Though the judgment of Dalip Singh J. is not quite clear upon the point their Lordships do not understand the learned judges of the High Court to affirm that all male members of the family are entitled to maintenance from an impartible estate. This is not contended by Mr. Parikh for the assessee: it is contrary to much authority and practice and it would in many if not in most cases convert a heritage into a burden. If some members have and some have not the right, although all are equally " co-owners " or " joint owners ", the difference can only be attributed to custom. If it is custom whose power has superseded the ordinary law and introduced the rule of primogeniture, the unique incidents of single heir succession (so to call it) can have no other origin. What then is the doctrine which the High Court derive from the passage cited from the *Gorakhpur* case? Is it that custom has taken away from some of the junior members their rights of maintenance but left to others those rights of maintenance which the ordinary law would give them in the case of partible property? This was thought by the Madras High Court in the *Chemudu* case, 1934 I.L.R. 57 Madras 1023, to have been laid down by the Board's judgment in the second *Pittapur* case, but, as has been already noticed, that judgment is opposed to it. The same doctrine, it may be, is what the High Court of Lahore have discerned in the *Gorakhpur* judgment.

In any view their Lordships think it important to make clear that this theory cannot be accepted. In partible property under the Mitakshara the right of members of the coparcenary while the family is joint is characterised by unity of ownership (community of interest) and unity of possession. This has often been stated and expounded—cf. the judgments of the Board delivered by Lord Justice Turner in the first *Shivagunga* case, 1863 9 M.I.A. 539, 611, and by Lord Westbury in *Appovier* v. *Rama Subba*, 1866 11 M.I.A. 75, 89. Before partition, the right of brother, son or nephew of the *karta* may be called and often is called a right to be maintained, but it is the same right as the *karta* has himself. Unity of possession is the basis of their right, which is a right to live upon the fruits of their own property. The *karta* has no special interest therein: there is community of interest and each coparcener is in joint possession of the whole. The right of son or nephew in the income is not a right to an exact fraction of the income: the *karta* may well spend more on a son whose family is large or who has special aptitudes or necessities. But, however wide his discretion within the extensive range of family purposes, he has no right to apply any part of the income to other purposes; and is liable in appropriate proceedings to make good to the other members their shares of any sums which he has actually misappropriated. For this purpose it is irrelevant to consider whether and in what circumstances the remedy is available apart from partition: the question is of right not of remedy. The various powers of management as *karta*, though given even to the father, confer on him no larger interest in the income or the corpus and no larger rights of enjoyment on his own behalf. The consequences attached to the son's pious duty to pay a father's debts may make sad havoc at times with the sons' birth-right to an equal interest, but that is another matter.

Now it is at least certain that the holder of an impartible estate stands in no such relation to those of the junior male members of the family who are entitled to maintenance. Can he not say, "'I have provided sufficiently for my sons: I shall invest the balance of the income for myself? " Certainly he can, so far as the sons are concerned. Single heir succession is inconsistent with any son having the same right in respect of income as he would have had in the income of partible property and the use of the word " maintenance " to describe the latter right cannot be allowed to confound the two. The right to maintenance in the former case is a right of a different character from that of a co-sharer to enjoy his share and live upon his own property by way of joint possession. To represent that custom takes away the right to maintenance from some members but leaves it to others does not explain the facts as to impartible estates. The son's right of maintenance out of impartible property cannot be accounted for as an original and separable right untouched when custom takes away his right to joint possession. It is not something that is left after something else has been subtracted. It is a different right given sometimes to sons only and sometimes to others in consequence of the impartible character of the property; being sometimes a right of maintenance simply, and sometimes a right to a maintenance grant of lands. In their Lordships' judgment it can only be ascribed to custom as has repeatedly been held. It may be excessive to say that there is no coparcenary but it is certain that there is no joint possession.

It by no means follows, however, that the right is conferred or is available independently of membership of the joint family. There is no question of joint possession, but if " unity of ownership " be severed—and it has been held that it can only be severed by relinquishment on the part of the junior member—it may well be that even close relationship would not satisfy the custom. This relation between the rights of sons to maintenance and the " birth-right " of every male member to take by survivorship should he become senior in the senior line is the subject-matter of the observation in the *Gorakhpur* case. That observation may be taken to establish that enjoyment of the maintenance is *prima facie* an affirmation that the right to succeed by survivorship persists just as a maintenance grant may well be evidence negativing separation at least at the date of the grant. Their

Lordships are not now called upon to examine or expound these matters but are solely concerned with the character of the receipt and of the recipient of the interest which it is proposed to tax. They do not for this purpose find it necessary to answer questions hitherto undecided with respect to maintenance.

But they find it necessary to say that the law as declared in the cases of *Baijnath* and *Shiba Prasad Singh* has not been unsettled by the *Gorakhpur* case. The observation itself and its context show that the reference to other judgments of the Board is controlled by the reference to *Baijnath's* case as having negatived the view that an impartible estate could not be in any sense joint family property. The issue in the *Gorakhpur* case was Indarjit's right to succeed and the passage cited was addressed to that. It appears to waive aside, as no longer an obstacle, the extreme logic that as there is no right to a partition the junior branch could have no right, actual or prospective, which the enjoyment of maintenance could evidence. It need not be taken as swinging to the opposite extreme: indeed it would be in a high degree unreasonable, having regard to the line of decisions, to interpret it as meaning that there is no reason why holders of impartible estates should not now be told that, unless they can prove a custom to the contrary, all junior male members of the family have a claim for maintenance—that is, all who have not relinquished their right of succession. The point made is only this: that rights of maintenance out of an impartible family estate—however little they may be and to whichever member they be extended—would not be enjoyed or enjoyable by anyone who had ceased to be joint in respect of the estate. In their Lordships' opinion this should not be taken to affirm any disputable doctrine as to the origin of the right of maintenance, or any other doctrine which would make junior members " actual co-owners " or the right a " real right " in the sense negatived by the Board in *Baijnath's* case.

In the *Challapalli* case above-mentioned, 1900 L.R. 27 I.A. 151, 158, the origin of the junior members' right to maintenance was not under discussion: only the amount recoverable and the property to be charged therefor. The character of the right was fully considered, however, and it was said by the Board that

> " the right to maintenance is primarily a right to be maintained out of the current income of the property in the enjoyment of the party chargeable ".

Their Lordships will in the present case assume that the sons of the assessee have a right to be maintained by him, that this right arises from the fact that he is the present holder of the impartible estate, and that the right is a right to be maintained out of the current income thereof in such sense that it could be enforced against the assessee in default by the Courts in India giving them a charge upon the property or a sufficient part of it. Even so it is not true in fact or in law to say that the income from the estate is received by the assessee as the income of a joint Hindu family receivable by the *karta,* nor is it received by him on behalf of himself and his sons; but on his own account as the holder by single heir succession of the impartible estate. The " presently existing right " of the sons is to be paid a suitable maintenance or to have it provided for them in the ordinary course of Hindu family life. The Hindu law is familiar not only with persons such as wives, unmarried daughters and minor children for whose maintenance a Hindu has a personal liability whether he have any property or none, but also with cases in which the liability arises by reason of inheritance of property and is a liability to provide maintenance out of such property. It applies to persons whom the late owner was bound to maintain. The facts that the sons' right to maintenance arises out of the father's possession of impartible estate and is a right to be maintained out of the estate do not make it a right of a unique or even exceptional character or involve the consequence at Hindu law that the income of the estate is not the father's income.

Unity of ownership, unaccompanied by joint possession on the part of the sons or any other right of possession, would not seem to affect the character in which the income is received. Income is not jointly enjoyed

by the party entitled to maintenance and the party chargeable; and their Lordships see no reason to restrict the observations which they have cited from the judgment in *Jagadamba's* case to the special class of cases where no maintenance is payable to any junior member. It cannot, in their view, be held that the respective chances of each son to succeed by survivorship make them all co-owners of the income with their father, or make the holder of the estate a manager on behalf of himself and them, or on behalf of a Hindu family of which he and they are some of the male members.

Their Lordships think that the answer proper to be given to the first question propounded in the case stated is as follows: As regards house property: for the purposes of section 9 of the Act. No. As regards interest: for the purposes of sections 8 and 12 of the Act. Yes. The second question may be answered: As regards interest, Yes, and need not be further answered.

Their Lordships will humbly advise His Majesty accordingly and that this appeal should be allowed and the High Court's Order varied in accordance with the answers above given. The High Court's order will stand as regards costs. Since the assessee has succeeded as regards the house property which is the main part of the case the appellant must pay the assessee respondent's costs of this appeal.

(12939) Wt. 8194—7 180 7/41 D.L. G. 338

In the Privy Council

COMMISSIONER OF INCOME-TAX, PUNJAB, NORTH-WEST FRONTIER AND DELHI PROVINCES, LAHORE

v.

DEWAN BAHADUR DEWAN KRISHNA KISHORE, RAIS LAHORE

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