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that the transfer evidenced by the entries in the books of account and by the declaration did not operate to bring into existence a valid gift:

Held, on the facts, that the assessee had made a valid gift of the value of Rs. 50,000 to his son on November 20, 1956.”

(13) Both these authorities have no application to the facts of the instant case.

(14) In view of what has been said above, the answer to the question referred to above would be in the affirmative.

DHILLON, J.—I agree.

K. S. K.

CRIMINAL WRIT

Before Ranjit Singh Sarkaria and S. C. Mittal, JJ.

SURJIT SINGH,—Petitioner.

versus.

THE STATE OF PUNJAB ETC.,—Respondents.

Criminal Writ No. 11 of 1971

May 26, 1972.

Prisons Act (IX of 1894)—Section 59—Punjab Jail Manual Paras 631 and 647—Code of Criminal Procedure (Act V of 1898)—Section 401—Life imprisonment—Whether equates with imprisonment to 20 years for all purposes—Prisoner sentenced to life imprisonment completing 20 years imprisonment—Whether entitled to be released without orders under section 401 of the Code—Persons convicted in other States of India transferred to Punjab jails—“Appropriate Government” competent to pass orders under section 401 of the Code for their pre-mature release—Whether the Government of Punjab.

Held, that no doubt the definition of ‘life-convict’ given in para 631(2) (f) of the Punjab Jail Manual equates life imprisonment to 20 years’ imprisonment but this is only for the purpose of calculating the remissions earned and not for all purposes. A sentence of life imprisonment is one for the whole of the remaining life of the convict and there is nothing in the statutory rules contained in the Punjab Jail Manual, or any other law, which equates such a sentence to 20 years imprisonment or any other definite term for all purposes. The release of such a life-convict even on

completion of 20 years imprisonment, being premature release, can legally be effected only by remitting the entire balance of the sentence by an order passed under section 401 of the Code of Criminal Procedure by the appropriate Government. Paras 631 and 647 of the Punjab Jail Manual are to be construed in conformity with the scheme and setting of the Remission System. They cannot be interpreted to mean that a sentence of imprisonment for life means a sentence of 20 years imprisonment for all purposes and on the completion of 20 years' imprisonment (including remissions), a life convict acquires an indefeasible right to be released without the prior orders of the appropriate Government passed under section 401 of the Code.

Held, that for the purposes of section 401 of the Code, the "appropriate Government" is the Government of the State within the territorial jurisdiction of which a person is committed, tried and convicted. This interpretation is consistent with sub-section (2) of section 401, under which the appropriate Government may require the Presiding Judge of the Court before or by which the conviction was made or confirmed, to state his opinion as to whether the application for suspension or remission of sentence should be granted or refused. When a person convicted in another State of India is transferred to Punjab jails under the provisions of Transfer of Prisoners' Act, 1950, the Punjab State cannot solicit such an opinion of the Judge of the convicting Court of another State, there being no extra-territorial jurisdiction vesting in the Punjab State. Hence under section 401 of the Code, it is only the Government of the State where a person is convicted, and not the Punjab Government which is competent to remit the balance of the sentence of the life-convicts transferred to Punjab jails. All that the Punjab Government can do is to forward the cases of the life-convicts to the appropriate Government for remitting the remaining term in exercise of the powers under section 401 of the Code.

Petition under Articles 226/227 of the Constitution of India read with Section 491 of the Code of Criminal Procedure, 1898, praying that the impugned order of the U. P. Government Annexure "A" be quashed.

Balwant Singh Malik, Advocate, for the petitioner.

I. S. Tiwana, Assistant Advocate-General, (Punjab), Hari Mittal Assistant Advocate-General (Haryana), for the respondents.

JUDGMENT

SARKARIA, J.—This judgment will dispose of two batches of Criminal Writ petitions. The first consists of Criminal Writs 13, 14, 15, 16 and 18 of 1971. The second comprises Criminal Writs 11, 12, 19 and 20 of 1971.

(2) The petitioners in all these nine cases were convicted by Courts in the other States of the Indian Union, *inter alia*, of the

offence of murder and were sentenced to imprisonment for life. They were transferred under the Transfer of Prisoners' Act, 1950 (hereinafter called the "Transfer Act") to jails in Punjab.

(3) At the date of institution of the writ petitions, the five convicts of the first batch were deemed to have undergone imprisonment for a period of 20 years or more after including remissions. Their contention is that having served a term of 20 years imprisonment (including remissions), they are entitled to be released by the Superintendent of the Jail concerned under Para 647(2) of the Punjab Jail Manual without obtaining orders of the State Government under section 401, Criminal Procedure Code for that purpose. The petitioners, therefore, maintain that their continued detention is wrongful and entitles them to the issuance of writ of *habeas corpus*.

(4) The four petitioners in the second batch had, at the date of the institution of the writ petitions, undergone imprisonment, including remissions, for a period of 14 years or more. Their contention is that under para 516-B of the Punjab Jail Manual, their cases should have been submitted through the Inspector-General of Prisons, Punjab, for obtaining orders of their release by the Government of Punjab State. According to them, the orders under Para 516-B are to be passed by the Punjab Government and not by the Government of the State of conviction.

(5) With regard to the first batch, the contention of Mr. B. S. Malik, learned counsel for the petitioners, is that the provision contained in para 647 of the Punjab Jail Manual, is a statutory one, being a rule framed by the competent Government under section 59 of the Prisons Act (Act No. IX), 1894, and consequently, release of a prisoner under Para 647(2) will be a discharge "in due course of law" within the contemplation of sub-section (2) of section 3 of the Transfer Act. In support of his contention, counsel has relied upon *Sitaram Barelal v. State of Madhya Pradesh* (1) and three unreported judgments of this Court in *Prisoner Mohan Lal son of Hardayal v. State of Haryana* (2) decided by B. S. Dhillon, J., *Prisoner Rattan Singh v. State of Punjab* (3) decided by B. S. Dhillon,

(1) A.I.R. 1969 M.P. 252.

(2) Cr. O. No. 38-M of 1971 decided on 31st March, 1971.

(3) Cr. O 61-M of 1971 decided on 13th May, 1971.

J., and *Ajit Singh v. State of Punjab* (4) decided by M. S. Gujral, J.

(6) A different view was taken by Sandhawalia, J. in *Prisoner Raghbir Singh v. State of Punjab* (5) which judgment does not appear to have been brought to the notice of the learned Judges who decided the other three cases (supra). This conflict of opinion came to the notice of C. G. Suri, J. in *Raghbir Singh v. Punjab State, etc.* Criminal Writ 15 of 1971 and *Kartar Singh v. Punjab State, etc.* Criminal Writ 16 of 1971. He, therefore, by this order, dated October 15, 1971, suggested that these petitions be referred to a Division Bench for decision. This is how all these cases have come before us.

(7) The stand taken up by Sarvshri I. S. Tiwana and Hari Mittal, learned Assistant Advocate-Generals for the States of Punjab and Haryana, respectively, is that a sentence of life imprisonment being one for the whole life-time of the prisoner, the latter can, even on completion of 20 years' imprisonment, be released only after remittance of his sentence by the appropriate Government under section 401 of the Code of Criminal Procedure. On this reasoning it is maintained the view taken in *Prisoner Raghbir Singh's case* (supra) is the correct one, and that to the contrary taken in *Prisoner Mohan Lal's Prisoner Rattan Singh's and Ajit Singh's, cases* is erroneous. It is further urged that the decision of the Madhya Pradesh High Court in *Sitaram's case* (1) (supra), turns on an interpretation of a Madhya Pradesh Act and is not applicable to the facts of the case before us.

(8) The whole case resolves itself into the issue: What is the term or duration of a sentence of life imprisonment? Is there anything in the statutory rules (embodied in the Punjab Jail Manual), which equates a sentence of life imprisonment, for all purposes, to any definite term of imprisonment?

(9) Since the pronouncement of the Supreme Court in *Gopal Vinayak Godse v. The State of Maharashtra and others* (6), it is settled law that a sentence of imprisonment for life must, *prima facie*, be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. After considering

(4) Cr. W. 10 of 1971 decided on 8th September, 1971.

(5) Cr. O. 32-M of 1971 decided on 26th March, 1971.

(6) A.I.R. 1961 S.C. 600.

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sections 53, 53-A, 55 and 57 of the penal Code and the Bombay Rules framed under section 59 of the Prisons Act, 1894, their Lordships further held that there is no provision of law whereunder a sentence of life imprisonment without any formal remission from the appropriate Government can be automatically treated as one for a definite period.

(10) It was contended before the Supreme Court by Gopal Godse that the Bombay Rules governing the Remission System substituted a definite period for life imprisonment and, therefore, if the aggregate of the term actually served exceeds the said period, the person should be entitled to be released. Rule 1419(c) was as follows :—

“A sentence of transportation for life shall ordinarily be taken as 15 years’ actual imprisonment.”

This rule, though not in *pari materia*, is somewhat similar to the rule contained in Para 631(2) (f) of the Punjab Jail Manual. The other Bombay rules then under consideration were 934, 937(c) and 1447(2) which read as under :—

“934. In all cases of premature releases orders under section 401, Criminal Procedure Code, will have to be issued by Government before the prisoners can actually be released from jail.

937(c). When a life convict or a prisoner in whose case the State Government has passed an order forbidding his release without reference to it, has earned such remission as would entitle him to release but for the provisions of this rule, the Superintendent shall report accordingly to the State Government through the Inspector-General in order that his case may be considered with reference to section 401 of the Code of Criminal Procedure, 1898.

1447(2). Notwithstanding anything contained in Rule 1419, no prisoner who has been sentenced to transportation for life or more than 14 years imprisonment or to transportation and imprisonment or to transportation and imprisonment for terms exceeding in the aggregate 14 years shall be released on completion of his term of transportation or imprisonment or both, as the case may be, including all

remissions unless a report with respect to such prisoner has been made under sub-rule (1) and orders of Government have been received thereon with regard to the date of his final release."

Though there is no provision in Punjab Jail Manual identical to rule 934 of the Bombay Rules, yet this general principle is implied in the scheme of the Manual. Para 516-B (which will be noticed later in this judgment) is somewhat analogous to clause (c) of Para 647(1).

(11) It will be seen that just as the relevant Bombay Jail Rules formed a bunch in the Chapter captioned as "Remission System", the relevant Punjab Rules, quoted below, also appear under the heading 'Remission System' in Chapter XX of the Manual. These are :—

"Para 631(2)(f) 'life convict' means a person whose sentence amounts to 20 years imprisonment ;

- (i) a class I or class 2 prisoner whose sentence amounts to twenty-five years' imprisonment, or
- (ii) a class 3 prisoner whose sentence amounts to twenty years' imprisonment.

Para 647(1) when a life-convict who is either

- (a) a class I prisoner, or
- (b) a class II or class III prisoner with more than one sentence,
- (c) a prisoner in whose case the Local Government has passed an order forbidding his release without reference.

has earned such remission as would entitle him to release but for the provision of this paragraph, the Superintendent shall report accordingly to the Local Government in order that his case may be considered with reference to section 401 of the Code of Criminal Procedure, 1898.

- (2) Save as provided by clause (1) when a prisoner has earned such remission as entitles him to release the Superintendent shall release him."

(12) It is common ground that these rule have been framed under the Prisons Act, 1894. The Supreme Court in *Gopal Godse's case* (6) (supra) laid down this guiding principle for interpreting such Jail Rules :

“The Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, *inter alia*, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act. The rules, *inter alia*, provide for three types of remissions by way of rewards for good conduct, namely, (i) ordinary, (ii) special, and (iii) State. For the working out of the said remissions, under rule 1419(c), transportation for life is ordinarily to be taken as 15 years' actual imprisonment. The rule cannot be construed as a statutory equation of 15 years' actual imprisonment for transportation for life. The equation is only for a particular purpose, namely, for the purpose of 'remission system' and not for all purposes.”

(13) On parity of reasoning, it must be held that the definition of 'life-convict' given in Para 631(2)(f) equates life imprisonment to 20 years' imprisonment (in the case *inter alia*, of class III life-convicts) only for the purpose of calculating the remissions earned and not for all purposes. This interpretation is also indicated by the words “amounts to” occurring in the definition of 'life-convict'.

Once it is held that a sentence of life imprisonment is one for the whole of the remaining life of the convict and there is nothing in the statutory rules contained in the Punjab Jail Manual, or any other law, which equates such a sentence to 20 years imprisonment or any other definite term, for all purposes, there is no escape from the conclusion that the release of such life-convict even on completion of 20 years imprisonment, being premature release, can legally be effected only by remitting the entire balance of the sentence by an order passed under section 401 of the Code of Criminal Procedure by the appropriate Government. The words “entitles him to release” and the “Superintendent shall release him” occurring in

sub-para (2) of Para 647 of Punjab Jail Manual, therefore, are subject to the prior order by the appropriate Government remitting the balance of his sentence.

(14) In any case, the Punjab Government has directed the Superintendents of the Jails concerned that these life-convicts who were convicted in other States and have been transferred to Jails in Punjab, be not released by the Superintendents without reference to them. For this reason also, the Superintendent Jail concerned is not legally empowered to release the petitioners under sub-para (2) of Para 647. It is true that the Punjab State has issued this direction to the Superintendents of the Jails, only on the basis of the Government of India's letter No. 20/63/P.IV dated February 16, 1966 (Annexure 'E' to the States Return in Criminal Writ 11 of 1971). Nevertheless, it will be deemed to be an "order forbidding the release" of such transferred life-convicts, passed under clause (c) of the afore-said Para 647(1).

(15) The next question (which also arises in the second batch of writ petitions) is: Whether the Punjab Government or the Government of the State of conviction in the case of these petitioners, was the "appropriate Government," competent to pass necessary orders under section 401 of the Code of Criminal Procedure. Section 402(3) says :—

"402(3) In this section and in section 401, the expression 'appropriate Government' shall mean—

- (a) in cases where the sentence is for an offence against, or the order referred to in sub-section (4A) of section 401 is passed under any law relating to a matter to which the executive power of the Union extends, the Central Government, and
- (b) in other cases, the State Government.

From the above definition, it follows as a necessary corollary that the 'appropriate Government' for the purposes of section 401 is the Government of the State of conviction within the territorial jurisdiction of which the offence was committed and tried. This interpretation is consistent with sub-section (2) of section 401, under which the appropriate Government may require the Presiding Judge

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of the Court before or by which the conviction was made or confirmed, to state his opinion as to whether the application for suspension or remission of sentence should be granted or refused. Obviously, the Punjab State could not solicit such an opinion of the Judge of the convicting Court of another State, there being no extra-territorial jurisdiction vesting in the Punjab State. It is pertinent to notice here the definition of "appropriate Government" given in section 55-A, Penal Code which reads :—

"55A. In sections fifty-four and fifty-five the expression 'appropriate Government' means—

- (a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and
- (b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, *the Government of the State within which the offender is sentenced.*"

This definition is similar to the one given in section 402(2) of the Code of Criminal Procedure. The test of 'appropriate Government' in both these definitions is the same, namely, whether the offence of which the prisoner was convicted was against a law relating to a matter to which the executive power of the State extends. The murder was committed in the State of conviction. The executive power of the Government of the State of Punjab, therefore, did not extend to the offence committed in another State. The definition in section 55A, Penal Code, no doubt, has been given with reference to commutation of a sentence of imprisonment for life. There is, however, nothing to indicate that for the purposes of remission and suspension of sentences under section 401, Criminal Procedure Code, the Legislature intended to adopt a different definition of appropriate Government'. In short, under section 401, Criminal Procedure Code, the Government of the State of conviction and not the Punjab Government was competent to remit the balance of the sentence of these life-convicts. All that the Punjab Government could do was to forward the cases of these life-convicts to the appropriate Government for remitting the remaining term of their life imprisonment, in

exercise of the powers under section 401, Criminal Procedure Code. The Punjab Government has already made such a reference in favour of the petitioners to the Governments of the States of conviction. Neither the Punjab Government nor the Superintendent of Jail concerned can release the prisoners under any of the statutory rules contained in Punjab Jail Manual without receiving the necessary orders of the appropriate Government under section 401. Pending the receipt of orders of the appropriate Government, therefore, the detention of the petitioners could not by any reasoning be called illegal.

(16) At this place it will be appropriate to notice *Sitaram's case* (1) (supra). There, the petitioner was, *inter alia*, convicted under section 302, penal Code and sentenced to imprisonment for life by a Court of Session in District Chanda of Vidarbha Region. He was lodged in the Central Jail to serve out the sentence. After the States Re-organisation Act, 1956 came into force, the entire Vidharbha Region became part of the new State of Maharashtra. Under section 3 of the Transfer Act, with the consent of the Government of Madhya Pradesh, he was transferred to a jail in the latter State. Thereafter, the prisoner applied to the Government of Madhya Pradesh for his release on probation under section 2 of the Madhya Pradesh Prisoners Release on Probation Act (No. XVI of 1954) (hereinafter called the Madhya Pradesh Act). After receiving the application duly recommended, through proper channel, the Government of Madhya Pradesh issued an order for his *conditional release on probation* under section 2 of that Act. Before that order could be implemented, the authorities concerned felt that they had overlooked Inspector-General of Prisons' Circular, which required the prior concurrence of the State of conviction as a condition precedent for the release of a prisoner under section 2 *ibid*. Madhya Pradesh Government consulted the State of Maharashtra which did not agree to such release of the petitioner. In consequence, the order of release on probation passed by Madhya Pradesh Government was cancelled. The questions for consideration before the Division Bench of that Court, were :—

- (1) Whether the powers of the Government of Madhya Pradesh under section 2 of Madhya Pradesh Act, are subject to any prior concurrence of the State of conviction, as envisaged by the impugned Circular; and

- (2) Whether the Superintendent of the Central Jail Jabalpur has a right under section 3(1) of the Transfer Act to detain the prisoner unless he serves out his sentence for life despite the order of the Government of Madhya Pradesh for his release on licence in Form 'D' under Rule 7 of the Rules.

Both these questions were answered in the negative on the basis of construction flowing from the plain language of section 2 of the Madhya Pradesh Act, which reads:—

"2. *Notwithstanding anything contained in Section 401 of the Code of Criminal Procedure 1898, where a person is confined in a prison under a sentence of imprisonment, and it appears to the Government from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison, the Government may by licence permit him to be released on condition that he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner or such institution or society as may be recognised by the Government for the purpose, provided such other person, institution or society is willing to take charge of him.*"

(17) This *non-obstante* clause (which has been underlined (Italics in this report) in the above-quoted section 2) could reasonably be regarded as modifying or repealing the inconsistency in Section 401, Criminal Procedure Code for the purpose. Moreover, the release under section 2 of the Madhya Pradesh Act in that case was merely a conditional release on probation and not an absolute discharge of the prisoner on completion of his term of imprisonment.

(18) We have no quarrel with the legal proposition enunciated by the Madhya Pradesh Bench in *Sitaram's case* (1) (supra) that the expression in due course of Law, appearing in section 3(2) of the Transfer Act, means under some enactment or statutory rule in force in the State wherein the prisoner is detained. However, this expression will cover not only the statutory provision contained in the Punjab Jail Manual, but also the law as contained in section 401 of the Code of Criminal Procedure. Para 647 (2) of the Punjab Jail Manual has to be read subject and subservient to section 401 of the Code.

(19) Mr. Malik, learned counsel for the petitioners attempted to distinguish *Gopal Godse's case* (6) (supra) on the ground that there is no statutory rule in the Bombay Rules analogous to that contained in Para 647(2). In this connection, he has referred to a sentence occurring in the Supreme Court judgment towards the end of paragraph 7. This sentence reads:—

“No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions.”

It does not seem proper to divorce the above sentence from its context and read it in isolation. It must be read along with what precedes and succeeds it. This sentence is immediately succeeded by the observation:—

“The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.”

(20) It will bear repetition that Paras 631(2) and 647(2) of the Punjab Jail Manual are to be construed in conformity with the scheme and setting of the Remission System. They cannot be interpreted to mean that a sentence of imprisonment for life means a sentence of 20 years' imprisonment for all purposes and on the completion of 20 years' imprisonment (including remissions), a life convict acquires an indefeasible right to be released without the prior orders of the appropriate Government passed under section 401.

(21) This takes me to the second batch of cases. Counsel takes his stand on Para 516-B of the Punjab Jail Manual which reads:—

“516-B. (a) With the exception of females and of males who were under 20 years of age at the time of commission of offence, the cases of every convicted prisoner sentenced to:—

- (i) Imprisonment/s for life.
- (ii) Imprisonment/s for life and a term/s of imprisonment.
- (iii) Commulative periods of Rigorous imprisonment aggregating to more than 14 years or

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(iv) a single sentence of more than 20 years—

(a) who has undergone a period of detention in Jail amounting together with remission *earned to 14 years, shall be submitted through the Inspector-General of Prisons, Punjab for the orders of the State Government.*

(b) the case of a female prisoner and of a male prisoner under 20 years of age at the time of commission of offence, who is undergoing—

(i) Imprisonment/s for life.

(ii) Imprisonment/s for life and a term/s of imprisonment.

(iii) Commulative periods of Rigorous imprisonment aggregating to more than 10 years, or

(iv) A single sentence of more than 20 years shall be submitted through the Inspector-General of Prisons, Punjab, for the orders of the State Government when the prisoner has undergone a period of detention in jail amounting together with remission earned to 10 years.

(v) Notwithstanding anything contained above, a Superintendent, Jail may, in his discretion, refer at any time, for the orders of the State Government through the Inspector-General of Prisons, Punjab, the case of any prisoner sentenced to imprisonment for life whose sentence might in the Superintendent's opinion be suitably commuted into a term of imprisonment."

It is contended that the Punjab Government was the appropriate Government under this para to pass the necessary orders under section 401 of the Code of Criminal Procedure.

(22) This contention is devoid of force. As discussed already, in the case of a transferred life-convict, the appropriate Government which can remit his sentence and order his release, is the Government of the State of conviction.

(23) For the foregoing reasons, with all due deference, we are unable to endorse the view taken by the learned Single Judges in Criminal Originals 38-M of 1971, 61-M of 1971 and Criminal Writ 10 of 1971. We are, however, in respectful agreement with the view taken by the learned Single Judge in *Prisoner Raghubir Singh v. State of Punjab* (5) (supra).

(24) In the result, all the nine writ petitions fail, and are dismissed.

MITAL, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli and Pritam Singh Pattnr, JJ.

NIHAL SINGH ETC.,—*Petitioners.*
versus.

THE STATE OF HARYANA ETC.,—*Respondents.*

Civil Writ Petition No. 2089 of 1974

September 17, 1974.

Haryana Land Holdings Tax Act (XVIII of 1973 as amended)—Sections 2, 3, 5, 6 and 7—Aggregation of lands owned by the members of a family for raising increased revenue—Whether violative of Article 14—State Government—Whether competent to provide for such aggregation—Section 3 as amended—Whether provides for the aggregation of the land of all the members of a family.

Held, that there is no inequality between a family and a family or the provision with regard to aggregation. The land of all members of a family, as defined in Haryana Land Holdings Tax Act, 1973, is aggregated and the tax is levied on the aggregated holding. There is no comparison between an aggregate of holdings of all the members of a family and the aggregated land held by an individual. Both stand on a different footing and are two distinct classes for the purposes of taxation. The classification made by the Legislature is not unreasonable. It is open to the Legislature to prescribe taxable units, the taxing event and the rate of tax. The Courts cannot interfere if they are clearly stated and are ascertainable. The aggregation of the land of the members of a family consisting of the husband, the wife and their minor children is also not irrational or unreasonable. The land of the wife and the minor children is generally managed and cultivated