

- (iii) interest posterior to adjudication, if and when allowable ;
  - (f) priority between creditors
    - (i) priority between ordinary creditor and a partner creditor<sup>1</sup>;
  - (g) matters which the official receiver is empowered to investigate in such administration,
  - (h) preparation of the schedules of creditors and distribution of assets,
    - (i) excess assets after payment of all creditors, how to be disbursed.
11. **Discharge**
- (i) if a firm can apply for discharge.

## LECTURE X

### QUASI-PARTNERSHIPS NOT GOVERNED BY THE INDIAN PARTNERSHIP ACT 1932

#### 1. Family partnerships

- (a) Hindu<sup>2</sup>,
- (b) Burmese Buddhist,
- (c) Mahomedan converts carrying on joint family business<sup>3</sup>,
- (d) Mahomedan and Christian families retaining Hindu customs having joint family trade<sup>4</sup>.

#### 2. Different kinds of joint family business—

- (a) ancestral business,
- (b) business partly ancestral and partly introduced by the managing members of the family<sup>5</sup>,
- (c) entirely new business started by members of a joint family,
  - (i) of the same nature,
  - (ii) of a different nature<sup>6</sup>;

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(1) In re Howes (1934) 1 Ch. 49.

(2) Re Gobinda Lal Mahata 39 C. W. N. 275 and Section 5 I. P. A.

(3) Solema Bibi v. Hafez I. L. R. 54 Cal. 687.

(4) Francis Ghosal v. Gabri Ghedal I. L. R. 31 Bom. 25 and M. A. Rowthen v. Grana Ammal 1934 Mad. 327.

(5) Sannyasi v. Krishnadhan I. L. R. 49 Cal. 560.

(6) Damu v. Bansi I. L. R. 51 Mad. 711; Venkat v. Palani I. L. R. 52 Mad. 227. <sup>c</sup>

- (d) new business started with family funds and with concurrence of adult members<sup>1</sup>;
- (e) joint family business carried on
  - (i) exclusively by members of joint family,
  - (ii) by members of the joint family with partners from another family, viz :
- (x) with collaterals,
- (y) with quite strangers<sup>2</sup>.
- (f) Firms established out of joint family funds,
  - (i) funds established to the detriment of family property,
  - (ii) funds carried on for the benefit of entire family,
  - (iii) members of the joint family carrying on business of the firm<sup>3</sup>.

### 3. Chief points of distinction between family partnerships and contractual partnerships.

- (1) Partnership by birth or marriage (status) and by operation of personal law.
- (2) Not dissolved by the death of a partner, and his heirs become partners by operation of law<sup>4</sup>.
- (3) Unequal consumption allowed.
- (4) No account for past profits or losses—nor precise accounts according to shares.
- (5) Members not partners but co-owners.
- (6) Discontented co-parceners can bring a suit for partition and account and not for dissolution of partnership and account.
- (7) Ties among the members of a trading family are closer and the relation is of a corporate character—mutual rights and duties governed by law and not by contract.
- (8) Right to borrow in managing members.
- (9) Managing member's right to represent others.
- (10) Son liable for father's debts.
- (11) All properties of all the members are equally bound for the debts of the joint family business.
- (12) All the coparceners must be impleaded in suits - no suits in the name of the business.
- (13) Ordinary rules apply in the case of service of summons and signing and verification of plaints.
- (14) Business assets of a co-parcener can be attached for his debts.

(1) Lakshmia v. Official Assignee 193 Mad. 776.  
 (2) Pichappa v. Chakalinga 603 L. J. 136 P. C.  
 (3) Johar v. Chetram I. L. R. 39 Bom. 715.  
 (4) Johar v. Chetram I. L. R. 39 Bom. 715.

- (15) Assets of persons not named as judgment-debtors cannot be attached with the leave of the court as in case of a firm.
- (16) Registration not allowed under I. P. A. nor under the Indian Income Tax Act.
- (17) Provisions of I. C. A. not applicable—rules of I. P. A., order XXX and order XXI, rules 49 and 50 C. P. C. not applicable<sup>1</sup>.
4. **Powers of a manager of a joint family business—powers of persons managing different sections of a business.**
- (1) Power to borrow.
- (2) Power to execute bonds and negotiable instruments.
- (3) Power to release and give discharge of debts.
- (4) Power to acknowledge debts and liabilities.
- (5) Power to enter into business contracts.
- (6) Power to compromise suits.
- (7) Power to refer to arbitration.
- (8) Power to mortgage or alienate immovable properties.
- (9) Power to pledge moveables.
- (10) Power to carry on trade on behalf of a minor co-parcener.
- (11) Power to enter into co-partnership with a stranger.
5. **Difference between a Mitakshara joint family business and a Dayabhaga joint family business.**
- (a) If a son a Co-partner or Coparcener with a father in a *Mitakshara* and in a *Dayabhaga* family.
- (b) If in a business of the father son becomes a Co-partner<sup>2</sup>.
6. **Liability of sleeping Co-parceners** -
- (i) liability of the sons for the debts of the family firm,
- (ii) presumption regarding jointness and partition.
7. **Position of the Karnarvan of a Malabar Tarward and Nattu Kotai Chetties** and similar families not governed by customs and usages differing from ordinary Hindu Law.
8. **Incidence of Mahomedan and Christian family business.**
9. **Extra-ordinary partnerships not governed by I. P. A. but by the Indian Companies Act and other Statutes.**

(1) Lalchand Amonmal v. M. C. Boid and Co.

I. L. R. 61 Cal. 975.

(2) Tulsidas v. Lyon Lord & Co, 86 I. C. 934 and Pallani v Official Assignee 36 I.C. 787.