the debtor or his agent. The cheque is only an order for payment, and it does not evidence any payment at all. Nor does it show for what purpose the payment was made. There is, no doubt, some parole evidence as to the payment, but the Act requires that the fact of payment, and that such payment was a part-payment, should appear in writing signed by the debtor or his agent authorized to make the payment.

It is not urged that there is such writing, and the appeal must therefore fail. It is next urged that no double set of costs should have been awarded, but the respondents had distinct defences in respect of the question of limitation and appeared by different pleaders, and we cannot say that they were not entitled to separate costs.

We dismiss the appeal with costs.

Solicitors for appellants, *Barclay & Morgan.*

APPELLATE CIVIL.

Before Mr. Justice Brandt and Mr. Justice Parker.

PONNUSÁMI (PLAINTIFF), APPELLANT,

and

THATHA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886. Feb. 1, 8.

Hindú law—Gift of undivided share by a coparcener invalid.

The rule of Hindú law which forbids voluntary alienations of the family estate by a Hindú coparcener applies as well to gifts to relatives as to gifts to strangers.

APPEAL from the decree of D. Irvine, District Judge of Trichinopoly, in suit 9 of 1884.

The plaintiff, Ponnusámi Pillai, sued Thatha, Shanmugam, and Thangathammál, infant children of the daughter of plaintiff's deceased brother Chidambaram, to cancel a deed of gift executed by Chidambaram in favour of defendants and to recover possession of certain land held by virtue of such gift.

The plaintiff alleged that Chidambaram was his coparcener and died undivided, and that the land sued for was part of the family estate.

* Appeal 133 of 1885.

PONNUSÁMI v. THATHA.

The defendants pleaded, *inter alia*, that the gift was valid t the extent of the donor's half share.

The Court held that the plea was valid and decreed accordingly.

Plaintiff appealed.

Sadagópáchárydr for appellant.

Hon. *Rámá Rdu* for respondents.

The Court (Brandt and Parker, JJ.) delivered the following

JUDGMENT.—The question to be decided is whether a gift of joint family property by a deceased undivided coparcener can be supported as against the surviving coparcener, a brother. The gift was in favour of the sons of a daughter of the donor.

The case of *Baba* v. *Timma*,(1) a Full Bench case, was brought to the notice of the District Judge, but he distinguished it on the ground that in that case the gift was made by a father of estate to a stranger to the detriment of the son's right, w this case the donor was the brother of the surviving copare and that "an alienation by a brother of his own share in undivi property is," as he believes, "valid so long as the gift is compl and is on the same footing as any other alienation," and moreov that "the donees in this case are not strangers, but persons f whom the donor might reasonably and fairly make provision."

In the Full Bench case the authorities were considered and th question was argued on the broad grounds that the Mitákshará dic not allow alienations except for necessity, that alien ons i favour of *bonâ fide* purchasers for value had been upheld decisions as an exception to the rule, and that no such equ in favour of a volunteer claiming under a gift; that the ine should not be carried further nor the equity extended in f our of a volunteer under a deed or a will. On the other hand, t was asked why should not the principle of compelling an alienor, who could have himself obtained a partition, to give his creditors all the remedies to which he would be entitled be applied in favour of a donee also?

Reference was made by the late learned Chief Justice to observations made by him respecting the right of a coparcener to make an alienation of his share, which will be found in *Ponnappa*

(1) I.L.R., 7 Mad., 357.

Pillai v. *Pappuváyyangár*.(1) It is there observed that with the exception of one case, *Vencatapathy Reddy* v. *Lutchmee Ammal* (2) there appears to be no case in which an alienation has been supported except where it might have been supported on the principle above stated; and as to the case of *Vencatapathy Reddy* it is pointed out that no authority is cited for the decision therein arrived at, and that it does not appear that the decision in *Atchama* v. *Ramanadha* (3) was brought to the notice of the Judges who decided it; again in *Baba* v. *Timma* (4) it is said that on the one side there is "the unanimous consensus of the commentators accepted in Southern India, and the opinions of the most eminent English writers on Hindú Law" against, on the other side, one decision of this Court, already held in *Ponnappa Pillai's* case to be no authority for the proposition stated in it; while "the principle on which alienation was permitted to satisfy a judgment-debt or to give effect to a contract made with a purchaser for value implies that ordinarily the power to alienate is absent," and that "what was intended as the justification for an exception to the rule cannot be recognized as a rule."

The validity of an alienation to a purchaser for value has been upheld "on the equity which such a purchaser has to stand in his vendor's shoes and to work out his rights by means of partition;" but with the exception of the case of *Vencatapathy* v. *Lutchmee* above referred to we are not aware of any instance in which a voluntary alienation by gift of joint family property by an undivided member unless permitted by an express text—and it is not pretended that there is any such text to cover the case of this gift—or an alienation by will has been given effect to against an undivided coparcener. We entertain no doubt that that case decides the general question therein raised and considered, and is not to be restricted to the simple proposition that a gift to a stranger is ineffectual or that it is authority for the proposition that a gift of affection generally, to any relative, is effectual.

The appeal must be then allowed and decree made in the appellant's favour for the relief sought in the plaint together with costs in both Courts.

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(1) I.L.R., 4 Mad., 56. (2) 6 Mad. Jur., 215. (3) 4 M.I.A., 1.
(4) I.L.R., 7 Mad., 357.