MADRAS EQUITABLE ASSURANCE COMPANY v. THE PRESIDENT, MUNICIPAL COMMISSION, MADRAS.

having gain for their object are liable to taxation. The assurance society, with which we are concerned, certainly carries on business. It is not a partnership, but it is an association of persons having a common object and interest, viz., the mutual assurance of lives. Does it then carry on its business for gain? In *re Arthur Average Association*(1), the Master of the Rolls observes, with reference to somewhat similar words in an English statute, that gain means acquisition, something obtained or acquired and is not limited to pecuniary gain, still less to commercial profits.

In the case before us, the insurers contribute their money with a view to making provision for those in whom they are interested, and the statement of the case further shows that the available funds of the association are invested, being lent out at interest; and a certain proportion of the gain or profits derived from such investment is, under the Act by which its affairs are regulated, divisible among the subscribers at stated periods, and it is immaterial that such proportion of the funds is to be applied in reduction of the premia accruing due during the succeeding period. The liability to pay less consequent on there being an available surplus is as distinctly a gain as the division of the profits would be, even if it be not an equal gain.

We are then of opinion that the conclusion come to by the Magistrates is correct.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.

1888. Jan. 16, 19.

RAMANNA (DEFENDANT, No. 1), APPELLANT,

and

VENKATA (PLAINTIFF), RESPONDENT.*

Hindú law—Gift of ancestral property by father to stranger—Suit by minor son to recover.

Where a Hindú made a gift of certain land, which he had purchased with the income of ancestral property, and a suit was brought to recover the land on behalf of his minor son, who was born seven months after the date of the gift:

(1) L.R., 10 Ch., 546.

* Second Appeal No. 241 of 1887.

Held that the gift was invalid as against the plaintiff and that he was entitled to recover the land from the donee.

THE plaintiff, Kolluri Venkata Subbarayadu, a minor, by his next friend (his paternal uncle) alleging that his father, defendant No. 3, at the instigation of his mother, defendant No. 4, executed a registered deed on 13th April 1880 in favor of defendant No. 1, purporting to make a gift of the family inam land, sued to recover the land and mesne profits and to cancel the deed of gift.

The District Múnsif of Cocanada, A. F. Elliot, dismissed the suit and found that the land had been purchased before plaintiff's birth out of the income of the family property, and held that plaintiff had, therefore, no right to question the gift. It was admitted that the plaintiff was born two months after the sale.

On appeal, the Subordinate Judge, T. Ramasami Ayyangar, reversed this decree on the ground that the gift having been made when the plaintiff was in the womb was invalid and decreed possession to plaintiff.

Defendant No. 1 appealed on the following grounds :—

The Lower Appellate Court ought not to have allowed this suit to be instituted by the minor's next friend, who is not his natural guardian, at the instigation of the minor's father and lawful guardian for setting aside a gift made by himself.

The land mentioned in the plaint having been purchased by plaintiff's father before the plaintiff was begotten, he acquired no right by birth in the same.

The suit is not maintainable, inasmuch as the plaintiff and his father are undivided and living together.

The gift, which is valid against the father, is equally valid against the plaintiff who was not born at the time.

The Sub-Judge ought to have held that the property mentioned in the plaint is not the ancestral property of the plaintiff in the sense that he could impeach its sale or alienation.

As this suit is in reality conducted by the plaintiff's father after having failed in two former attempts to revoke the gift, this suit ought to have been dismissed.

The alienation in question ought, under the circumstances of the case, to have been held valid at any rate to the extent of the father's share in the property.

Bháshyam Ayyangár for appellant.

Ramasami Mudaliar for respondent.

RAMANNA v. VENKATA.

The Court (Collins, C.J., and Muttusámi Ayyar, J.) delivered the following

JUDGMENT:—We entertain no doubt that property acquired by means of income derived from ancestral property is also ancestral and that the son acquires a joint interest in it with his father by birth under the Hindú law. Any other view is inconsistent with Mitakshara, chap. I, s. iv, cl. i, which defines self-acquired property. It is suggested by the appellant's pleader that the father may spend the income at his pleasure, and, therefore, if he invests it in land, he is at liberty to alienate it at his pleasure.

We are, however, of opinion that the father is not liable to be called upon to account for the income of family property during coparcenary not because he has an absolute disposing power either over the family property or its income, but because it is presumed from the continuance of the coparcenary that the expenditure has been acquiesced in by the coparcener. If the father saves any part of the income, the saving is clearly part of the property of which the son can demand a partition. In the case of a childless Hindú widow, the income derived from her husband's property constitutes part of the widow's estate, but in the case of a joint family, the income of a family estate is, unless it has been expended *bonâ fide* in the ordinary course of management, part of that estate. The observations of Mr. Justice Mitter in *Gunga Prosad* v. *Ajudhia Pershad Singh*(1) are a mere dictum. We overrule the contention that the property in dispute is the third defendant's self-acquisition for the purposes of this suit.

It is then urged that the appellant is not entitled to recover the whole of the land alienated and to maintain this suit for that purpose though he may sue for partition. Under the Mitakshara law, the son has a power of interdiction and is at liberty to continue in coparcenary and at the same time to exercise this power in respect of ancestral property improperly alienated. During coparcenary, the ancestral property vests in the joint family, and if any coparcener dies before partition, the property vests in the other coparceners as if he was never born. In the case of a sale, the alienation is upheld to the extent of the alienor's share as a matter of equity, which the purchaser is considered to be entitled to insist upon, but in the case of gift there is no such equity. It

(1) I.L.R., 8 Cal., 131.

has already been decided by a Full Bench of this Court that the gift by a coparcener of his undivided interest in ancestral property cannot be supported at all even to the extent of the donor's share. We cannot, therefore, hold that the power of interdiction vesting in the son cannot be exercised in the case of an invalid gift otherwise than by suing for partition.

It is then said that the suit already brought by the father to set aside the gift has failed and that if the son's claim is now decreed, the former will be thereby enabled to recover through his son what he could not recover himself and what he would be stopped from recovering by a suit instituted in his own right. There is no doubt this is an apparent anomaly, but the real question is whether the property in question continues to vest in the joint family. The gift is not binding on the family either in part or in whole, and the property in the subject of gift originally vesting in it is not divested by it, and we are, therefore, of opinion that the power of interdiction includes a right to see that the family estate is preserved for the family until a partition is made and that the donee, who accepts the gift subject to this right of a coparcener, is not entitled to complain of its enforcement to his prejudice. It is conceded that, if the father dies in coparcenary, the son may then set aside the gift and recover back the property improperly alienated, but, in our judgment, the decision must depend not on the question whether the father or the son may happen to die in coparcenary, but whether the gift was valid at the time when it was made and whether it operated to transfer the property in the subject of the gift from the family to the donee either in part or whole.

This second appeal fails and we dismiss it with costs.