The District Judge set aside the decree of the Lower Court and dismissed the suit, on the ground that the plaintiff had failed to perform his part of the contract, inasmuch as he neither tendered nor paid the balance of the purchase money on the execution and registration of the document.

The plaintiff preferred this appeal.

Bhashyam Ayyangar for appellant.

Kothandaramayyar for respondents.

JUDGMENT.—We are of opinion that the registration of the sale-deed to plaintiff effected a transfer of the property to him by virtue of section 54 of the Transfer of Property Act. It has been held in *Narain Chunder Chuckerbutty* v. *Dataram*(1) that a registered transfer without delivery of possession will pass any interest in land, and we consider that registration constitutes a sufficient delivery of the deed to pass such interest, otherwise the object of registration would be defeated, that object being to let all the world know in whom the title to property lies. We must therefore reverse the decree of the District Judge and restore that of the Munsif, the plaintiff still being liable for the balance of the unpaid purchase money. The defendants must pay the plaintiff's costs in this and in the Lower Appellate Court.

APPELLATE CIVIL.

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

CHOCKALINGA PILLAI (DEFENDANT), APPELLANT,

1893. July 11, 14.

v.

NATESA AYYAR AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Letters of administration—Promissory note given to a firm consisting of two undivided Hindu brothers—Decease of the brothers—Suit on note by their sons without taking out letters.

Two brothers, members of an undivided Hindu family, who traded as 'T. Iyavier and Brother,' became the holders of a promissory note given to the firm. The elder brother having died, his son joined the firm in his place, and he and

(1) I.L.R., 5 Calc., 597.

* Appeal No. 19 of 1892.

CHOCKALINGA PILLAI v. NATESA AYYAR.

his uncle filed a suit against the maker of the note, but before the action was heard the uncle died, and his son (a minor) was substituted as plaintiff for him, suing by the other plaintiff as his next friend. The plaintiffs had not taken out letters of administration to their respective fathers' estates:

Held, (1) that assuming that the younger brother could have sued as surviving member of the firm, on his death the necessity for taking out letters of administration could not be avoided;

(2) that, if the debt was in reality due to the plaintiffs' family and not to the obligees of the bond, they could not sue upon it in their own right of survivorship without taking out letters of administration, since the promissory note did not disclose the nature of the debt, and, moreover, the other members of the family should have been joined as plaintiffs. *Venkataramanna* v. *Venkayya*(1) distinguished.

APPEAL against the judgment of Handley, J., in civil suit No. 150 of 1889 on the file of the High Court, Original Side.

The plaintiffs sued to recover the sum of Rs. 3,096-10-8 due on a promissory note under the following circumstances. T. Iyavier, the deceased father of the second plaintiff, and Visvanadha Ayyar, the deceased father of the first plaintiff, were undivided Hindu brothers, who carried on business under the firm and style of T. Iyavier and Brother. In 1884, in the course of business, the firm lent the sum of Rs. 2,000 to one P. A. Chockalingam Pillai, defendant in the present suit, taking from him a promissory note for the amount and interest thereon at 12 per cent. per annum. T. Iyavier having died, his son, T. I. Vythinatha Ayyar, the second plaintiff, joined the firm in his place, and in 1887 the defendant endorsed on the note a renewal of his promise to pay. In 1889 the firm filed a suit against the defendant to recover the amount of the loan and interest, but, before the hearing, the first plaintiff died and his son, T. Natesa Aiyar (a minor) appeared as plaintiff in his stead by his next friend the second plaintiff. The plaintiffs had not taken out letters of administration to their respective fathers' estates.

Handley, J., delivered judgment for the plaintiff on the ground, *inter alia*, that letters of administration were not necessary for the maintenance of the suit since it was a suit by a surviving partner to recover a debt due to the *firm*, and not a suit to recover a debt due to a deceased person. The defendant preferred this appeal.

Branson and *Branson* for appellant.

Sadagopachariar and *Krishnamachariar* for respondents.

(1) I.L.R., 14 Mad., 377.

JUDGMENT.—The document, which is in the nature of a bond, is executed by the appellant in favour of Visvanadha, originally a plaintiff on the record, but now deceased, and Iyavier, who died before action brought.

The question is whether the suit is maintainable, no letters of administration having been taken out to Visvanadha or Iyavier. The learned Judge has held that letters were not required because the action was not to recover a debt due to a deceased person, but was an action by the surviving member of a firm. In saying this, however, he overlooked the fact that the surviving partner also was, at the time of trial himself, dead and that the actual plaintiff Natesa was seeking to recover a debt due to his deceased father Visvanadha. Assuming, therefore, that the latter could have sued alone as the surviving partner, we fail to see how, on death, the necessity of taking out letters of administration can be avoided. But it has been argued that the money was really owing to the family and not to the obligees of the bond, and that the plaintiffs as members of the family were entitled to sue in their own right of survivorship without obtaining letters of administration. *Venkataramanna* v. *Venkayya*(1) was cited in favour of this contention. What was said, however, in *Venkataramanna* v. *Venkayya*(1) was that, if, on the face of the document, it appeared that the debt was a family debt, the surviving member might sue in his own interest, the money being due to the family. In the present case the bond does not show the nature of the debt and therefore the decision is really not applicable.

Moreover, if it was competent to the plaintiffs as being themselves primarily and not in a representative character interested in the claim, the other members of the family ought to have been joined, and no application to join them was made though the objection of non-joinder was taken at the earliest opportunity.

It is said that the second plaintiff became a member of the firm on the death of Iyavier and that as such he is entitled to sue, but that contention is clearly unsound. The right originally vested in Iyavier might have been assigned to the plaintiffs or, on Iyavier's death, might have passed to his representative. But it certainly did not pass to him owing to the mere fact that he joined

(1) I.L.R., 14 Mad., 377.

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the firm. In our opinion the plaintiff's suit was not properly framed and ought to have been dismissed.

If Visvanadha Ayyar and Iyavier were partners of a firm constituted in the ordinary way by contract, as appears to have been the case, for otherwise the second plaintiff would not have been said to have joined the firm on his father's death (see *Ram Narain Nursing Doss* v. *Ram Chunder Jankee Loll*(1)), then it is clear that their representatives or at least the representative of the survivor must establish his character as such in the legal way by taking out letters of administration. In that case the Act clearly applies.

On the other hand, if it is said that the money was due to the family and that the plaintiffs as surviving members of the family were suing to recover it, they are met with the difficulties already mentioned.

We must reverse the decree and dismiss the suit directing the plaintiffs to pay the costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1893.
April 25.
October 20.

SRI RAJA RAU VENKATA KUMARA MAHIPATI SURYA RAU (PLAINTIFF), APPELLANT,

v.

SRI RAJA RAU CHELLAYAMMI GARU (DEFENDANT), RESPONDENT.*

Grant of portion of impartible zamindari—Construction of instrument of grant—Absolute grant—Creation of separate estate in favour of grantee as between him and grantor—Restriction in instrument contravening Hindu law of succession.

In a suit for the recovery of possession of an estate, it appeared that the estate in question had formerly formed a portion of an impartible zamindari, but had been granted, in the year 1845, by the plaintiff's father to his younger brother, in whose name the estate was registered in the Collector's books as a separate estate. The instrument of grant provided (*inter alia*) that in case of failure of self-begotten male issue in the grantee's line, the immovable property of the grantee should be put in possession of the grantor's line. On the death of the first grantee, the

(1) I.L.R., 18 Calc., 86.

* Appeal No. 44 of 1892.