We are of opinion that the present suit is not barred under section 13 or section 43 of the Civil Procedure Code.

The appeal came on for final hearing in due course before Subrahmania Ayyar and Benson, JJ., when the Court delivered the following

JUDGMENT.—In accordance with the decision of the Full Bench we set aside the decree of the Courts below and remand the appeal to the lower Appellate Court for disposal according to law. Costs in this Court will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Boddam.

CHINNAM RAJAMANNAR AND ANOTHER (DEFENDANTS NOS. 1 AND 3), APPELLANTS,

v.

TADIKONDA RAMACHENDRA RAO AND ANOTHER (FIRST PLAINTIFF AND SECOND DEFENDANT), RESPONDENTS.*

1905 September 26, October 12, 13, November 2.

Will, construction of—'Labham,' meaning of-Transfer of Property Act IV of 1882, s. 35 (b)—Exception not applicable where debt not the whole consideration—Probate and Administration Act V of 1881, ss. 128, 130, 131-Interest allowable on demonstrative legacies-Demonstrative legatee, right of to resort to general assets.

The word 'Labham' is generic and covers different kinds of profit and in its ordinary and comprehensive sense means profit, gain or income as opposed to the corpus yielding the same and includes interest and dividends and income from immoveable property, especially where other portions of the will show such to have been the intention of the testator.

The exception in paragraph (*b*) of section 135 of the Transfer of Property Act will apply only where the whole of the consideration for the transfer is a debt due by the transferor.

The rule that in the case of demonstrative legacies, the legatee is entitled to resort to the general assets on failure of the source intended will not apply where there are directions to the contrary by the testator.

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* Appeal No. 67 of 1904, presented against the decree of M.R.Ry. I. L. Narayana Rao, Subordinate Judge of Kistna at Masulipatam, in Original Suit No. 9 of 1899.

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Under the English Law, interest is payable on demonstrative legacies from the expiry of one year from the testator's death.

Mullins v. *Smith*, (1 Drewry & Smale's Rep., 204), approved and followed.

Lord Londesborough v. *Somerville*, (19 Beav., 295), approved and followed.

The same is the law in India and the absence of a distinct provision in sections 128, 130, and 131 of the Probate and Administration Act with respect to interest on such legacies does not imply an intention to disallow interest in such cases.

THIS was a suit instituted by the plaintiffs for the administration of the estate of one *C. V.* deceased against the first defendant who was the son of *C. V.* and defendants Nos. 2 and 3 who were the executors in possession of the estate, and for payment to the plaintiffs of legacies bequeathed to them by *C. V.*, and of legacies to others of which they had obtained transfers.

C. V. who died in September 1888, made his last will and testament in April 1887 and subsequently executed no less than five codicils.

By his last will he directed among other things—

(1) That Rs. 15,000 should be paid in cash to *L. V.*

(2) That Rs. 3,000 should be invested at interest and the profits therefrom should be paid to *A. L.* sister of the testator, the principal amount to be paid to her son *V.R.* on his attaining his majority.

(3) That Rs. 500 should be given to each of the plaintiffs for their marriages.

The will provided that the remaining properties should be delivered to the first defendant on his attaining his twentieth year.

The mode of paying the legacies is provided for by codicil 4, the material portion of which is as follows :—

"Excluding the amounts payable to Venkata Krishnaya and Subba Lakshmi and for the abovementioned scholarship of Rs. 5,000 the money payable for the other items shall be debited against and discharged from the profits derived from the business or transactions belonging to Venkanna Garu and myself. But it shall not be out of the principal . . . . This will shall be carried out until the boy attains his proper age, *i.e.*, 20 years but not afterwards. The opinion of the members may be given effect to in all matters whenever necessary."

The plaintiffs obtained an assignment of the legacy to *L.V.* of Rs. 15,000 in July 1898 for Rs. 13,000 being made up of Rs. 12,000 due to them by *L.V.* and Rs. 1,000 paid in cash.

The plaintiffs also obtained an assignment of the legacy to *V.R.* of Rs. 3,000. This was also in July 1893 and was for a consideration of Rs. 3,500.

The plaintiffs in this suit claimed the full amount of these legacies with interest from the time they were payable and the amount with interest of the legacies devised to them.

The Subordinate Judge passed a preliminary decree in favour of the plaintiffs for the principal amount of the suit legacies and also for interest on the two legacies for Rs. 1,000 and Rs. 3,500 from such time as funds for paying the same were available, and interest on all legacies from date of decree. Accounts were directed to be taken of the profits available for payment of the legacies.

The defendants preferred this appeal and a memorandum of objections was filed by the plaintiffs.

The principal questions involved in the appeal were, whether under section 135 (*b*) of the Transfer of Property Act, the plaintiffs could recover on account of the legacy to *L.V.* assigned to them only the amount actually paid with interest; whether the legacies were payable out of the profits of trade alone or out of interest and the income of immoveable properties also: whether the legacies were payable out of the general assets, and the time from which the plaintiffs were entitled to interest.

P. Nagabhushanam for appellants.

The Advocate-General (Hon. Mr. *J. P. Wallis*) and Dr. *S. Swaminadhan* for first respondent.

JUDGMENT.—The will and the codicils upon the construction of which the questions raised in this case depend are not very felicitously drawn, and the number of codicils which have succeeded each other (five in number) add to the difficulty of construing them. A great deal of the judgment of the lower Court was devoted and much of the argument on behalf of the appellants was directed to the construction of paragraphs 13 and 14 of the will. We think it unnecessary to consider this matter as codicil No. 4 is sufficient for the disposal of the main question in the case. The material part of it runs thus: "Excluding the amount payable to Venkata Krishnayagaru and Subba Lakshmi, and for the abovementioned scholarship of Rs. 5,000, the money payable for the other items shall be debited against and discharged from the profits derived from the business or transactions belonging to

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Venkannagaru and myself. But it shall not be out of the principal. This will shall be carried out until the boy attains his proper age, *i.e.*, twenty years but not afterwards. The opinion of the members may be given effect to in all matters whenever necessary."

The contention on behalf of the plaintiffs is, that the legacies given by the testator other than the three expressly excluded in the above passage, were payable from the entire income or profits derived from the estate held jointly by the testator and his partner Venkannagaru, moveable or unmoveable. The contention on behalf of the defendants is that they are payable only out of profits realised up to the time the first defendant attained his 20th year (such) profits being exclusive of interest received as such upon the capital employed in the business and also exclusive of the dividends of certain mill shares held by the partners as well as the income of the immoveable property held by them jointly. The contention on behalf of the plaintiffs is, in our opinion, correct. As regards the defendant's objection that the payments on account of the legacies are to cease as soon as the first defendant attains the age of twenty years, reliance is placed upon the clause " this will shall be carried out until the boy attains his proper age, *i e.*, twenty years but not afterwards." The argument of the Advocate-General that this passage means nothing more than that the executors were to cease to manage when the first defendant attained twenty years is supported by the next following sentence which provides for the executors' opinion being obtained even subsequent to that period. Further, paragraphs 6, 7, 8 and 9 of the will also go strongly to support this argument on behalf of the plaintiffs since they contain provisions for payments which, from their very nature, might have to be made after the first defendant attained the age of twenty years.

As regards the defendant's other contention that the interest on the capital, the dividends on the shares and the income of the immoveable property should be excluded from the profits out of which the legacies were to be paid, it is clearly opposed to the ordinary meaning of the vernacular term " labham " translated *in the above quotation* as profits. It is a *very generic expression* covering different kinds of profit or gain and that it included profit by way of interest in the view of the testator himself in connection with these testamentary instruments is clear from paragraphs 8 and

9 of the will where he directs certain amounts to be laid out at interest and uses the term "labham" in respect of the interest thus to accrue. The second paragraph of the fifth codicil equally confirms this view. In the sentence "in the event of his carrying on a different trade, the profits or losses whereof shall also belong to him," the term used is "labham" and from the context it is impossible to doubt that it is used in its widest possible sense. It follows, therefore, that the term in question was not intended to be used in the fourth codicil in any, but its ordinary and comprehensive sense of profit, gain or income as opposed to the corpus yielding the same.

The next point is as to the amount due to the plaintiffs in respect of the legacy transferred to them under Exhibit B. We are unable to accede to the view urged on behalf of the plaintiffs that the case is within the exception in paragraph (*b*) of section 135 of the Transfer of Property Act. No doubt one part of the consideration for the transfer was a debt due by the transferor to the transferees, but the other part was cash paid. The words of the section "where it is made to a creditor in payment of what is due to him" can only apply to cases where the entire consideration is the debt. To hold that the present case is within the words would in effect be varying the language materially and would make the clause run as if the words were "in payment wholly or in part of what is due to him." In this view the plaintiffs will be entitled to receive on this account only Rs. 13,000 with interest thereon at the rate of 12 per cent. per annum which rate, we think, should be allowed as was done by the Subordinate Judge in regard to the amount claimed under another assignment having regard specially to the fact that no less than twelve-thirteenths of the consideration was a debt due to the transferees.

The next point is whether the plaintiffs are entitled to be paid out of the general assets of the testator in the event of the failure of the source from which they were directed to be paid by the testator. No doubt, in the case of demonstrative legacies, the legatee is entitled to resort to the general assets on failure of the source intended, but that rule is of course subject to any direction to the contrary by the testator. It is our opinion, that there is such a direction in the present case, as the will says, that they "shall not be paid out of the principal." The vernacular term for principal (asalu) used here means in the context the

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corpus of his estate. In other words the intention of the testator was that the source from which the legacies were to be discharged was the income of the estate and not any portion of the estate itself.

The last question is as to the interest payable upon the legacies. In the view we have taken of the inapplicability of section 135 (*b*) of the Transfer of Property Act, the matter is only important as regards the two legacies of Rs. 500 each payable to the plaintiffs. We agree with the Advocate-General that they carry interest at 6 per cent. per annum from the expiry of one year from the death of the testator, and it follows that this interest is payable out of the income or profits from which the principal amount of these legacies is made payable. That, according to English law, demonstrative legacies also carry interest from one year from the testator's death is clear upon the authorities to which our attention has been drawn on behalf of the plaintiffs [see *Mullins* v. *Smith*(1) and *Lord Londesborough* v. *Somerville*(2)]. We are unable to agree with the suggestion on behalf of the defendants that the Indian law is different. Section 128 of the Indian Probate and Administration Act provides that the legatee is entitled to the produce of a specific legacy and sections 130 and 131 entitle legatees to interest on general legacies. The absence of a distinct provision in regard to the payment of interest on demonstrative legacies does not imply an intention to disallow interest in such cases. As pointed out in *Mullins* v. *Smith*(1) *supra*, in the matter of interest, demonstrative legacies are to be viewed as of the nature of general legacies. The total amount due, therefore, to the plaintiffs will be Rs. 1,000 with interest at 6 per cent. per annum from the expiry of one year from the testator's death till date of the lower Court's decree and Rs. 13,000 with interest at 12 per cent. per annum from the 16th July 1898 till the date of the lower Court's decree and the costs of the transfer, and Rs. 3,500 with interest at 12 per cent. per annum from the 1st July 1898 till the date of the lower Court's decree and the costs of the transfer with 6 per cent. per annum upon Rs. 17,500 and costs from the date of the lower Court's decree till the date of payment.

It is unnecessary, so far as this case is concerned, to direct any account to be filed as the amount which had accrued as profit and

(1) 1 Drewry & Smale's Rep. 204. (2) 19 Beav. 295.

which was attached before judgment will alone more than cover these payments. CHINNAM RAJA-MANNAR v. TADIKONDA RAMA-CHENDRA RAO.

In modification, therefore, of the decree of the Subordinate Judge we pass a decree for this amount.

Parties will pay and receive proportionate costs throughout, the memo. of objections included.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Mr. Justice Sankaran Nair.

MURUGAPPA CHETTI (DEFENDANT), APPELLANT,

v.

NAGAPPA CHETTI AND ANOTHER (PLAINTIFFS), RESPONDENTS.* 1905 September 7. October 4, 10.

Hindu Law—Adoption—Receipt of consideration by Natural father for giving in adoption does not make the adoption invalid.

Where a boy, being a fit subject for adoption in the Dattaha form, is given and accepted, with the proper ceremonies for such adoption, by persons respectively competent to give and accept him, he acquires the status of an adopted son. The receipt of money by the natural father in consideration of giving his son and the payment of such by the adoptive father, though illegal and opposed to public policy, do not make the adoption invalid, as the gift and acceptance of the boy is a distinct transaction clearly separable from the illegal agreement and payment. Such payment has not the effect of converting the adoption into an 'affiliation by sale,' a form now obsolete.

Manjaneer puthiran is synonymous with Dattaha son.

Bhasha Rabidat Singh v. *Indar Kunwar*, (I.L.R., 16 Calc., 556), followed.

THE first plaintiff claiming to be the adopted son of the defendant instituted this suit, impleading his minor son as co-plaintiff, for partition of the family properties in the hands of the defendant. The defendant pleaded *inter alia* that the first plaintiff did not acquire the status of an adopted son, as in consideration of a sum of Rs. 6,150 paid to the first plaintiff's natural father, he was added as a *Manjaneer puthiran* into the defendant's family and that, as such practice was opposed to public policy, the first plaintiff could

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* Appeal No. 179 of 1903, presented against the decree of M.R.Ry. W. Gopala Chariar, Subordinate Judge of Madura (East) in Original Suit No. 97 of 1901.