

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Abdur Rahim.*

BALAKRISHNA IYER AND OTHERS (DEFENDANTS NOS. 1 TO 4),
APPELLANTS IN APPEAL SUIT No. 6 of 1906.

v.

MUTHUSAMI IYER (PLAINTIFF), RESPONDENT IN APPEAL
SUIT No. 6 of 1906, AND APPELLANTS IN APPEAL SUIT
No. 23 of 1906.

190*.
November
26, 27, 30.
December
1, 2, 3, 16.

BALAKRISHNA IYER AND OTHERS (DEFENDANTS), RESPONDENTS*
IN APPEAL SUIT No 23 of 1906.

*Hindu Law—Partition, suit for—Right to account—Claim for share of
specific items bar to claim for a general account.*

Under the Mitakshara Law, a member of an undivided family who
sues for partition, and who has not been excluded from the family is not,
unless he establishes fraud or misappropriation, entitled to call upon the
managing member to account for his past dealings with the family property.

Abhaychandra Roy Chowdhry v. Pyari Mohan Guho, [(1869-70) 5
Beng. L.R., 347], not followed.

Narayan Bin Babaji v. Nathaji Durgaji, [(1904) I.L.R., 28 Bom., 201],
followed.

Where a plaintiff, suing for partition, prays for general account and
claims a share in specific items alleged to have been received by the manager
of the family, and attempts to prove the receipt of such items, he will not,
on failing to prove such receipt, be allowed to claim a general account.

APPEAL against the decree of V. Subramanyam, Subordinate
Judge of Tanjore, in Original Suit No. 29 of 1903.

[This case is reported only on the question of the right to
general account in a suit for partition.]

Suit to recover plaintiff's one-half share of joint family prop-
erties belonging to plaintiff and defendants Nos. 1 to 4. The first
defendant was the father of defendants Nos. 2 to 4 and plaintiff
was the grandson of first defendant's paternal uncle. The first
defendant was the managing member of the family for nineteen
years prior to suit. The plaintiff claimed one-half of the immove-
able properties belonging to the family: Rs. 10,000 as his half
share of Rs. 20,000 which he alleged the first defendant had saved
from the income of the family estate and from money dealings,
and a moiety of outstanding and moveables.

* Appeal Suits Nos. 6 and 23 of 1906.

WHITE, C.J.,
AND ABDUR
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—
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The fifth issue was whether first defendant was liable to render accounts and if so, for what period, and the eighth issue was whether the first defendant had in his possession Rs. 20,000 saved as alleged by plaintiff. On the fifth issue, the Subordinate Judge held that there was no fraud or misappropriation on the part of first defendant and that he was not liable to render an account of past transactions.

On the eighth issue, he found that first defendant was in possession of Rs. 13,000 belonging to the family. He accordingly decreed to plaintiff one-half of the immoveables and one-half of the sum of Rs. 13,000 and one-half of the mesne profits for 1902-1903 and a moiety of other moveables.

The first defendant appealed (Appeal Suit No. 6 of 1906) substantially against the finding on the eighth issue, and the plaintiff appealed (Appeal Suit No. 23 of 1906) mainly on the ground that he was entitled to a general account.

The Hon. Mr. *V. Krishnaswami Ayyar* and *K. Ramachandra Ayyar* for appellants in Appeal Suit No. 6 of 1906.

P. R. Sundara Ayyar and *G. S. Ramachandra Ayyar* for respondents in the above.

P. R. Sundara Ayyar and *G. S. Ramachandra Ayyar* for appellant in Appeal Suit No. 13 of 1906.

The Hon. Mr. *V. Krishnaswami Ayyar* and *K. Ramachandra Ayyar* for respondent in the above.

JUDGMENT.—Appeal No. 6 is an appeal by the defendants against a decree in a partition suit with reference to certain sums of money which the Subordinate Judge held were payable by the defendants to the plaintiff under the decree. Appeal No. 23 is an appeal by the plaintiff against the same decree. In Appeal No. 23 the plaintiff raised the general question whether he was entitled to an account as incidental to his suit for partition. In his plaint he asked for an account as from October 1884, the date when the first defendant became the managing member of the family. An issue was taken as to whether the first defendant as managing member was liable to render accounts to the plaintiff for any and what period. The Subordinate Judge held that the plaintiff had not made out a case to be entitled to call upon the first defendant to render an account of past transactions. The plaintiff appealed against this finding. There is considerable conflict of authority on the question whether a member of an undivided family

who sues for partition is entitled as of right to call upon the managing member to render an account of his dealings with the family property. Mr. Mayne observes (paragraph 294) that the right of each member of an undivided Hindu family to require an account of the management has been both affirmed and denied in decisions which are not very easy to reconcile. The view which has been adopted in Bengal is that a member who sues for partition is so entitled, (see *Abhaychandra Roy Chowdhry v. Pyari Mohan Guho*(1)). In Bombay the decisions are not uniform, but in the latest reported case--an authority on which the Subordinate Judge relied--*Narayan Bin Babaji v. Nathaji Durgaji*(2) it was held that in a partition suit no coparcener has a right to an account of past transactions. The question is somewhat bare of authority so far as this Presidency is concerned, but the view which has prevailed would seem to be the same as that taken in the Bombay case just referred to. In *Krishna v. Subbanna*(3) the actual point decided was that in the case of an infant who has been excluded from the enjoyment of the family property the manager is bound to account to the infant for mesne profits from the date of his exclusion. The learned Judges, however, expressed an opinion (see page 569) that if an adult member is not excluded but chooses to live apart from the manager, as he did not choose to enforce partition, it might be reasonable, apart from any question of fraud or misappropriation by the manager, to apply the principle that unless something is shown to the contrary, every adult member of an undivided family, living in commensality with the manager must be taken to be a participator in, and authorizer of, all that has been done in the management of the property. The learned Judges who decided this case were apparently prepared to extend the principle to which they referred to the case of an adult member who chose to live apart from the manager without enforcing partition. In the case before us the plaintiff who lived as a member of the family at any rate until the end of 1902 claims an account in respect of transactions entered into when he was living with the family as an undivided member thereof.

WHITE, C.J.,
AND
ABDUR
RAHIM, J.
—
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In the case of *Rama Iyer v. Duraisami Iyer and 5 others*(4); Davies and Moore, JJ., set aside a decree ordering an account

(1) (1869-70) 5 Ben. L.R., 347. (3) (1884) I.L.R., 7 Mad., 564.

(2) (1904) I.L.R., 28 Bom., 201. (4) Appeal No. 185 of 1899 (unreported).

WHITE, C.J., ask us to send the case back for a general account on the ground that the finding of the Subordinate Judge that the plaintiff was not entitled to a general account of past transactions was wrong.

AND
ABDUR
RAHIM, J.
—
BALA-
KRISHNA
IYER
v.
MUTHUSAMI
IYER.

There is evidence in this case that the rendering of a general account by the first defendant is impossible by reason of the fact that the family accounts are in the possession of the plaintiff. In the view we take on the general question of the right of a member of an undivided family to an account from the manager in respect, of past transactions, and on the question of the plaintiff's rights in this connection in this particular case, we do not think it necessary to discuss this evidence.

We now proceed to consider the evidence with regard to the specific items which the plaintiff alleges were received by the first defendant, and for which the first defendant is accountable to him.

[Their Lordships then went into the evidence, and allowing Appeal No. 6 of 1906, modified the decree of the lower Court.]

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Abdur Rahim.*

1908.
December 4,
22.

ABDUL KHADER AND OTHERS (DEFENDANTS NOS. 3 TO 6),
APPELLANTS,

v.

CHIDAMBARAM CHETTIYAR AND OTHERS (PLAINTIFFS AND
DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

Muhammadan Law—Partner, death of, effect on partnership—Guardian of property, who is—power of de facto guardian to bind minor—Who is de facto guardian.

Under Muhammadan, as under English, law, the death of a partner dissolves the partnership.

The Muhammadan law does not recognise the joint family tenure of property prevailing among Hindus; and the rights and obligations incident to such tenure will not apply among Muhammadans.

Co-owners under Muhammadan law hold their property in severalty.

On the death of a Muhammadan, his heirs take their shares in severalty, as heirs and not as members of the family.

* Appeal No. 169 of 1905.