personally liable and in that capacity the respondents are his legal representatives.

For these reasons, we must reverse the order of the Subordinate Judge and direct him to dispose of the petition. Costs will abide the result.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Oldfield.

NARAYANA ANNAVI AND TWO OTHERS (PLAINTIFFS), APPELLANTS,

v.

K. RAMALINGA ANNAVI (MINOR BY HIS GUARDIAN DHARMI AMMAL) AND FIVE OTHERS (DEFENDANTS), RESPONDENTS.*

1915. March 12, 15, 17, 18, 19 and 31 and April 29.

Hindu Law—Partition—Marriage of co-parcener—Provision for expenses of marriage at partition—Expenses, incurred subsequent to suit but before decree—Anticipatory provision for future marriage, right for—Decree in partition suit—Gift by co-parcener of lands, less than his share, validity of—Estoppel.

An unmarried co-parcener is not entitled to have an anticipatory provision made for the expenses of his future marriage at partition.

Srinivasa v. *Thiruvengadathiengar* (1915) I.L.R. 38 Mad., 556., dissented from.

Where the expenses of marriage of a co-parcener were incurred subsequent to the institution of a suit for partition but prior to the decree of the Court of first instance,

Held, that the severance of the joint family was effected only by the decree, and that the expenses, should be credited to him in the account to be taken in the suit.

Where a member of a joint Hindu family made a gift of some immoveable property, which was not unreasonable regard being had to the extent of his share in all the joint family properties, and his undivided son did not impeach the gift during his father's lifetime,

Held, that neither the son nor the grandson could question the validity of the same after the donor's death.

APPEAL against the decree of A. N. ANANTHARAMA AYYAR, the Subordinate Judge of Tinnevelly, in Original Suit No. 10 of 1910.

This appeal arises out of a suit for partition instituted by the first plaintiff and his two minor sons, who were the second and third plaintiffs in the suit, against the other members of the joint family. The fourth defendant was the sister of the

* Appeal No. 89 of 1913.

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first plaintiff and was joined as a party to the suit as the plaintiffs claimed to recover certain immoveable properties of the family which had been given over to her by the father of the first plaintiff and the fourth defendant in 1908. The first to third defendants, who were the members of the other branches of the family contended that there was a prior partition in the family in 1895-96 of the outstandings and of the immoveable properties belonging to the family and that the lands subsequently purchased were the separate properties of the several members: subsequent to the institution of the suit, the second plaintiff who was a minor was married and expenses were incurred therefor prior to the passing of the decree in the Court of first instance. The plaintiffs claimed that the expenses abovesaid should be paid out of the family property and that provision should be made in the decree for the expenses of the future marriage of the third plaintiff who was unmarried and was still a minor at the date of the suit. The Subordinate Judge of Tinnevelly, who tried the suit, held that there was only a division of the outstandings in 1895 and that the family was joint in other respects and passed a decree for partition. The Subordinate Judge disallowed the claim for payment of the marriage expenses of the second plaintiff which were incurred during the pendency of the suit and also disallowed the claim for provision being made in the decree for the expenses of the future marriage of the third plaintiff. The Subordinate Judge upheld the gift in favour of the fourth defendant. The plaintiffs appealed to the High Court, on all the questions decided against them in the lower Court. The High Court held that there was a division in 1895 only of some portion of the outstandings of the family and that the status of the family was unaffected and that some portion of the outstandings as well as the immoveable properties were liable to division in this suit.

[The portion of the judgment of the High Court dealing with the evidence relating to the question of division above mentioned has been omitted, as not material to this report. Their Lordships then dealt with the question of the validity of the gift of lands in favour of the fourth defendant, and that of the claims of the second and third plaintiffs in respect of the expenses of their marriage. The portion of the judgment relating to the above questions has been reported herein.]

K. Srinivasa Ayyangar and *S. Ramaswami Ayyar* for the appellants.

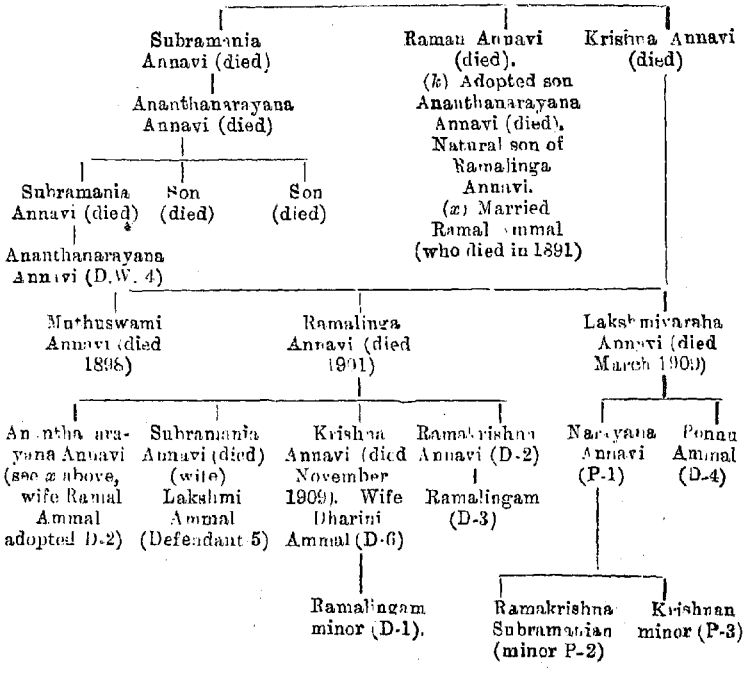
A. Rangaswami for the first respondent.

K. Jagannadha Ayyar for respondents Nos. 1 and 6.

S. Srinivasa Ayyangar and *T. M. Minakshisundaram Ayyar* for respondents Nos. 2 and 3.

M. D. Devadoss for the fourth respondent.

The following judgment of the Court was delivered by SANKARAN NAIR, J. :—This is a suit for partition. The following pedigree will show the relationship of the parties.



Narayana Annavi the first plaintiff is the son of Lakshmivaraha Annavi who is now deceased. The second and third plaintiffs are the minor sons of the first plaintiff. The first, second and third defendants are the descendants of Ramalinga Annavi, the brother of Lakshmivaraha Annavi. The fourth defendant is the first plaintiff's sister who claims to be in possession of certain properties transferred to her by her father. The plaintiffs state that those transfers are invalid and the properties still continue in the possession of the joint family. The fifth and sixth defendants are two widows of deceased co-parceners and they are

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SANKARAN NAIR AND OLDFIELD, JJ.

joined as parties to the suit as provision has to be made for their maintenance.

The contention of the first defendant is that there was a partition in the family about the year 1895-96 during the lifetime of the three brothers "Muthuswami Annavi, Ramalinga Annavi and Lakshmivaraha Annavi and that Ramalinga Annavi was only in management of the properties set apart for his share and after him the first defendant's father Krishna Annavi continued in management of those properties and that the plaintiffs are not entitled to any share in the properties that belonged exclusively to Ramalinga's branch. The fourth defendant denied that the alienations in her favour are invalid. The Subordinate Judge found that there was a partition effecting a severance of interest in respect of the debts due to the family in the year 1895-96, but the family retained its undivided status in respect of lands and houses, and that under that partition of the debts the second defendant obtained two-eighths and the balance of the debts remaining due to the family with the exception of Rs. 5,000 which was set apart for Muthuswami Annavi was equally divided between Ramalinga and Lakshmivaraha. He also found that the items of property included in the sale-deed, Exhibit III, belonged exclusively to the second defendant. The properties purchased since the partition by the family were directed to be divided between the parties in the proportions in which the debts were divided in 1895-96. The lands which were left undivided in 1895-96 were directed to be divided between the parties according to the shares to which they would be entitled under the Hindu law. He also upheld the transfers in favour of the fourth defendant. In appeal it is contended that all these findings are wrong.

[Their Lordships dealt with the question of the status and of the division of the properties of the family and then proceeded as follows :—]

The deed of gift in respect of the properties in schedule XV (*c*) was executed only on the 4th November 1908. It was given to the fourth defendant by her father as her stridhanam. If this deed had been impeached in his lifetime, he might have claimed his share in all the properties which are now found to belong to the joint family and given to her such properties as he pleased. Having regard to his share we are unable to say that

his gift was unreasonable. See *Sundaramayya* v. *Seetamma*(1). Moreover he was living with her in his old age and she was taking care of him and it was in consideration of the care she took of him that these properties were given to her. The transaction cannot therefore be treated as a mere gift. In these circumstances we are of opinion that the gift is not invalid.

The appeal is argued next against the lower Court's findings on issue No. 9 that the plaintiffs are not entitled to any amount for the expenses of the marriages of the second and third plaintiffs. The second and third plaintiffs are the first plaintiff's minor sons, and the expenses of the marriage of the second plaintiff were incurred after the suit was filed. The third plaintiff is still unmarried.

It has been settled by *Kameswara Sastri* v. *Veeracharlu*(2), that marriage is so far a normal and obligatory incident in a Hindu's life that the expenses of its performance are chargeable against the joint family, to which he belongs. In the present case, the severance of the joint family was effected only by the decree under appeal. *Thandayuthapani* v. *Raghunatha*(3). The lower Court's decision as to the expenses of the second plaintiff's marriage accordingly cannot be sustained. They must be credited to plaintiffs in the account which will have to be taken.

As regards third plaintiff reliance is placed on *Srinivasa* v. *Tiruvengadathiengar*(4), in which after two learned Judges had differed, a third held that the expenses of the marriage of an unmarried co-parcener should be awarded to him or his guardian at partition. We regret that we are unable to follow this decision. It is not material that the argument in it, based on the fact that the marriage of an opposing co-parcener had already been performed by the family, is not relied on here. Nor do we deal with the social considerations, which had weight with SADASIVA AYYAR, J. Nor is it necessary for us to decide, as we have been pressed to do, that if provision for future marriages is obligatory it is so only between co-parceners of one generation, though the references in the texts to "brethren" may support that conclusion. Our ground of decision is the broader one that the learned Judges, SUNDARA AYYAR and SPENCER, JJ., who have accepted the view contended for by the plaintiffs did so on

(1) (1912) I.L.R., 35 Mad., 628.
(2) (1911), I.L.R., 34 Mad., 422.
(3) (1912) I.L.R., 35 Mad., 289.
(4) (1915) L.L.R., 38 Mad., 556.

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the assumption that marriage being obligatory, anticipatory provision must necessarily be made for it at partition. That assumption appears to us unfounded.

We take it that the account given of the texts in the case relied on is exhaustive, since no others have been cited before us. In each we have merely a simple and general injunction that the brethren, who make a partition, must perform subsequent samskaras for those, who have not yet undergone them. It is not necessary for the present purpose to decide whether this injunction imposes a legal, and not merely a pious obligation. It is sufficient that the texts, the sole foundation of the plaintiffs' claim enjoin nothing expressly or impliedly as to the method, by which performance of this obligation is to be secured, and nothing as to reservation of funds for it. For all that is enjoined, the uninitiated or unmarried member's right is only to obtain funds from the brethren, when they are required, that is, when and if the expenditure has been or is about to be incurred. There is therefore no reason in the texts for enabling him to do so earlier. On the other hand, it seems unreasonable to order present payment of money, which might never or only partly be utilized in the manner intended and of which it might be difficult or impossible to recover the unspent portion. For it is unlikely that the money would be preserved intact or would be traceable. On the death of the unmarried member in question the unspent portion would not necessarily revert to the other members, who made it, as his heirs, since his heirs might not be those members, but his mother or his father. Again it would be inconvenient for the Court to estimate, it might be years in advance, expenses the amount of which would depend on the future tastes and status of the unmarried member and his bride's family. For these reasons we find issue No. 9 against the plaintiffs as regards the third plaintiff's marriage expenses.

According to our findings the houses and *manaikats* which belonged to the family in 1895-1896 will be divided as family properties. All parties bear their own costs

[See *Karuturi Gopalam* v. *Karuturi Venkataraman*(1) decided by WALLIS, C.J., and SESHAGIRI AYYAR, J., following *Sri Jagannada Raju* v. *Sri Rajah Prasada Rao*(2).].

K.R.

(1) (1915) 29 M.L.J., 710. (2) (1915) I.L.R., 38 Mad., 556.