PRIVY COUNCIL.*

RAMALINGA ANNAVI AND ANOTHER (DEFENDANTS), APPELLANTS,

1922, March 7.

v.

NARAYANA ANNAVI AND OTHERS (PLAINTIFFS), RESPONDENTS.

[AND CONNECTED APPEAL.]

[On Appeal from the High Court of Judicature at Madras.]

Hindu Law—Partition—Marriage expenses, provision for—Marriage after plaint but before decree—Gift to daughter out of joint property.

The institution of a suit for partition by a member of a joint Hindu family effects a severance of the joint status of the family, and a member of the family who is then unmarried is not entitled to have a provision made in the partition for his marriage expenses, although he marries before the decree in the suit is made.

Assignments by a member of a joint Hindu family to his daughters of a sum of money and of a usufructuary mortgage held valid, both Courts in India having found that they were reasonable in the circumstances in which they were made.

CONSOLIDATED APPEALS (Nos. 150 and 151 of 1919 from a judgment and decree, 19th April 1915) of the High Court, varying a decree of the Subordinate Judge of Tinnevelly.

The Consolidated Appeals arose out of a suit brought by Narayana Annavi, and his two minor sons, for partition of the property of a joint Hindu (Mitakshara) family consisting of themselves and of Ramalinga, Ramakrishna, and Krishna Annavi, the last three named with others being defendants. Narayana was the son of

* *Present*:—Lord ATKINSON, Lord CARSON, Sir JOHN EDGE, and Mr. AMEER ALI.

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Lakshmivaraha (deceased); Ramalinga was the son; and the other two named defendants were grandsons of Ramalinga (deceased), the brother of Lakshmivaraha.

Both Courts in India had rejected the defendant's contention that in 1895 there had been a division of the joint status of the family. At that date certain sums due to a money-lending business carried on by the joint family had been divided. The Subordinate Judge found that there had then been a complete winding up of the family money-lending business. The High Court found that the division of property which then took place comprised only three particular items, and that the residue of the family property remained to be partitioned in the suit. The question as to the true effect of the transaction of 1895 depended upon the evidence and a report of that part of the case is not called for.

Two subsidiary questions arose. The first was as to the validity of gifts made by Lakshmivaraha (deceased) to his daughter Ponnu Ammal. On the division in 1895, Lakshmivaraha was allotted a sum of Rs. 8,300 due to the family business from a debtor, who gave him a promissory note for Rs. 3,300 and, by his directions, gave a note for Rs. 5,000 to Ponnu Ammal. In 1898 these notes were secured by usufructuary mortgages. In 1908, Lakshmivaraha assigned to Ponnu Ammal by deed the mortgage for Rs. 3,300 in his favour, together with a small house. The deed gave the reasons for the transaction as follows: "As you are my only daughter, as from the time of your mother's death up to this date you alone have been protecting me properly, as I did not give you jewels and ornaments such as would be in keeping with my rank, as I did not at all give you the funds of your mother which were with me, I have, with sound understanding and full consent, conveyed to you by means of this deed of settlement the properties

specified in the schedules." The value of the plaintiffs' claim in the suit was put at over a lakh of rupees.

The second question arose upon a claim of the plaintiffs that the marriage expenses of plaintiffs 2 and 3, the sons of Narayana (plaintiff 1) should be provided for. At the date when the suit was brought neither of the sons was married, but the elder married before the decree was made. The expenses of the marriage of defendant 1, who was in the same degree as plaintiffs 2 and 3, had been met out of the joint family property.

The Subordinate Judge held that any claim to the Rs. 5,000 given to Ponnu Ammal was barred by limitation, and that the gift to her in 1908 was valid as stridhan. He referred to *Sundararamayya* v. *Sitamma*(1) in support of his view on that point, and said that the gift could not be considered unreasonable in the circumstances of the case. He rejected the claim to marriage expenses, saying :

"I can find no authority in support of the plaintiffs' contention on this point ; it is true that in the case of brothers, the eldest brother is bound to perform the necessary samskaras from the common funds for his younger brothers, but that is not the case here."

On appeal to the High Court the learned Judges (SANKARAN NAYAR and OLDFIELD, JJ.,) affirmed the decision of the Subordinate Judge as to the properties transferred to Ponnu Ammal. They further considered that the transaction could not be treated as a mere gift, as Ponnu Ammal was living with and looking after her father. They held that the marriage expenses of plaintiff 2 should be provided for, as in their view the severance of the joint status took place only when the decree was made. They rejected the claim of plaintiff 3, who was unmarried at the date of the decree, declining to follow *Srinivasa Iyengar* v. *Thiruvengadathaiyangar*(2), since in

(1) (1912) I.L.R., 35 Mad., 628. (2) (1915) I.L.R., 38 Mad., 556 (F.B.).

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their view marriage was not obligatory, and the anticipatory provision of funds for marriages was not enjoined by the texts or a convenient practice. The appeal to the High Court is reported in *Narayana* v. *Ramlinga*(1) and a pedigree will be found there.

The first of the present Appeals was by defendants 1 and 6, namely, Ramalinga Annavi and his widowed mother; and the second by plaintiffs 1, 2 and 3, namely, Narayana Annavi and his two sons, of whom the elder had attained his majority. The arguments are here reported only so far as they related to the two subsidiary questions above referred to.

Sir George Lowndes, *K.C.*, and *Dube* for the appellants in the first Appeal, contended on the evidence that in 1895 there had been either a complete severance, or in any case a partition of the whole of the property connected with the family money-lending business.

Dunne, *K.C.*, and *Kenworthy Brown* for the respondents (appellants in the second Appeal).—The gifts to Ponnu Ammal were invalid, having regard to the facts that the father had co-parceners, and that the gift was not out of income. Each of those considerations was expressly made a ground of the decision in *Bachoo* v. *Mankorebai*(2), which was affirmed by the Board in *Bachoo* v. *Mankorebai*(3). The gift being of a considerable portion of the joint property was invalid: *Kamakshi Ammal* v. *Chakrapany Chettiar*(4). The High Court in the present case followed its decision in *Sundararamayya* v. *Sitamma*(5), but that decision is not supported by the authorities and is distinguishable. *Churaman Sahu* v. *Gopi Sahu*(6), which was there relied on, related to a gift by a widow, who necessarily had no co-parceners;

(1) (1916) I.L.R., 39 Mad., 587. (2) (1905) I.L.R., 29 Bom., 51.
(3) (1907) I.L.R., 31 Bom., 373 (P.C.); L.R., 34 I. A., 107.
(4) (1907) I.L.R., 30 Mad., 452. (5) (1912) I.L.R., 35 Mad., 628.
(6) (1910) I.L.R., 37 Calc., 1.

further, that gift was a marriage gift. Secondly, the marriage expenses of both Narayana's sons should have been provided for. *Srinivasa Iyengar* v. *Thiruvengadathaiyangar*(1), which the High Court declined to follow, was subsequently followed in *Gopalam* v. *Venkataraghavulu*(2), the decision in the present case being dissented from. [Reference was also made to *Jairam* v. *Nathu*(3).]

De Gruyther, *K.C.*, and *Narasimham* for the defendant.—Ramakrishna admitted the validity of the gifts to Ponnu Ammal. With regard to the marriage expenses, the joint status of the family was determined by a notice served by Narayana on the other members in July 1909; at latest it was terminated by the bringing of the present suit: *Girja Bai* v. *Sadashiv Dhundiraj*(4). Neither son being then married the expenses should not be allowed. In *Srinivasa Iyengar* v. *Thiruvengadathaiyangar*(1), SADASIVA AYYAR, J., held that marriage in the case of a male member was not an obligatory samskara for which provision should be made; SUNDARA AYYAR, J., came to the opposite conclusion. Upon a reference to SPENCER, J., the allowance of marriage expenses was upheld, but as being in accordance with modern conditions rather than strict Hindu Law. In *Gopalam* v. *Venkataraghavulu*(2), a case of partition between brothers, the last-named decision was adopted, but apparently merely as being in accordance with the practice in Madras. It is submitted that the judgment of SADASIVA AYYAR, J., above referred to expressed the true view according to Hindu Law. There is no other authority than those mentioned which supports the allowance of expenses for prospective marriages, and the practice would give rise to inconvenient complications.

(1) (1915) I.L.R., 38 Mad., 556 (F.B.). (2) (1917) I.L.R., 40 Mad., 632, 639
(3) (1907) I.L.R., 31 Bom., 54.
(4) (1916) I.L.R., 43 Calc., 1031 (P.C.); L.R., 43 I.A., 155.

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The decision of the Full Bench in *Kameswara Sastri* v. *Veeracharlu*(1) was merely that where it was reasonably necessary for a karta to borrow money for the purpose of the marriage of a member, an alienation of the joint family property binds the family.

Parikh for Ponnu Ammal was not called upon.

Sir George Lowndes, K.C., replied on the evidence.

The JUDGMENT of their Lordships was delivered by

MR. AMEER ALI.

Mr. AMEER ALI.—These two consolidated Appeals from a decree of the High Court of Madras arise out of a suit which was brought by the plaintiffs in the Court of the Subordinate Judge of Tinnevelly on 31st January 1910, for a decree for partition in respect of certain moveable and immoveable properties together with outstandings of a money-lending business, on the allegation that they and the defendants 1, 2 and 3 formed members of a joint undivided Mitakshara family.

[The judgment dealt very fully with the evidence as to the effect of the transactions of 1895, their Lordships coming to the conclusion that the view of the Subordinate Judge was right and that that of the High Court could not be sustained; the two questions above referred to were then dealt with as follows.]

There remain now the two questions, one relating to the validity of the two gifts made by Lakshmivaraha to the fourth defendant, Ponnu Ammal. The first is an assignment of Rs. 5,000 out of the money which fell to the share of Lakshmivaraha due from the Thiruvaduthurai Mutt. This was done at the instance of Lakshmivaraha. The other is an assignment of a usufructuary mortgage held by him. In the aggregate the two sums amount to Rs. 8,000. The father has

(1) (1911) I.L.R., 34 Mad., 422.

undoubtedly the power under the Hindu Law of making, within reasonable limits, gifts of moveable property to a daughter. In one case, the Board upheld the gift of a small share of immoveable property on the ground that it was not shown to be unreasonable. In the present case, the gifts relate to sums of money. The only question is whether they were reasonable. Both the Courts in India have answered the question in the affirmative and their Lordships have no materials or ground to hold otherwise.

Regarding the prayer for the allotment upon partition of Rs. 2,000 for the marriages of plaintiffs 2 and 3, the High Court disallowed the claim in respect of the prospective marriage, but allowed it for the expenses of the marriage that took place before the decree in the first Court, on the ground that the joint family status was not dissevered until the decree for partition, and that the joint family liability continued until then. This view is opposed to the law laid down in *Girja Bai* v. *Sadashiv Dhundiraj*(1) where it was held expressly, that under the law of the Mitakshara, to which the parties in the present case are subject, an unambiguous and definite intimation of intention on the part of one member of the family to separate himself and to enjoy his share in severalty has the effect of creating a division of the interest which, until then, he had held in jointness. This intention was clearly intimated to the co-parceners when the plaintiff Narayana served on them the notice on 30th July 1909. That notice effected a separation so far as his branch of the family was concerned, and no obligation rested on the joint family in respect of his sons' marriages. The decree of the Subordinate Judge dismissing the claim was therefore correct.

(1) (1916) I.L.R., 43 Calc., 1031 (P.C.); L.R., 43 I.A., 151, 155.

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[After dealing with another small question not material to this report, and the costs, the judgment concluded.]

Their Lordships will accordingly humbly advise His Majesty to set aside the decree of the High Court and restore the decree of the Subordinate Judge, subject to the above variation, with the above directions as to costs.

Solicitors for appellants (defendants 1 and 6): *Chapman-Walker & Shephard.*

Solicitors for respondents (plaintiffs 1, 2 and 3): *Barrow, Rogers Nevill.*

Solicitor for respondent (defendant 2): *Douglas Grant.*

Solicitor for respondent (defendant 4): *E. Dalgado.*

PRIVY COUNCIL.*

1922. March 7.

L. OPPENHEIM AND COMPANY (PLAINTIFFS),

v.

MAHOMED HANEEF, SINCE DECEASED (DEFENDANT).

[On Appeal from the High Court of Judicature at Madras.]

Arbitration—Award—Submission to arbitration—Suit in India on award—Defence of irregularity in arbitration—Judgment by default in England—Suing on judgment in India—Code of Civil Procedure (Act V of 1908), s. 13—Arbitration Act, 1889 (52 and 53, Vict., c. 49), sec. 11.

In a suit in India upon an award made upon a submission to arbitration which provided that the arbitration was to take place in London and in accordance with English law and procedure, irregularity or misconduct in arriving at the award is not a defence; the award can be set aside on those grounds only by

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* *Present*:—Viscount CAVE, Lord SHAW, Lord PHILLIMORE, Sir JOHN EDGE and Mr. AMEER ALI.