PRIVY COUNCIL.*

1924, November 20.

PALANI AMMAL (21ST DEFENDANT), APPELLANT,

v.

MUTHUVENKATACHALA MONIAGAR AND OTHERS (PLAINTIFFS AND DEFENDANTS), RESPONDENTS.

[On Appeal from the High Court at Madras.]

Hindu Law—Partition—Severance of joint status—Plaint claiming partition—Withdrawal of plaint—Agreement to remain joint after severance of one member—Family business—Inference.

The filing of a plaint claiming partition by a member of a joint Hindu family, if the plaint has been withdrawn before trial, does not result in the family being separate at a later date, although it is evidence that an intention to separate had been entertained by the plaintiff, *Kedar Nath* v. *Ratan Singh* (1910) I.L.R., 32 All., 415; 37 I.A., 161, followed.

When a member of a joint family has separated, an agreement by the remaining members to continue undivided may be inferred from the way in which their business is carried on after the separation.

In a suit for partition which proceeds to a decree, it is the decree which shows whether the separation was only a separation of the plaintiff from his coparceners or was a separation of all the members from each other.

APPEAL (No. 67 of 1922) from a decree of the High Court (August 26, 1917) affirming a decree of the District Judge of Madura.

The appeal arose out of a suit brought in 1906 for partition of an estate known as the Vadimitta estate. The plaintiffs, respondents Nos. 1 and 2, with their youngest brother (defendant-respondent No. 36) who was born after the institution of the suit, were the sons of defendant No. 1 and represented the branch of the second son of the zamindar. The present appellant was

* *Present*:—Lord SUMNER, Lord PHILLIMORE, Sir JOHN EDGE and Sir LAWRENCE JENKINS.

defendant No. 21; by her written statement she pleaded that the estate was the separate property of her deceased brother, who represented the branch of the first son, and that the members of the family had separated long ago.

The material facts appear from the judgment of the Judicial Committee.

The District Judge found that the award made in 1900 was fraudulent and collusive and that the family was joint and undivided. He made a decree for partition.

The decree was affirmed on appeal to the High Court.

Dube for the appellant contended that the family had separated; he referred to *Balkishen Das* v. *Ram Narain Sahu*(1), *Kawal Nain* v. *Budh Singh*(2) and *Jatti* v. *Banwari Lal*(3).

Wallach for respondents Nos. 1, 2 and 3 was not called upon.

The JUDGMENT of their Lordships was delivered by

Sir JOHN EDGE.

Sir JOHN EDGE.—This is an appeal by Palani Ammal, a Hindu lady, who is one of several defendants, from a decree, dated 29th August, 1917, of the High Court at Madras, which affirmed a decree for partition of the Vadimitta estate, dated 23rd April, 1909, of the District Judge of Madura.

The estate in question, which appears to be a large zamindari, was purchased by Peraiyar Muthukumaraswami, who died in 1834. He was a Hindu Sudra, who and his descendants were governed by the law of the Mitakshara. His descendants, unless they separated, constituted a Mitakshara joint family, the property of which was in law joint property unless the contrary was

(1) (1903) I.L.R., 30 Calc., 738 (P.C.); 30 I.A., 139.
(2) (1917) I.L.R., 39 All., 496 (P.C.); 44 I.A., 159.
(3) (1923) I.L.R., 4 Lah., 355 (P.C.); 50 I.A., 192.

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proved. For the sake of brevity, he will hereafter be referred to as the propositus. The propositus had two wives; by the senior wife he had six sons, most of whom married and left male issue, by his junior wife he had one son, who left male issue. It is stated in the judgment of SASTRI, J., in this case, and doubtless correctly, that "the property admittedly continued to be in the possession and enjoyment of the descendants of the first son of the propositus." As the family was not an ancient family, the property, which was acquired in quite modern times, was in the possession of the senior son and his descendants as managers of the joint family and not as the senior male member of a joint family.

There are two questions in this suit and in this appeal upon which there are concurrent findings of the District Judge and the High Court. Those questions are whether the principal parties to the suit are bound by an award which was made by some arbitrators, who have been made defendants to the suit, and if they are not bound by the award, then the question arises whether the joint family which descended from the propositus ever separated.

The question relating to the award may be disposed of at once. The District Judge and the High Court found, for reasons which their Lordships consider to have fully justified their findings, that the award was not binding upon any of the parties. No argument has been addressed to their Lordships in this appeal in support of the award, and they accept the concurrent findings that it is not binding as correct. The sole appellant, Palani Ammal, claimed that some of the estate sought to be partitioned had vested under the award in her. Her claim under the award fails, but as she appears, when the suit for partition was brought, to have been in possession of part of the estate, the right of the plaintiffs

to a decree for partition must be established, and it is necessary to consider whether the joint family had ever separated.

It is beyond question that the estate which the propositus had purchased vested on his death, in 1834, if not on the purchase, in the joint family, and was held jointly by the male members of the joint family as coparceners. Their Lordships do not know whether the estate was purchased with joint family money or with self-acquired funds of the propositus, but for the purposes of this judgment they will assume that the estate did not vest in the joint family until the death of the propositus.

In coming to a conclusion that the members of a Mitakshara joint family have or have not separated, there are some principles of law which should be borne in mind when the fact of a separation is denied. A Mitakshara family is presumed in law to be a joint family until it is proved that the members have separated. That the coparceners in a joint family can by agreement amongst themselves separate and cease to be a joint family, and on separation are entitled to partition the joint family property amongst themselves, is now well-established law. An authority for that proposition is the judgment of the Board in *Appovier* v. *Rama Subba Aiyan*(1), which applies to joint families such as the joint family which descended from the propositus. But the mere fact that the shares of the coparceners have been ascertained does not by itself necessarily lead to an inference that the family had separated. There may be reasons other than a contemplated immediate separation for ascertaining what the shares of the coparceners on a separation would be. It

(1) (1866) 11 M.I.A., 75.

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is also now beyond doubt that a member of such a joint family can separate himself from the other members of the joint family and is on separation entitled to have his share in the property of the joint family ascertained and partitioned off for him, and that the remaining coparceners, without any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained after such a partition of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous coparcener had separated from them. It is also quite clear that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. The leading authority for that last proposition is *Balabux Ladhuram* v. *Rukhmabai*(1).

The fact that any member of a joint family has separated himself from his coparceners may be proved by his suing for a partition of the joint family property, and if the suit is decreed the date of his severance from the joint family will, if nothing else is proved, be treated as the date when the suit was instituted. In *Kedar Nath* v. *Ratan Singh*(2) a member of a joint Hindu family had filed a plaint claiming a partition but afterwards had withdrawn it, and the Board held that no severance of the joint status resulted. Their Lordships see no reason to depart from that view, although

(1) (1903) I.L.R., 30 Calc., 725 (P.C.); 30 I.A., 130.
(2) (1910) I.L.R., 32 All., 415 (P.C.); 37 I.A., 161.

such a plaint, even if withdrawn, would, unless explained, afford evidence that an intention to separate had been entertained, see *Girja Bai* v. *Sudashiv Bhundiraj*(1) and *Kawal Nain* v. *Budh Singh*(2). In a suit for partition which proceeds to a decree which was made, the decree for a partition is the evidence to show whether the separation was only a separation of the plaintiff from his coparceners or was a separation of all the members of the joint family from each other. It appears to be obvious to their Lordships that in a suit for partition no effective decree can be made for a partition unless all the coparceners whose addresses are known, are parties to the suit, and that it is the decree alone which can be evidence of what was decreed.

With the observations which their Lordships have already made, they will proceed to consider whether the joint family which descended from the propositus ever separated. It will be necessary for their Lordships in referring to evidence to refer only to such evidence as they consider is material. In the present case there were concurrent judgments of the District Judge and the High Court that the family descended from the propositus never separated, and that the property sought to be partitioned is partible. The onus of proving that there had been an effective separation was upon the defendants. The Courts below were, as their Lordships are, obliged to construe documents according to their legal effect, but the Courts below were, and their Lordships are, entitled to draw all legitimate inferences as to the intentions of the parties to them, and the inferences so drawn are findings of facts.

It was pointed out by SASTRI, J., in his judgment in this case, that so far as division or non-division of the

(1) (1916) I.L.R., 43 Calc., 1031 (P.C.); 43 I.A., 151.
(2) (1917) I.L.R., 39 All., 496 (P.C.); 44 I.A., 159.

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estate is concerned, "there has been no formal partition deed between the various members of the family, and it is not alleged that the estate was at any time divided by metes and bounds." The defendants, whose case is that the estate, of which partition is claimed, is not now partible, rely upon certain decrees and documents as showing that the estate was divided and partitioned between descendants of the propositus and that the joint family had ceased to remain joint.

In 1842 a suit was filed in the District Court of Tinnevelly by some of the sons of the propositus against his eldest son claiming that the estate should be divided according to his will. The District Judge in 1846 found rightly that the division made by the propositus was invalid in law, but he made an equally invalid decree declaring that the sons of the first wife were entitled to one-half of the estate and the son of the second wife to the other half of the estate. On the 23rd July, 1849, the Suddar Adalat Court in appeal held that all the sons were entitled to equal shares, but held that the Court was not called upon to subdivide the estate in accordance with the law of inheritance, no such question being before the Court, and decided—

"37. It is, therefore, left for the heirs, or for such of them as may be dissatisfied with the management of the joint estate by the head of the family, to adopt such a course of proceeding as they may see fit to obtain the surrender to them of their respective portion or portions of the estate."

A razinama had been filed in that suit on the 1st June, 1846, by the great-grandfather of the plaintiffs in this suit stating that he no longer wished to press the eldest son for a partition of the family estate.

After the decree of the Suddar Adalat of 1849 a son of the fifth son of the propositus brought a suit in the Zilla Court of Tinnevelly in 1849 against the eldest son

of the propositus for a fifth share in the estate, and the defendant in that suit pleaded that the then plaintiff's father had in a previous suit admitted that the estate ought to be held according to the law of primogeniture and had renounced all claim to a division of the estate. The Zilla Court on 22nd January 1852, holding that the Suddar Adalat in 1849 had held that the estate was divisible gave the then plaintiff a decree for a one-fifth share in the estate. On the 31st October 1870, the widow of the plaintiff in the suit in the Zilla Court sold her deceased husband's interest in the estate to the son of the first son of the propositus, who was the father of Ponnusami Moniagar who was the brother, deceased without issue, of the appellant, Palani Ammal.

Their Lordships have in considering the facts in this appeal had the great advantage of the very careful and elaborate judgments which were delivered in the appeal to the High Court by Sir JOHN WALLIS, C.J., and SASTRI, J., and they agree with their conclusions as to the facts. Their Lordships have no doubt that this joint family never did separate.

Their Lordships think that so far from the members of that joint family intending to separate, their object probably was to establish themselves, if possible, as a joint family with an impartible estate descending according to the rule of lineal primogeniture with rights of maintenance and other privileges for the junior members. Such a joint family could not be established in modern times.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitor for appellant: *H. S. L. Polak.*

Solicitor for respondents Nos. 1, 2 and 3: *E. Dalgado.*

A.M.T.