the power as against the trustee under a subsequent bankruptcy; see Williams on Bankruptcy, 13th edition, page 321. In my opinion, the appellant is entitled to rank only as an unsecured creditor in respect of his promissory-note debt.

Solicitors for second respondent: *King and Partridge.*

G.R.

APPELLATE CIVIL.

Before Mr. Justice Waller and Mr. Justice Krishnan Pandalai.

CHINTAPENTA NARASIMHAM (SEVENTH DEFENDANT), APPELLANT,

v.

CHINTAPENTA NARASIMHAM AND FIVE OTHERS (PLAINTIFF AND DEFENDANTS 1 to 3, 12 AND NIL), RESPONDENTS.*

1932, January 25.

Hindu Law—Inheritance—Father—Self-acquisition of—Succession to—Right of—Divided son—Undivided son—Rights of.

On the death of a Hindu leaving self-acquired property, his undivided sons succeed to such property to the exclusion of a divided son.

Nana Tawker v. *Ramachandra Tawker*, (1908) I.L.R. 32 Mad. 377, was rightly decided as regards the order—though not as to the nature—of succession in such a case.

Vairavan Chettiar v. *Srinivasachariar*, (1921) I.L.R. 44 Mad. 499 (F.B.), explained.

APPEALS against the decrees of the Court of the Subordinate Judge of Amalapuram in Appeal Suit Nos. 154 and 153 of 1924 respectively preferred against the decrees of the Court of the District Munsif of

* Second Appeals Nos. 707 and 708 of 1928.

NARASIMHAM v. NARASIMHAM.

Amalapuram in Original Suits Nos. 958 of 1919 and 458 of 1921 respectively.

G. Lakshmanna and *K. Ramamurti* for appellant.

T. Satyanarayana for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by

WALLER J.

WALLER J.—Two questions arise in these second appeals. The first is whether Exhibits IV and IV-A evidence a partition between Sivaramayya and Seshayya, one of his three sons. As to that we see no reason to dissent from the conclusion arrived at by both of the Courts below that they do. The circumstances, it seems to us, indicate that it was the intention of both parties to enter into a complete separation of interest. The second question is whether, on the death of a father leaving self-acquired property, his undivided sons succeed to such property to the exclusion of a divided son. That question was answered in the affirmative in *Nana Tawker* v. *Ramachandra Tawker*(1). It has, however, been referred to a Bench for reconsideration on the grounds that some doubt has been thrown on the correctness of that decision in a later Madras case and that it has been expressly dissented from by the Chief Court of Oudh. The later Madras case is *Vairavan Chettiar* v. *Srinivasachariar*(2). It dissents from *Nana Tawker* v. *Ramachandra Tawker*(1) on one point, no doubt, but it does not dissent from it on the material point as to the exclusion from inheritance to the father of divided by undivided sons. As OLDFIELD J. observed, only the order of succession was then in dispute and not the nature of the succession. As to the order of succession, he thought, and the other two Judges did not dissent from him, that *Nana Tawker* v. *Ramachandra Tawker*(1) was

(1) (1908) I.L.R. 32 Mad. 377. (2) (1921) I.L.R. 44 Mad. 499 (F.B.).

correctly decided. As to the nature of the succession, however, they thought that the earlier decision was incorrect. To put it briefly, they were of opinion that the succession was not by survivorship, but by inheritance. Mr. Lakshmanna argues that, logically, this leads to the conclusion that, as partition does not put an end to the right of inheritance, the divided son must succeed to the father's self-acquired property equally with the undivided son. The answer to his argument is that the divided son has ceased to be a member of the co-parcenary. This was pointed out by Mayne in his comments on a Bombay case, *Fakirappa* v. *Yellappa*(1), which is directly in point and against the appellant.

"A grandson",

he observed,

"sued his grandfather and uncles for a partition. He obtained a decree as to all the joint property, but failed as to part which was held to be the separate property of the grandfather. On the death of the grandfather he brought a fresh suit for a share of this, contending that by descent it had become joint property. This was perfectly true, but the answer to the plaintiff was that he was no longer a member of the coparcenary. On the grandfather's death, his interest in the joint property passed to the remaining co-parceners by survivorship. His own separate property passed to his united sons as heirs, and in their hands became an addition to the joint property, in which the divided grandson had no interest."

In other words, the separate property becomes part of the joint property in the hands of the heirs and, as a divided member no longer belongs to the coparcenary and has no interest in its property, he can take no share in it. So far, then, the cases are all against the appellant. *Badri Nath* v. *Hardeo*(2) is the only decision *contra*. It dissents from *Fakirappa* v. *Yellappa*(1) and

(1) (1896) I.L.R. 22 Bom. 101. (2) (1929) I.L.R. 5 Luck. 649.

NARASIMHAM v. NARASIMHAM. WALLER J.

Nana Tawker v. *Ramachandra Tawker*(1) and follows *Kunwar Bahadur* v. *Madho Prasad*(2). It is impossible to understand how this last case can be treated as an authority on the question at issue. There was, no doubt, a dispute as to the right to succeed to a father's self-acquired property, but it was conceded that the sons, who were living apart from the father, had not partitioned the joint property and severed themselves from him and the sons who continued to live with him. That being so, it is obvious that the family remained joint and that the question now at issue could not have arisen. All that the Judges then said was this:—

"If however we accept the finding of the Court below that the property was the self-acquired property of Asharfi upon his death all his sons including the defendants would be entitled and the mere fact that some of those sons continued to live in his house joint in food with him would not deprive the sons who were living away from him of their share in his estate."

In other words, the mere fact of separate living did not operate as a division and naturally the latter were equally entitled with the rest to succeed. It is a legitimate inference from emphasis laid on the fact that there had been no partition that, had there been a partition, the decision would have been in the opposite sense.

We find that *Nana Tawker* v. *Ramachandra Tawker*(1) was rightly decided as regards the order, though not as to the nature, of succession in a case like this and dismiss the appeals with costs in Second Appeal No. 707 of 1928 the contesting respondent.

A.S.V.

(1) (1908) I.L.R. 32 Mad. 377. (2) (1918) 17 A.L.J. 151.