APPELLATE CIVIL.

Before Mr. Justice Reilly and Mr. Justice Burn.

S. M. ARUMUGHA CHETTY (PLAINTIFF), APPELLANT,

v.

RANGANATHAN CHETTY (DEFENDANT), RESPONDENT.*

1933, August 11.

Hindu Law—Joint family—Agreement between coparceners not to divide for a certain time or until a certain event happens —Validity of.

Coparceners in a joint Hindu family can agree for consideration that for a certain time or until a certain event or for their lives they will not exercise their right to divide.

APPEAL from the judgment of WALLACE J., dated 16th March 1932, and made in Civil Suit No. 164 of 1930 in the Ordinary Original Civil Jurisdiction of the High Court.

C. Veeraraghava Ayyar and *T. R. Sundaram* for appellant.

K. S. Krishnasami Ayyangar and *Srinivasa Raghavan* and *Thyagarajan* for respondent.

JUDGMENT.

REILLY J.—The plaintiff and the defendant, his grandson, are the only coparceners in a Hindu joint family. The plaintiff sues for a declaration that a written instrument, Exhibit A, dated 25th January 1930, and admittedly signed by him, is void, and for partition of the family property. His case in regard to Exhibit A appears to be twofold, first, that he can claim a declaration that it is voidable on account of fraud and misrepresentation and, secondly, that he can ignore it as void

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for want of consideration and for another reason, which I will mention shortly, and that it is therefore no bar to the partition which he claims. WALLACE J., who heard the suit, dismissed it; and against that decision the plaintiff appeals.

The plaintiff's story in his plaint is that after the death of his only son in August 1929 he was not satisfied with the behaviour of his grandson, the defendant, a young man then of about 18 years; and that he therefore wished for a partition on the following lines; first, that provision should be made for four of the plaintiff's daughters by settling on each of them a small house from the share that was to be allotted to the plaintiff; secondly, that a house in Thambu Chetty Street and the family house in another street, worth together Rs. 40,000, should be allotted to the plaintiff's share; thirdly, that the family business in brass utensils should be allotted to the defendant; fourthly, that out of the defendant's share two houses worth Rs. 8,000 should be given to the defendant's mother; fifthly, that the jewels in the possession of the various members of the family should be kept by those in whose possession they were; and sixthly, that the remaining property of the family should be kept undivided. The plaintiff goes on in his plaint to allege that he instructed a clerk, Desikachari, who had long been employed in the family business, that that was what he wished to be done. Paragraph 7 of the plaint is as follows :—

"The said Desikachariar said that the defendant was agreeable to this course and thereupon the plaintiff instructed Desikachariar to have a document prepared after consulting lawyers to carry out the proposals set forth above. In or about the last week of January 1930 on a Saturday night after

10 p.m. the said Desikachariar came to the plaintiff along with the defendant and one Ramaswami Ayyar, represented that the document had been prepared in accordance with the express intentions of the plaintiff and had been approved by a Vakil and further informed the plaintiff that it is better to execute the document at once. On the plaintiff asking him to read the document the said Desikachariar assured the plaintiff that the document contained the terms mentioned above in paragraph 6 *supra*. As the plaintiff had implicit confidence in the said Desikachariar and believing in the truth and representations made by the said Desikachariar in the presence of and to the hearing of the defendant, he signed the document then and there and the defendant also put his signature to the said document."

The plaint goes on to state :

"The said Desikachariar was instructed by the plaintiff to keep the document with him."

The story goes on that after about fifteen days the plaintiff obtained from Desikachariar what was represented to be a copy of the document which he had executed, and then to his surprise he found that it was not the kind of document which he had intended but something very different. Exhibit A, after setting out that there had been some misunderstandings between the parties, that it would not be proper to remain in that state, and that a partition should not be effected between them, provides that two specified houses should be given to one of the plaintiff's daughters, four shops to another, a house and site to a third and a house and site to a fourth ; then that two houses should be given to the defendant's mother for her life, and after her death they should go to her daughters ; then that the defendant should get the brass business, which I have mentioned, with its stock and its outstandings and discharge its debts. Next it is provided that the remaining immovable property

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shall be enjoyed by the plaintiff and the defendant during plaintiff's life and after his death by the plaintiff's wife, if she survives him, and the defendant, during all which time none of the parties concerned shall have power to alienate the property, and after the death of the plaintiff and his wife the property shall go to the defendant absolutely. There is a further provision that out of the income from the immovable property the plaintiff shall be at liberty to take not more than Rs. 200 a month to spend as he likes, and after his death his wife shall be at liberty to take a similar amount. Then it is provided that the defendant shall get all the vessels and movable property of the family and that the jewels shall be taken by those persons in whose use they are. Finally, there is an addition at the end of the document that the plaintiff's daughters shall get the property allotted to them only after the death of the plaintiff and his wife. This, it will be seen, is a very different arrangement from what the plaintiff alleges in his plaint he had told Desikachari was what he wished.

In his written statement the defendant says in paragraph 5:

> "This defendant states that as per the desire expressed by the parties and with a view to record the agreement and arrangement which had been arrived at prior thereto, Ramaswami Iyer prepared the document dated 25th January 1930 with legal assistance, and both the plaintiff and defendant executed the said document after reading the same and with full knowledge and understanding of its contents."

In paragraph 11 he says:

> "This defendant denies the further allegations in the said paragraph that after 10 p.m. Desikachari went to the plaintiff with the defendant and Ramaswami Iyer. On the other hand, the document was prepared and written by Ramaswami Iyer

at the express direction of the plaintiff and the same was executed by the parties at about 8 p.m. as per previous arrangement. The plaintiff first read over the document and executed it and the defendant also did so. Ramaswami Iyer and Desikachari attested the execution."

[His Lordship discussed the evidence and the arguments advanced and proceeded:]

In my opinion there is no sufficient reason for differing from WALLACE J.'S finding that the plaintiff's story is untrue and that the plaintiff executed Exhibit A with knowledge of its contents and with free consent.

But it has been urged by Mr. Viraraghava Ayyar that, even if that be so, Exhibit A may be no bar to the plaintiff's present suit. He urges that there was no consideration for the agreement embodied in Exhibit A. I have already discussed some of the elements of consideration for that agreement; and it may be added that, if, as I should be prepared to find in this case, the plaintiff did not want a partition but on the contrary wanted to prevent a partition, then the defendant's forbearance from his right of partition would itself serve as another element of consideration.

But it has been further urged that an agreement between Hindu coparceners not to exercise their right of partition is in itself invalid. That appears to be the view of the Bombay High Court. In *Ramlinga Khanapure* v. *Viru Pakshi Khanapure*(1) it was decided that an agreement between coparceners never to divide certain property is invalid under the Hindu Law as tending to create a perpetuity. That is not the exact question

(1) (1883) I.L.R. 7 Bom. 538.

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before us. But it appears that in that case the learned Judges were of opinion that an agreement between coparceners not to divide, even if not intended to create a perpetuity, but only to be effective for a certain period or for their lives, would be invalid ; and that I understand is the view still taken in Bombay. The learned Judges say that

> "the right to demand a partition is in itself superior, as a part of the Hindu public law in the larger sense, to the conventions of individuals."

With very great respect I am not able to follow that. As Mr. Krishnaswami Ayyangar for the defendant has urged, the right of partition itself has been a historical development in Hindu Law. At different stages the right has varied. At the present day it varies among different classes of Hindus in different parts of the country. Although of course Hindu coparceners no more than any one else can create perpetuities except under special provisions, I can see no legal obstacle to prevent two coparceners from agreeing for consideration that for a certain time or until a certain event or for their lives they will not exercise their right to divide. That this is possible is the view held by the High Courts of Calcutta and Allahabad ; see *Rajender Dutt* v. *Sham Chund Mitter*(1), *Srimohan Thakur* v. *Mac Gregor*(2), *Krishnendra Nath Sarkar* v. *Debendra Nath Sarkar*(3) and *Rup Singh* v. *Bhabhuti Singh*(4). There is no direct decision on the question in this Court ; but I understand from the judgments in *Ramabhadra Odayar* v.

(1) (1880) I.L.R. 6 Calc. 106.
(2) (1901) I.L.R. 28 Calc. 769.
(3) (1908) 12 C.W.N. 793.
(4) (1919) I.L.R. 42 All. 30.

Gopalaswami Odayar(1) that both the learned Judges, who disposed of that case, were of opinion that such an agreement would be valid.

In my opinion, therefore, both because Exhibit A includes an agreement between the plaintiff and the defendant not to divide the immovable property of the family while the plaintiff and his wife are alive and because Exhibit A embodies a family arrangement, it is a bar to the plaintiff's suit. In my opinion this appeal should be dismissed with costs.

BURN J.—I agree and have nothing to add.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Jackson.

1933, April 25.

POPURI MURAHARI BRAHMA SASTRI ALIAS SRI RAMA SARMA, MINOR, BY VENKATASUBBAMMA AND ANOTHER (DEFENDANTS 1 AND 2), APPELLANTS,

v.

CHILUKURI SUMITRAMMA AND TWO OTHERS (PLAINTIFF AND DEFENDANTS 3 AND 4), RESPONDENTS.*

Hindu Law—Adoption—Widow making adoption without the consent of her step-daughter—Validity of—Consent of sapindas and holding of family council—Discussion of the law relating to.

An adoption by a Hindu widow, which is otherwise proper and *bona fide*, is not rendered invalid merely because she did not obtain the consent of her deceased husband's daughter or because she obtained the consent of only one of the two nearest sapindas (the other having capriciously withheld his consent)

(1) (1930) I.L.R. 54 Mad. 269.

* Appeal No. 35 of 1928.