rule 7, beyond the periods mentioned therein, but the power should not be exercised without cogent reason.

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MADHAVAN NAIR J.—I agree.

VARADACHARIAR J.—I agree.

A.S.V.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Madhavan Nair.

CHOCKALINGAM CHETTIAR (SIXTH DEFENDANT), APPELLANT,

1938, March 29.

v.

MUTHUKARUPPAN CHETTIAR AND SEVEN OTHERS (PLAINTIFF AND DEFENDANTS 1 TO 5 AND 7 AND 8), RESPONDENTS.*

Hindu law—Joint family—Manager of— Contract of partnership by, with strangers—If, and when, other members of the joint family also become partners—Partition—Consent decree not effecting immediate severance of status but only embodying arrangement to be carried into effect if and when a partition subsequently takes place—Subsequent contract implying the continuance of joint status—Effect of.

In a suit for partition among the members of a joint Hindu family, a consent decree was passed which declared, *inter alia*, that certain members were entitled to a half share and certain other members were entitled to the other half. In a subsequent suit a question arose as to the status of the family after the consent decree. It was found: (i) that the partition decree was not intended to alter the joint family status, but was merely regarded as embodying arrangements to be carried into effect, if and when a partition did in fact take place,

* Appeal No. 379 of 1933.

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and (ii) the members of the family never in fact separated and the members regarded themselves as being joint, and even if the intention was originally to divide the family, that intention must in the circumstances be deemed to have been abandoned.

Held that the consent decree did not put an end to the joint family status.

Held further: A contract of partnership by a manager of a joint Hindu family does not *ipso facto* make the other members of the family partners in the business. But when a manager of a joint Hindu family enters into a partnership with strangers for the purpose of carrying on the same kind of business and which could be regarded as an extension of the family business, the other members of the family including minors are liable to the extent of their interests in the family property for the debts binding on the manager in the partnership business.

Case-law reviewed and discussed.

APPEAL against the decree of the Court of the Subordinate Judge of Devakottah in Original Suit No. 122 of 1931.

S. Venkatesa Ayyangar for appellant.

C. S. Venkatachari and *R. Kesava Ayyangar* for first respondent.

Other respondents were unrepresented.

Cur. adv. vult.

LEACH C.J.

The JUDGMENT of the Court was delivered by LEACH C.J.—This appeal raises two questions. One is whether the minor members of a trading family can be held liable to the extent of their interests in the family properties for debts incurred in a business carried on by the father in partnership with strangers. The other question is whether a decree passed by consent in a partition suit puts an end to the joint status, notwithstanding that the terms of the decree are never carried into effect and the members of the family

continue to live together and regard themselves as still being joint.

The appellant is the son of one Narayanan, a Nattukottai Chettiar, who died in 1927. Narayanan had two wives, Unnamalai and Alamelu. By Unnamalai he had three sons, A. M. A. N. Annamalai Chettiar (the third respondent), A. M. A. N. Natesan *alias* Chidambaram Chettiar (the fifth respondent), and A. M. A. N. Sambandam Chettiar (the sixth respondent). By Alamelu he had four sons. The eldest, Annamalai, predeceased his father and the youngest, Yoganandam, was given in adoption. The other two sons are the appellant, and A. M. A. N. Subbayya Chettiar (the seventh respondent). Many years ago Narayanan founded a money-lending business with his brother at Kuala Lumpur in the Federated Malay States. Afterwards they separated and on the partition of the family properties the Kuala Lumpur business fell to the share of Narayanan, who carried it on until his death for the benefit of himself and his sons. This business was continued after his death and it is not disputed that it must be regarded as a family business. In 1907 there was disagreement between the two wives of Narayanan with regard to their stridhanam moneys and it would appear that Unnamalai wished to make certain that her sons would not be prejudiced so far as their shares in the family properties were concerned as the result of other sons being born to Alamelu. At this time the only son born to Alamelu was Annamalai. As the result of the differences between the two wives a suit for partition was filed in the Court of the Subordinate

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Judge, Madura East, by the sons of Unnamalai, who were represented by their maternal grandfather Chidambaram Chettiar. This suit was numbered as Original Suit No. 28 of 1907. The defendants were Narayanan, Unnamalai, Unnamalai's daughter Unnamalai, Alamelu's son Annamalai, and Alamelu. There does not appear to be any doubt that this suit was of a friendly nature. Narayanan, his wives and children were all living together at the time and continued to live together until his death. In fact the sons have always lived in the family house. On 30th September 1908 a decree was passed by consent in the partition suit. It declared, *inter alia*, that the sons of the first wife were to have a half share of the family properties, and the sons of the second wife, including the sons to be born thereafter, the other half. The decree did not, however, result in the division of the family properties and can only be regarded as embodying arrangements to be carried into effect, if and when a partition did in fact take place. In the course of his evidence the third respondent stated that the moveable properties were divided, but as it is clear that he was untruthful on other points we are not prepared to attach any weight to his testimony, and it was not accepted by the learned trial Judge. I will return to this compromise decree later.

After the partition suit had been settled Narayanan entered into a partnership with the second and fourth respondents for the purpose of carrying on a money-lending business at Maubin in Burma under the vilasam of M.P.N. The capital contributed by Narayanan to this partnership must be deemed to have come from the

common fund of the family. What the amount of the capital is does not appear. The books have not been produced and the appellant must share the responsibility for this. It is common ground that the business was a very successful one for many years and that Narayanan took part in its management during his life. On his death it was not wound up, but continued exactly as before, except that the third respondent as the eldest son took his father's place in the partnership. It was not until the rebellion broke out in Burma in 1930 that business ceased to prosper.

In the course of its business the M.P.N. firm accepted deposits from customers and paid interest on the amounts so received. During the lifetime of Narayanan and in the ordinary course of business the first respondent deposited a sum of money with the firm. On 27th April 1930 it was calculated that there was due by the firm in respect of this deposit Rs. 10,126–9–6, for which a promissory note was executed by the firm's agent and handed over to the first respondent. When he demanded payment the firm failed to comply and the first respondent was compelled to file the suit out of which this appeal arises. The defendants were Narayanan's partners and his sons. The second and the fourth respondents, who with Narayanan founded the firm, pleaded that the firm's agent had no power to accept the deposit. The third, fifth and sixth respondents, Narayanan's sons by Unnamalai, denied that they ever had any interest in the business. Their case was that their father merely represented himself and his sons by Alamelu. The appellant and the seventh respondent contended that they had no

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interest in the business and that their father entered the partnership on behalf of himself and his sons by the first wife. These defences all failed and the suit was decreed with costs, the liability of the appellant and the fifth, sixth and seventh respondents being limited to their shares in the family properties.

The decision of the trial Judge is challenged by the appellant alone. He contends that the business of the M.P.N. firm cannot be regarded as being part of an ancestral business and says that unless it can be so regarded, he is under no liability to the first respondent. He asks the Court to hold that the family became divided as the result of the partition suit and that Narayanan did not enter into the M.P.N. partnership on behalf of himself and all his sons, but only on behalf of himself and his sons by Unnamalai. He says that, even if Narayanan did enter into the partnership on behalf of all, the partnership was dissolved on his death and it could not be continued so as to make him liable. For the first respondent it is denied that the effect of the partition suit was to divide the family. It is contended that the interest in the M.P.N. firm must be regarded as being part of an ancestral business ; but if it cannot be so regarded, it is said that the family being a trading family the M.P.N. business must be deemed to be part of the family business, which renders the minor members of the family liable to the extent of their interests in the family properties. It is also contended that the appellant is liable under the pious obligation rule of Hindu law.

The business here cannot be regarded as being ancestral. It is true that Narayanan and his sons are Nattukottai Chettiars and that their family trade is money-lending, but no business came to Narayanan from his forbears. So far as the evidence discloses, his business career commenced in Kuala Lumpur with the firm founded there by him in partnership with his brother and the only other business interest which he had was his interest in the M.P.N. firm. While in these circumstances it cannot be said that Narayanan carried on an ancestral business, it can be said that he managed a family business. This is accepted by the appellant but he says that the family business came to an end with the compromise decree passed in Original Suit No. 28 of 1907 as this decree dissolved the joint status. We do not agree. That decree made no difference to the position of the family at the time it was passed and as far as we know it has never been acted on, not even in part. In *Palaniappa Chettiar* v. *Alagan Chetti*(1) the Privy Council found that a custom existed among the Nattukottai Chetties inhabiting certain villages in the Madura District whereby when a chettiar during the lifetime of his first wife married another wife he appropriated out of his property a part for the maintenance of his first wife and that the property so appropriated descended to her son and that the rest of the property was notionally divided, a half being allotted to the son or sons by the first wife and the other half to the son or sons by the second wife. There is no evidence of any such custom

(1) (1921) I.L.R. 44 Mad 740 (P.C.).

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in the present case, but the judgment in *Palaniappa Chettiar* v. *Alagan Chetti*(1) shows that in some parts of the Madura District there can be a notional division of property, and we consider that the evidence here discloses that this was the intention when the compromise decree was passed. If the family separates, the separation will be deemed to continue unless it is shown that there has been a re-union, and a person who sets up a re-union must prove it; *Govindoss* v. *Official Assignee, Madras*(2). But here we are concerned with a case where the members of the family never in fact separated and the members regarded themselves as being joint even after Narayanan's death. Exhibits K and III show this beyond doubt. Exhibit K is an affidavit sworn by the fifth respondent on 12th December 1927 in support of an application to bring on the record of a suit which Narayanan had filed the names of his legal representatives. Paragraphs 3, 4 and 5 of this affidavit read as follows :—

"3. To the said late Narayanan Chettiar, his first wife's sons, viz., (1) A. S. Annamalai Chettiar, (2) A. N. Chidambaram Chettiar, and (3) minor Sambandam Chettiar, aged 16 years and his second wife's sons, viz., (4) minor A. N. Chockalingam Chettiar, (5) minor A. N. Subbayya Chettiar and (6) minor A. N. Yoganandam Chettiar, are the undivided sons of the late A. N. Narayanan Chettiar and are the heirs who have succeeded to his estate by 'survivorship' and are his 'legal representatives.'

4. To the plaintiff A. N. Narayanan Chettiar, deceased, except we six persons, there are no other heirs.

5. Therefore, it is just and necessary that the six persons mentioned in the petition, who are the sons of the plaintiff

(1) (1921) I.L.R. 44 Mad. 740 (P.C.). (2) (1934) I.L.R. 57 Mad. 931 (P.C.).

A. N. Narayanan Chettiar deceased, and who have succeeded to his estate by 'right of survivorship' and who are his 'legal representatives', should be brought on record as his 'legal representatives', and the case proceeded with."

There is here sworn testimony by a member of the family, who was giving evidence on behalf of the family, that Narayanan and his sons by his two wives constituted an undivided family. Exhibit III is the application itself and contains similar statements. Taking into consideration the course of events from the institution of the partition suit and the exhibits to which I have just referred we are of the opinion that the partition decree was not intended to alter the joint status of the family. It did not in fact make any change and even if the intention was originally to divide the family that intention must in the circumstances be deemed to have been abandoned.

When Narayanan embarked upon the M.P.N. partnership he did so as representing the family. That did not, however, make the members of his family partners. It is well settled law that a contract of partnership by a manager does not *ipso facto* make the other members of the family partners; *Sokkanadha Vannimundar* v. *Sokkanadha Vannimundar*(1), *Gangayya* v. *Venkataramiah*(2), *Ramanathan Chetty* v. *Yegappa Chetty*(3) and *Krishnasamy Ayyar* v. *Ramanadhan*(4). But this does not mean that where a manager of a trading family enters into a partnership with strangers for the purpose of carrying on the same kind of business the members of the family are not liable to the

(1) (1904) I.L.R. 28 Mad. 344.
(2) (1917) I.L.R. 41 Mad. 454.
(3) (1915) 30 M.L.J. 241.
(4) (1934) 41 L.W. 224.

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extent of the family property for the debts binding on the manager in the partnership business. That they are liable to this extent is pointed out in Mayne's Hindu Law, Ninth Edition, pages 398 and 399, from which I will quote the following passage :

> "On the other hand, the manager of a trading family has wider powers than those of the manager of a non-trading family. There is no deviation from the fundamental principle that what is done must be for the benefit or necessities of the family, but acts such as the incurring of debts and drawing of negotiable instruments are necessities to a trading family, which they would not be to a non-trading family. . . . But with a stranger partner the members of the family who are not actively engaged in the business have no contractual relation and they can seek no direct relief against him. To the creditors of the business they will be liable to the extent of their share of the family property embarked in the business; and in the case of families whose hereditary occuption is trade, this will be tantamount to saying that their liability extends to their share of the family property as a whole. The business is conducted on the credit of the whole family property, and that property is swelled by the profits of the business, and it would be impossible to say that any particular portion of the family property, less than the whole, is to be regarded as specifically allocated to the business."

The hereditary occupation of Nattukottai Chetties is money-lending and the business which Narayanan the manager of this family embarked on with the second and fourth respondents was a money-lending business. If this is to be regarded as an extension of the family business, and we regard it as such, the appellant is liable to the extent of his share in the family properties for the debt due to the first respondent. In *Ramanathan Chetty* v. *Yegappa Chetty*(1) COUTTS TROTTER and SRINIVASA AYYANGAR JJ. pointed out that there may be many cases in which family property may

(1) (1915) 30 M.L.J. 241.

in one way or other be available to the creditors of a partnership carried on by the manager with others, and the present case is in our opinion one of them.

In *Sri Thakur Ramkrishna Muraji* v. *Ratan Chand*(1) the Privy Council had to consider a case where an ancestral business of a Mitakshara joint family had been carried on in partnership with another person. Upon the retirement of the stranger partner there was a dissolution and winding up of the partnership, but the business was carried on thereafter on behalf of the joint family in the same commodities and upon the same premises. This was held not to be a new business, but a continuation of the ancestral business. In the present case, the business was not an ancestral one, but it was a family one, and when Narayanan died the family continued to be represented in the business of the M.P.N. partnership by the third respondent, the eldest member of the family. It was not really disputed that up to Narayanan's death the appellant was liable to the extent of his share in the family properties, but emphasis was laid on the fact that Narayanan's death effected a dissolution of the M.P.N.'s partnership. If the members of the family were all liable during Narayanan's lifetime it is difficult to see why they should not be liable after his death. The senior member of the family took his place in the partnership, and the firm continued to do business on the same basis as before. Moreover, Narayanan's death made no difference so far as the debt due to the first

(1) (1931) I.L.R. 53 All. 190 (P.C.).

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respondent was concerned as the debt had been incurred during Narayanan's lifetime. The learned Advocate for the appellant has suggested that the present case falls within the decision of the Privy Council in *Benares Bank, Ltd.* v. *Hari Narain*(1), but there their Lordships were considering a case where the manager had started a new business, not a case where the manager had entered on an extension of the family business. Consequently we hold that the debt due to the first respondent was incurred in the course of the family business and that the appellant is liable to the extent of his interest in the family assets. His brother and his half brothers accept this position so far as they themselves are concerned.

We also consider that the appellant is liable under the pious obligation rule. It is said on behalf of the appellant that this was not pleaded and that the Privy Council refused to allow the question to be raised in *Benares Bank, Ltd.* v. *Hari Narain*(1) because it was raised for the first time before their Lordships and it involved questions of fact which had not been tried. That case was a very different one. It is impossible for the appellant in this case to raise the plea that this debt was incurred by Narayanan for his own immoral purposes, or that it did not come within the category of a necessity. The debt represented a deposit made in the ordinary course of the family business.

For these reasons we consider that the case has been rightly decided by the trial Court, and the appeal must, therefore, be dismissed with costs.

G.R.

(1) (1932) I.L.R. 54 All. 564 (P.C.).